

## Appeal Decision

Hearing held on 14 June 2016

Site visit made on 14 June 2016

**by V Lucas-Gosnold LLB MCD MRTPI**

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

**Decision date: 19 October 2016**

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**Appeal Ref: APP/R0660/W/16/3145772**

**Land west of Bunbury Lane, Bunbury Lane, Tarporley, CW6 9QZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Macbryde Homes Ltd against the decision of Cheshire East Council.
  - The application Ref 14/5255N, dated 7 November 2014, was refused by notice dated 19 September 2015.
  - The development proposed is detailed planning application for the proposed development of 52 dwellings, access and public open space.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. At the Hearing a discussion took place regarding which local and national policies were most relevant to this appeal. Whilst I have had regard to the policies and paragraphs referred to, along with several legal judgements and other appeal decisions, I have specifically referred only to those which I consider to be most relevant to my Decision.
  3. The Council referred to policies from their emerging Local Plan. However, this has yet to complete the Examination process and, based on the evidence before me, it is apparent that there are unresolved objections to several policies. I therefore attach limited weight to the policies referred to in line with paragraph 216 of the National Planning Policy Framework (Framework).
  4. One of the Council's original reasons for refusal was that the scale of the development proposed would be premature following the publication of the draft Bunbury Neighbourhood Plan (NP). Subsequent to the Council's decision, the NP was made on 4 April 2016. However, the parties to this appeal have been given sufficient opportunity to comment on this matter during the appeal process, including through discussions at the Hearing. I am therefore satisfied that the interests of the parties will not be unduly prejudiced by my determining this appeal in line with the up to date policy framework. At the Hearing the Council also confirmed that as the NP is now made, their concerns relate to whether the proposal would conflict with specific policies in the NP rather than prematurity. I shall consider this matter further as part of my reasoning below.
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5. At the Hearing the parties agreed that the main issue in dispute was the effect of the development proposed on the character and appearance of the area. I have therefore framed my main issue accordingly.

### **Main Issue**

6. The main issue is the effect of the development proposed on the character and appearance of the area.

### **Reasons**

#### *Policy considerations*

7. The development plan for the area comprises the Crewe and Nantwich Local Plan (Adopted February 2005) (LP) and the Bunbury Neighbourhood Plan (Made April 2016) (NP). Planning law requires that the determination of an appeal must be made in accordance with the development plan unless material considerations indicate otherwise. In this appeal, the relevant policies are policies NE.2 and RES.5 of the LP and policies H1 and H2 of the NP are relevant.
8. The Framework does not change the statutory status of the development plan. However, it is a material consideration. A Statement of Common Ground (SoC) was submitted prior to the Hearing. Among those matters agreed between the parties, it is accepted that the Council is currently unable to demonstrate a five year supply of housing land in line with the requirements of the Framework. On that basis, there was agreement between the parties that paragraph 49 of the Framework was engaged. Specifically, that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. It is therefore necessary to consider whether the relevant local policies are relevant for the supply of housing and this was a matter that was discussed at the Hearing.
9. Policy NE.2 states that all land outside of the settlement boundaries will be treated as open countryside. The appeal site is not within the settlement boundary of Bunbury. Accordingly, for the purposes of the development plan, the site is within the open countryside. Within countryside locations, the policy seeks to restrict development to specifically defined purposes, including that which is essential for the purposes of agriculture, forestry or appropriate to a rural area. The policy also permits an exception to this approach, where the proposal would be infill development consisting of one or two dwellings. The justification for policy NE.2 also goes on to refer to seeking to safeguard the countryside for its own sake and to protecting its character and amenity.
10. Policy RES.5 seeks to define specific criteria where new development in the open countryside would be permitted, including agricultural or forestry workers dwellings. None of the criteria listed within the policy are relevant to this appeal proposal.
11. Policy H1 of the NP seeks to ensure that a minimum of 80 new homes are built in Bunbury during the plan period, focusing on sites within or immediately adjacent to the village, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.

12. Policy H2 of the NP is supportive of new development in principle, whilst seeking to ensure that it is small scale, and in character with the settlement. To that end, the policy seeks to restrict greenfield development to a maximum of 15 new houses on greenfield sites immediately adjacent to the village.
13. Together, the local policies relevant to this appeal therefore seek to restrict the amount and type of new housing that can be developed outside of defined settlement boundaries in countryside locations and to apply a limit to the amount of housing that can be developed on greenfield sites adjacent to Bunbury village. As such, these policies are likely to affect the supply of housing in their spatial application. I therefore consider that policies NE.2 and RES.5 of the LP and policies H1 and H2 of the NP are policies relevant to the supply of housing. Planning Practice Guidance (PPG) confirms that paragraph 49 also applies to Made Neighbourhood Plans<sup>1</sup>. Accordingly, in line with paragraph 49 of the Framework these policies should not be considered up-to-date.

#### *Character and appearance*

14. The appeal site is an area of pasture land accessed off Bunbury Lane and is approximately 2.9 hectares. It is situated to the rear of dwellings that line Bunbury Lane to the east. The site is bounded by pasture land to the north and south and to the west lies a brook beyond which is open countryside with views extending to the Peckforten Hills. Existing built development within the village can be seen to the north from within the site. These dwellings are physically separated from the appeal site by an area of undeveloped pasture land. The site is bordered by hedgerows with mature hedgerow trees. There is also a hedgerow that crosses the site. A number of the trees on the northern and western site boundaries are the subject of Tree Preservation Orders.
15. There is some dispute between the parties as to the extent to which the appeal site is visible from public viewpoints. From all that I have read and the observations I was able to make during the site visit, I consider the most significant public viewpoints of the appeal site are along Bunbury Lane, Long Lane and the footpath that crosses the site (FP14).
16. Bunbury Lane marks the southern entrance to the village, from the junction with Long Lane. Long Lane is narrow in width, lined with hedgerows and views of the open countryside extend either side of the highway. It therefore has a highly rural character and this extends as one passes the junction and travels along Bunbury Lane towards the village centre. The first buildings that are visible on Bunbury Lane are traditional farmhouse dwellings with a range of farm buildings visible from the highway. This emphasises the rural feel of this part of Bunbury. Further along the lane, dwellings begin to line the highway on either side at more regular intervals. The dwellings have a linear pattern of development and glimpses of the open countryside to the rear of the dwellings, including those across the appeal site, are visible through gaps between the dwellings.
17. This establishes a spacious pattern of development which contributes to and enhances the rural character and setting of the southern approach to the village along Bunbury Lane and assists in transitioning the character of the

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<sup>1</sup> ID 41-083-20160211 Last updated 11 02 2016

area from rural open countryside to that of the more developed area close to the centre of the village.

18. Views of the appeal site from Bunbury Lane can largely be defined as glimpses through the gaps in between the existing dwellings and filtered views through front boundary hedgerows that line the highway. Close to the proposed access there is a direct view of the appeal site, with a clear view across it to the Peckforten Hills beyond. Additionally, due to the linear nature of development along Bunbury Lane at this point, there are open sky views beyond the roof lines of the dwellings across the site and the crowns of several trees are also visible to the rear. The appeal site therefore significantly enhances the spacious, rural appearance of the southern entrance into the village along Bunbury Lane and makes a positive contribution to the character of the area in the role that it plays in the gradual transition between the countryside to the more developed parts of the village centre.
19. From Long Lane the appeal site is visible from public viewpoints in the highway, particularly close to where the public footpath is situated. The appellant's Landscape and Visual Impact Assessment (LVIA) shows views across open fields, including the appeal site, looking towards the village. Although the image in the LVIA does show limited glimpses of existing residential development along Wakes Meadow and Bunbury Lane, I note that the image also shows that not all of the trees were in full leaf at the time it was taken. At the time of the site visit, the trees were in full leaf and as a result they largely screened views of the existing residential development. As a consequence, the viewpoint was of open fields lined by small groups of trees, hedgerows and hedgerow trees. The character of the area at this point is therefore that of rural, open countryside with little visual evidence of built development when looking in the direction of Bunbury.
20. The contribution that the appeal site makes to the character of the area in its current form when seen from public viewpoints along Long Lane is in its integral role as fields that form part of the mosaic of open countryside that surrounds the village with the unimpeded views across it due to its undeveloped form. The site therefore enhances the rural setting of Bunbury when seen from this viewpoint which forms part of the southern gateway to the village.
21. A public footpath (FP14) crosses the appeal site and views of the site are therefore direct and experienced at close quarters by users of the path. Although, the appeal site may not have any particular landscape features of note, its rural appearance and the views across it to the Peckforten Hills and open countryside beyond do give it a pleasant and tranquil feel. This is particularly so in relation to the rear most field at the point where the footpath crosses the site.
22. Close to the footpath the site has an expansive, open feel and the character relates much more to the countryside beyond. The topography of the site also slopes downwards towards the brook and this draws the eye to the open fields that lie beyond. The appeal site therefore makes a positive contribution to the character of the area when viewed from the footpath that crosses it (FP14) due to its open and rural appearance, the views across it, and the high levels of amenity value it provides to users of the path.

23. Based on the evidence before me, the pattern of development historically within the village has largely been small scale, with limited groups of housing having been developed and this demonstrates how the village has grown organically over time. This forms part of the rural character of Bunbury. There are some exceptions to this however. Specifically, Darkie Meadow and Wakes Meadow. These developments are relatively large scale housing estates when considered in the context of Bunbury.
24. The appeal proposal would see the construction of 52 dwellings. The submitted plans show that the approximate extent of the built development proposed would be aligned with the existing rooflines of dwellings along Wakes Meadow to the north. The rear most part of the site would have a community orchard, public open space, an attenuation drainage pond and enhanced wildlife area with public access. The existing footpath across the site would be diverted and would run through the proposed development. The site access would be situated between two dwellings that front onto Bunbury Lane.
25. The development proposed would extend the amount of built development on the edge of the village along the southern and western boundaries to a significant extent. When seen from public viewpoints along the southern approach to Bunbury village in particular, the development proposed would be highly visible in views from Bunbury Lane and Long Lane. This would significantly detract from the integral role the appeal site plays in contributing to and enhancing the rural setting of the village at a key point where the character of the area undergoes a gradual transition from the open countryside to the more developed parts of the village centre beyond.
26. As a consequence, the appeal proposal would significantly detract from the spacious and rural character of the area when approaching Bunbury village along its southern gateway. The proposed development would also be visible in the gaps between dwellings that form the linear development on Bunbury Lane leading towards the village centre. This would detract from the spacious pattern of development that contributes to the rural character of the lane. The rural character of the lanes close to the village is a particular feature of Bunbury and one that local policies, such as the Bunbury Village Design Statement (March 2009) seeks to maintain so that the rural character of the village is not eroded (p. 14 and 15). The appeal proposal would therefore be significantly harmful to the rural character of Bunbury in this respect.
27. The appellant's LVIA observes that the public footpath that crosses the site (FP14) appears not to be well used and refers to the fact that it is unsurfaced in this assessment. I visited the appeal site on two occasions, one on an unaccompanied basis prior to the Hearing. On both visits, I observed that there is a clear and well-trodden path through the field which is normally a clear sign that a path is well used. I also note that numerous local residents have confirmed that the path forms part of a popular circular walk around the village. Whilst the path may be unsurfaced, this is fairly typical of the majority of footpaths that cross fields in the countryside and is not necessarily a decisive factor in determining the frequency of its use.
28. The extent of change that users of the footpath would experience as a result of the proposal would be significant. Rather than walking through an open field, with expansive views of the countryside beyond, users would instead be walking through a housing estate. Although the appellant's LVIA refers to the

effect of mitigation measures that would reduce the magnitude of change over the longer term, I am in no doubt that the level of enjoyment that users of the footpath currently experience as a result of the rural character of the appeal site would be significantly altered and that any screening effects as a result of additional planting would be minimal as users would walk directly past several of the proposed dwellings and would therefore experience them at close quarters. The change in the rural character of the appeal site when experienced from public viewpoints along the footpath as a consequence of the proposal would therefore be significantly harmful to users walking along it.

29. Although the layout of the development proposed has been designed to align with existing dwellings on Wakes Meadow that development lies to the north of the site and is separated from it by an open, undeveloped meadow. As a result, the appeal site is seen as visually and functionally separate from Wakes Meadow. I understand that a planning application has been submitted for housing development on this meadow but at the time of the Hearing, the application had not yet been determined by the Council.
30. The existing dwellings along Bunbury Lane are visible from the footpath. However, the boundary hedge that crosses the site in between the path and the rear of dwellings along Bunbury Lane provides a form of physical and functional separation that serves to emphasise the difference in character between the rural, open appearance of the appeal site and the more built up areas of the village beyond.
31. The appeal site is also visible from the footpath to the rear of the site (FP18). However, this is only in limited views close to the brook that runs along the field boundary due to the screening effect of several mature trees that run along the watercourse. Notwithstanding that the appeal site is in a slightly elevated position when seen from the footpath, this viewpoint of the site does not make a significant contribution to the character and appearance of the area as it is only experienced at close quarters and for a short duration.
32. I acknowledge that the appellant's LVIA assessed the landscape value of the appeal site to be medium. However, for the reasons I have described above, the appeal site is visible from several public viewpoints in both direct and glimpsed views and it makes a highly positive contribution to the rural character and setting of the village in its current form. Whilst horses may be being kept on the appeal site, this is a use that one would expect to see in the countryside and it is not necessarily a use that can be considered to be indicative of 'urban fringe'. The boundaries of the site are clearly defined by mature hedgerows and hedgerow trees and cannot therefore be reasonably described as 'gappy'.
33. Given that 52 dwellings are proposed, the scale of the development would be relatively substantial when considered in the specific context of Bunbury which is a small rural village. Whilst I have had regard to the scale of the Darkie Meadow and Wakes Meadow developments, these developments were approved approximately 30 years ago and the planning policy context has changed since then. Both local and national policies emphasise the importance of good design and the need for development proposals to reflect and respect the context within which they are situated. Specifically, policies H2 and H3 of the NP seek to restrict the amount of new greenfield development in Bunbury to a maximum of 12 dwellings on individual sites. These policies seek to

promote small scale development that reflects the historic pattern of development that has occurred in Bunbury over time. I acknowledge that the appeal proposal, being close to existing development along Bunbury Lane, does comply with some elements of these policies. Overall, the scale of the proposal would significantly exceed that envisaged in the NP and would fail to respect the character of Bunbury as a consequence.

34. Accordingly, I conclude on this issue that the development proposed would be harmful to the character and appearance of the area. The development proposed would therefore be contrary to policy NE.2 of the LP and policies H1 and H2 of the NP (as set out above). The proposal would also conflict with one of the core planning policies of the Framework which state, among other things, that planning should recognise the intrinsic character and beauty of the countryside (paragraph 17) and paragraph 61 which seeks to ensure that planning decisions address the integration of new development into the natural and built environment.

### **Other Matters**

#### *Whether sustainable development*

35. Paragraph 7 of the Framework describes how there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 goes on to state that these roles should not be undertaken in isolation, because they are mutually dependent and therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
36. The proposal would result in an additional 52 dwellings, including the provision of affordable housing. The Framework states that providing the supply of housing required to meet the needs of present and future generations is one of the social dimensions of sustainable development (paragraph 7). This is a matter that therefore weighs in favour of the appeal proposal.
37. The appeal site is close to and accessible from the centre of Bunbury village, where a limited range of services and facilities are available including a school, café, public house and shop. The appeal site is therefore in an accessible location for new housing development in this respect.
38. Among the other benefits listed by the appellant that weigh in favour of the proposal are the creation of public open space (including a wildlife habitat area and community orchard), the enhancement and mitigation of key habitats, the economic contribution that the development of the site would bring to the local and wider area, the provision of short term construction jobs, footpath enchantments and a financial contribution towards education provision in the area. A signed s.106 agreement along with a Unilateral Undertaking was submitted. There is therefore a mechanism before me to secure these benefits.
39. Based on the information before me, I am satisfied that the proposal would be acceptable, subject to conditions where appropriate, with regard to the effect on the living conditions of neighbouring occupants (due to the separation distances involved), highways, access and drainage. These are however neutral considerations whereby a lack of harm does not weigh in favour of the appeal proposal.

40. Additionally, paragraph 198 of the Framework states, among other things, that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. There was some discussion at the Hearing as to the meaning of 'normally' in the context of paragraph 198 and it is not specifically defined in the Framework. It is the appellant's case that given the scale of the under supply of housing across the local area, the housing need is such that it is a circumstance that should outweigh the conflict with the NP.
41. As the Council is unable to demonstrate a five year supply of housing land, I have considered paragraph 49 of the Framework and found that the local policies identified are relevant to the supply of housing and therefore should not be considered to be up-to-date. Paragraph 14 sets out the presumption in favour of sustainable development and describes that for decision taking this means that where the relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
42. In summary, I acknowledge that there are several environmental, social and economic benefits that weigh positively in favour of the appeal proposal. I have also identified several neutral factors which do not weigh in favour of the proposed development. On the other hand, I have concluded that the development proposed would be harmful to the character and appearance of the area as it would significantly detract from the rural setting and character of Bunbury. I have also found that the scale of the proposal would not reflect the historic pattern of development of the village. Recognising the intrinsic character and beauty of the countryside is a core planning principle of the Framework (paragraph 17). Additionally, paragraph 61 seeks to ensure that planning decisions address the integration of new development into the natural and built environment. These are significant factors that do not weigh in favour of the appeal scheme.
43. On that basis, I conclude that the adverse impacts of the development proposed do significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. As such, the appeal proposal would not represent a form of sustainable development.

### **Conclusion**

44. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*V Lucas-Gosnold*

INSPECTOR



## **APPEARANCES**

### **FOR THE APPELLANT:**

Mike O'Brian MRTPI MTCP	WYG
Xanthe Quayle DipLACMLI	Camlin Lonsdale
Elinor George MRTPI MTCP	WYG

### **FOR THE LOCAL PLANNING AUTHORITY:**

Robert Law	Cheshire East Council
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### **INTERESTED PERSONS:**

Isabel Noonan	Local resident
Cllr Ron Pulford	Chairman, Bunbury Parish Council
E Hanslip	Local resident
Andrew Thomson DpTP MRTPI	Local resident
Sandra Dykes	Local resident
Kate Catherall	Local resident
Peter Gorman	Local resident
Cllr L Potter	Bunbury Parish Council
Cllr Nick Parker	Bunbury Parish Council
Peter Jones	Local resident
Lucy Monro	Local resident
Walter Davies	Local resident
Diana Caldwell	Local resident
Nigel Parsonage	Local resident
Margaret Ellis	Local resident
Mark Jones	Local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Appeal statement by Crabtree Homes
2. Updated Appendix 'A' to Bunbury Parish Council response to appeal by Bunbury Parish Council
3. S. 106 agreement by the appellant
4. Unilateral Undertaking by the appellant

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Revised plans – Ashbourne house type
2. A copy of the judgement Cheshire East borough Council v. Secretary of State for Communities and Local Government and Renew Land Developments Ltd (dated 16 march 2016)
3. Signed s. 106 agreement