



---

# Appeal Decision

Inquiry held on 13, 14 & 15 December 2011 and the 9 & 10 February 2012

Site visit made on 8 February 2012

**by Andrew Jeyes BSc DipTP MRTPI**

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

**Decision date: 16 August 2012**

---

**Appeal Ref: APP/R0660/A/11/2158727**

**Loachbrook Farm, Sandbach Road, Congleton, Cheshire CW12 4TE**

- 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 N H and Mrs M Dale against the decision of Cheshire East Council.
  - The application Ref 11/0736C, dated 21 February 2011, was refused by notice dated 28 July 2011.
  - The development proposed is the redevelopment of land for up to 200 dwellings, community facilities and associated infrastructure.
- 

## Decision

1. The appeal is allowed and outline planning permission is granted for the redevelopment of land for up to 200 dwellings, community facilities and associated infrastructure at Loachbrook Farm, Sandbach Road, Congleton, Cheshire CW12 4TE in accordance with the terms of the application, Ref 11/0736C, dated 21 February 2011, subject to the conditions set out in the attached schedule.

## Procedural Matters

2. The Public Inquiry closed prior to the publication of the National Planning Policy Framework [the Framework], which now provides the national policy background in relation to development. Both the Council and the appellant have been consulted on the Framework. The appeal has been determined taking account of the national policy background established by the Framework and the views expressed on it.
3. The application is in outline with appearance, landscaping, layout and scale reserved for subsequent approval. Following closure of the Inquiry the appellants were consulted on whether access should be a reserved matter and it was indicated<sup>1</sup> that access should also be considered as a matter reserved for subsequent approval. The site is shown on Drawing No 4332-P-01B. Illustrative details of the proposed development are shown on Drawing Nos 4332-P-02H, 4332-P-03J and 4332-P-05B, with illustrative access details on Drawing Nos 1234/04D and 1234/05D.
4. At the Inquiry, Mr Helme, for the appellants, withdrew Section 7: *Comparison with other SHLAA<sup>2</sup> sites* and Paragraphs 9.14 to 9.17 of Section 9: *Conclusions* of his proof of evidence following submission of an agreed statement on sustainability<sup>3</sup>.

---

<sup>1</sup> Document 38: Further submissions relating to the National Planning Policy Framework and other matters

<sup>2</sup> Cheshire East Strategic Housing Land Availability Assessment

<sup>3</sup> Document 29: Statement of Common Ground : Sustainability

## **Main Issues**

5. The Statement of Common Ground [SoCG] indicates acceptance by both parties that the proposal is contrary to saved Policy PS8 of the Congleton Borough Local Plan First Review 2005 [CBLP] relating to development in the countryside and that foul drainage can be dealt with via a Grampian style condition. In addition, concerns were raised in respect of the housing land supply position within the authority and the fact that development of this site would be premature. The main issues arising from the decision notice and evidence presented at the Inquiry are:-
- [a] the countryside protection policies of the development plan and the Framework;
  - [b] the effect on the character and appearance of the landscape;
  - [c] the impact of the proposal in respect of good quality agricultural land;
  - [d] whether the development of the site would constitute sustainable development;
  - [e] housing land provision policies in the development plan and the Framework, including housing land supply and the sustainability of other sites; and
  - [f] whether the development would be premature in respect of the emerging Cheshire East Core Strategy and the Site Allocations Development Plan Document [DPD]

## **Reasoning**

### *Background*

6. This outline proposal for up to 200 houses is on a site that comprises part of Loachbrook Farm, the main buildings of which are on Sandbach Road. There is an illustrative masterplan indicating the principles of development that would be followed. The site extends back from Sandbach Road with Congleton High School and farmland fronting Holmes Chapel Road to the north-east and farmland fronting Sandbach Road to the south and Sandy Lane to the west. The remaining farmland is within the same ownership as the appellants.
7. The masterplan indicates housing on the southern, Sandbach Road, end of the site with controlled grazing and public access at the north-west end around a Neolithic Long Barrow, a Scheduled Ancient Monument [SAM]. A public footpath crosses the south-west side of the site from Sandbach Road to Sandy Lane. Vehicular access would be from Sandbach Road.

### *Countryside Protection*

8. The site is within the open countryside and its development would be contrary to saved CBLP Policy PS8, which aims to ensure the protection of the open countryside from inappropriate development. The proposal falls into none of the categories of development that, subject to other policies of the CBLP, would be considered appropriate. Whilst not referred to in the reason of refusal, it was indicated at the Inquiry that the proposal would also be contrary to saved CBLP Policy H6, which reinforces Policy PS8 and restricts housing in the countryside to essential workers, replacement of existing dwellings and conversion of rural buildings.
9. The Framework indicates that account should be taken of the intrinsic character and beauty of the countryside, with restrictions on new housing to where it would enhance or maintain the vitality of rural communities. Whilst the appellants indicate that CBLP Policy PS8, and Policy H6, should carry little weight as the CBLP is now time expired [2011], these policies have been formally saved. These policies are consistent with policy contained within the Framework and, as such, carry considerable weight. The proposal is contrary to the aims of saved CBLP Policies PS8 and H6 and with the Framework.

### *The Effect on Landscape*

10. The site is on the west side of Congleton and sits within a valley with the Loach Brook along its north-eastern boundary, with Congleton High School to the north-east of the

brook. The land rises steeply to the west and has an undulating character in its southern part. To the north, the land is less undulating following the line of the valley with the tree covered SAM forming a distinctive feature. Extensive views exist from higher parts of the site across Congleton towards the Peak District and associated hills. Overall, the site is an attractive undeveloped area of agricultural character. To the west of Sandy Lane, the landform is relatively flat.

11. The Framework indicates that the planning system should contribute to and enhance the natural and local environment by, amongst other matters, protecting and enhancing valued landscapes.
12. The Loach Brook has an extensive line of trees along it, which helps to screen views of the High School, but the school's extensive large buildings are visible as part of the landscape when seen from the west, especially in winter. The High School marks the effective built-up edge of the town relative to the site and this is reinforced by the tree line along the edge of the brook.
13. The *Cheshire Landscape Character Assessment* includes the site within the Brereton Heath Character Area comprised of gently undulating, sometimes flat, landform of medium scale, wide variation in enclosure and with woodlands providing an important visual characteristic. The *Landscape Assessment of Congleton 1998* includes the site within the Cheshire Plain Character Area of low-lying rural landscape with a predominantly pastoral use and small blocks of woodland.
14. Landscape assessments have been carried out by both the appellants and the Council, with differing conclusions as to the impact of the proposals on the landscape. The Council has based its assessment on *Guidelines for Landscape and Visual Assessment*<sup>4</sup> and clearly set out their methodology and conclusions, whereas the appellants, whilst stating that a similar methodology was used, were less transparent. The same nine assessment points have been used. The appellants assess the impact as "Minor adverse" from all but two viewpoints, with No 7 being "Moderate adverse" and No 9 "No change". The Council assess impact as more severe from all viewpoints other than No 9, which was "Slight - No change". These assessments provide a useful tool that carries moderate weight in assessing such proposals. In my view, both assessments have followed the basic methodology established in *Guidelines for Landscape and Visual Assessment*, but have reached different assessments, with the impact of the development lying between, for the reasons given in the following paragraphs.
15. Access would be from Sandbach Road and the masterplan indicates housing development at the Sandbach Road end of the site, which would extend up the western slope of the Loach Brook valley, but which would be unlikely to intrude above the skyline established by the ridge to the west. The proposal would thus not intrude into the wider landscape of this part of the Cheshire Plain or into any significant views from Sandy Lane or Holmes Chapel Road, including those of distant landforms that provide the setting of Congleton. However, it would noticeably extend the built-up area of Congleton. It would prominently intrude into views of the edge of Congleton and wider views of the landscape from the public footpath that crosses the site and would intrude into views along the valley from Holmes Chapel Road.
16. Substantial tree planting is indicated that, in the longer term, would provide a setting and screening function for the housing, such planting in part reflecting aspects of the wider character of the local landscape. The Council are concerned that this screening woodland would block views across the site and obscure more distant views of hills to the east and south. However, the *Cheshire Landscape Character Assessment* identifies woodland as providing an important visual characteristic in the area and this is borne out in the surrounding landscape. Whilst views would change, the proposed planting would not look out of place or introduce an uncharacteristic feature. Whilst the tree

---

<sup>4</sup> Institute of Environmental Management and Assessment: *Guidelines for Landscape and Visual Assessment*

planting would impede views of distant hills from restricted viewpoints, it would not impose on general views from the site as a whole.

17. The setting of the SAM at the northern end of the site is an important element in this landscape and is assessed in the landscape assessment, but in my view, it would not be unduly affected by the proposed housing to the south or by the proposals for footpaths in the area, providing suitably surfaced and fenced, which could be controlled by suitable conditions at the appropriate stage.
18. The overall impact on the landscape would be moderate and, whilst the proposal would locally harm the character and appearance of this area of countryside by extending the built up area of the town on the lower southern slopes, it would not unduly intrude into more distant views of landforms that provide the setting of Congleton. The proposed tree planting, which would reflect local landscape characteristics, would contribute to the setting of the development and help assimilate it into the edge of Congleton.
19. In conclusion, the proposal would locally harm the character and appearance of this area of countryside contrary to saved CBLP Policies GR5 and GR3 and guidance within the Framework, but would not unduly intrude into more distant views of landforms that provide the setting of Congleton. These policies aim to ensure, amongst other matters, that development should respect or enhance the landscape character of the area and not unacceptably lessen the visual impact of features that provide the setting of urban areas. These policies are consistent with the Framework and carry considerable weight.

#### *Loss of Agricultural Land*

20. The Framework indicates account should be taken of the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, the use of areas of poorer quality land in preference to that of a higher quality should be considered.
21. The SoCG indicates that of the site, some 4.6Ha is Grade 2, 6.5Ha is Grade 3A and 4.4Ha is Grade 4 agricultural land with 1.7Ha in associated use. Therefore, of the site as a whole, some 64% of the land is classed as being best and most versatile agricultural land. Most of this best and most versatile land would be used to accommodate housing, with the area left for pasture being predominantly the Grade 4 land.
22. The appellants contend that the loss of this land within the totality of such land available in the Cheshire Plain would only be minor and that, in any case, development of any sites around Congleton is likely to lead to the loss of best and most versatile agricultural land. A desktop study on agricultural land has been carried out on sites classified as developable within the SHLAA. This indicates that seven had a preponderance to be on best and most versatile agricultural land with three having a majority of poorer quality land. Thus, it is likely that best and most versatile agricultural land will need to be used to fulfil the town's housing requirements as indicated in a strategy<sup>5</sup> to guide future development within Congleton that will provide input to a Site Allocations DPD. This identified a need for 3,500 houses for the town by 2030. Whilst not adopted policy, this provides a clear indication of the intentions for future housing provision within the town.
23. A Council decision to permit housing development, subject to a planning obligation, at Hassall Road, Sandbach<sup>6</sup> has been referred to, which involved the loss of agricultural land. The Council accepted the loss of this agricultural land as it constituted Grade 3A over a 1.3Ha area and formed part of a site surrounded by housing on three sides and separated by mature trees and hedgerows from larger fields to the east. In my view,

---

<sup>5</sup> Draft Congleton Town Strategy Consultation: Cheshire East Local Plan

<sup>6</sup> Council Reference: 11/3414C Outline application for 39 dwellings on land at Hassall Road, Sandbach

the circumstances are not similar enough to create a precedent and each case needs to be judged on its individual merits.

24. For these reasons, whilst involving the loss of best and most versatile agricultural land contrary to the intentions of the Framework, this carries neutral weight, as other preferred sites would also involve a similar loss. The loss of best and most versatile agricultural land would not therefore be unwarranted.

#### *Sustainability of the Proposed Development*

25. The Framework indicates that the purpose of planning is to contribute to the achievement of sustainable development and that there is a general presumption in favour of sustainable development. Two of the core principles of the Framework are firstly, to proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs, and secondly, to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
26. The site is on the western edge of Congleton, which is classified as a key service centre in the Regional Spatial Strategy<sup>7</sup> [RSS]. Whilst the Government has indicated its intention to revoke regional strategies, for the present the RSS remains as part of the development plan. An agreed schedule indicating relative sustainability criteria with other comparable sites contained within the SHLAA has been submitted; this uses the North West Sustainability Toolkit derived to appraise development as part of support for RSS Policy DP9. This schedule indicates that the appeal proposal has reasonable sustainability credentials based on the toolkit checklist with the main concerns being distance from the railway station, town centre, medical facilities and local convenience food store.
27. The site is within reasonable walking distance, although slightly above the distance specified in the Toolkit, of West Heath Shopping Centre, a local centre containing two medium sized supermarkets, a pharmacy, newsagents and post office, veterinary surgery, food outlets, public house and other small shops. There is a secondary school adjacent to the site, which also provided access for the public to playing fields, meeting rooms and leisure facilities. Open space and play facilities would be provided as part of the development. The local primary school is within walking distance. However, the site is a considerable distance from the town centre, medical centre and rail station, all of which are served by bus routes that pass along Sandbach Road or Holmes Chapel Road. In this respect, the site reflects the position with other peripheral sites contained within the SHLAA.
28. In addition, the submitted details indicate that the development would provide opportunities for biodiversity enhancement, provide a degree of improved access to open countryside and the setting of the SAM would not be unduly affected by the proposals.
29. Overall, the site is in a sustainable position with reasonable access to local services and facilities, with public transport available for those facilities located at a greater distance away. It would form a sustainable site for development in respect of policy contained within the Framework.

#### *Housing Land Supply and the Sustainability of Other Housing Sites*

30. The RSS indicates a net requirement of 1150 dwellings per annum within Cheshire East, this being the combined figure of the three former district authorities, the net rates being 300 pa for Congleton, 400 pa for Macclesfield and 450 pa for Crewe & Nantwich. Net housing completions exceeded this overall figure from 2003 to 2008

---

<sup>7</sup> North West of England Plan: Regional Spatial Strategy to 2021 [RSS]

but, since then, reflecting the national economic downturn, there has been an under-performance.

31. The Framework indicates the importance of establishing a 5-year supply of deliverable housing sites against housing requirements, including a 5% buffer or, where persistent underperformance is identified, a 20% buffer. The Framework also indicates that housing applications should be considered in the context of the presumption in favour of sustainable development. In this context, relevant policies for the supply of housing land should not be considered up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing sites.
32. The SoCG indicates that, based on the housing requirements set out in RSS, there was an agreed housing land supply of 3.65 years [with a base date of April 2010], this being the situation identified at a planning appeal<sup>8</sup> in February 2011 [this decision has been quashed]. The draft SHLAA presented at the Inquiry indicated a possible 4.48 years supply from April 2011, but this was subject to consultation and debate and therefore carries little weight. It has since been approved by the Council, although not supported by all members of the Housing Market Partnership, using a revised methodology that demonstrated a 3.94-year housing supply. The Council therefore indicate that the position, as contained in their Annual Monitoring Report of March 2011, has improved to 3.94 years<sup>9</sup> from 3.65 years.
33. In addition, the housing supply figures do not allow for any buffer as required by the Framework. I do not consider that persuasive evidence has been put before me to suggest that there has been a persistent underperformance on the part of the Council and that a buffer of 5% should apply. The Council indicate that with a 5% buffer, the housing land supply equates to 3.75 years. The appellants dispute the use of a 5% buffer and consider that a consistent undersupply is present, so triggering the need for a 20% buffer; this would give, based on the Council's housing figures, a 3.28-year supply. Whichever size of buffer is used, it is clear that a 5-year supply of deliverable housing sites cannot be demonstrated by a clear margin. This represents a serious shortfall in housing provision that carries substantial weight. Housing on this site would contribute to meeting this shortfall.
34. The Council do not dispute that the proposal could provide mixed housing of high quality to meet housing objectives. Their outstanding concerns were with the impact on the character and appearance of the countryside and landscape.
35. The Framework indicates that the Government is committed to delivering a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, including the provision of affordable housing.
36. The proposal includes the provision for just over 30% of the proposed housing to be affordable. The Council target for affordable houses has not been met in recent years and is below the number required to meet local affordable housing needs. The Council accept that this element would make an important contribution, but indicate that this would be expected from any new greenfield housing proposal. The affordable housing provision would be secured by means of a condition and this would contribute to meeting Government guidance in the Framework and the objectives of saved CBLP Policy H13 to secure the provision of affordable and low cost housing. This policy is consistent with the Framework and carries considerable weight.
37. As indicated, an agreed schedule indicating relative sustainability criteria with other comparable sites contained within the SHLAA has been submitted. These sites were regarded by the Council as sequentially more preferable than the appeal site. This schedule indicates that the appeal proposal has reasonable sustainability credentials

---

<sup>8</sup> APP/R0660/A/10/2140255 & APP/R0660/A/10/2143265: "Abbeyfields site", Sandbach, Cheshire

<sup>9</sup> Document 39: Statement of the Local Planning Authority relating to National Planning Policy Framework

based on the toolkit checklist with some drawbacks. Similar drawbacks are shared by other sites within the SHLAA.

38. The Framework indicates that housing proposals should be considered favourably in the absence of a 5-year land supply, taking account of other policies in the Framework. This indicates that the site should be suitable for housing, including its environmental sustainability. This requires an assessment of the proposed site and is not a requirement for comparison with other sites that may be preferred for housing. As previously indicated, the appeal site has sustainability credentials sufficient to satisfy the intentions of the Framework. Nor is it suggested that the site would not achieve a high quality of housing of a suitable mix or that it would fail to use the land efficiently.
39. In conclusion, the Council has failed to demonstrate a 5-year land supply of deliverable sites contrary to policy in the Framework. Government policy is that housing applications should be considered in the context of the presumption in favour of sustainable development, which this site would represent. The development would also contribute to meeting policy in the Framework and the objectives of saved CBLP Policy H13 to secure the provision of affordable and low cost housing. These matters carry substantial weight in relation to this appeal.

#### *Prematurity*

40. Although not part of the reasons of refusal, the Council has raised concerns in respect of prematurity in relation to prejudicing the spatial vision for the area. This vision will be contained within the Core Strategy<sup>10</sup> and a Site Allocations DPD<sup>11</sup>, and would involve considering this site against other sites that are considered more appropriate within the context of Congleton as a whole. Congleton is defined as a Key Service Centre in RSS, and has been identified as such in the emerging Core Strategy, towards which some housing growth would be directed to meet local needs.
41. The Council has commenced work on its Core Strategy and published an "Issues and Options Paper" in November 2010, which set out high level options for future development, including three housing growth options, each with a possible rural variant, the lowest of which accords with current RSS. The Core Strategy is programmed for submission with a view to adoption by the end of 2013. A "place shaping" exercise via a Local Area Partnership took place in mid-2011 and a neighbourhood planning exercise is underway, with Congleton being recognised by the DCLG<sup>12</sup> as one of four towns that are Neighbourhood Planning Front Runners. This is expected to provide guidance on development in Congleton and input into a Site Allocations DPD to be adopted by the end of 2014; this timetable is to be further considered by the Council in July 2012. The Council consider that allowing this appeal would undermine this process.
42. Saved CBLP Policy H2 contains a breakdown of how housing requirements were to be split over settlements in the former borough, with Congleton town having no more than 30%. Over Cheshire East, the RSS provides the basis of a spatial framework, with priorities for growth and development, with an expectation that housing would be focussed on meeting identified local needs. Crewe is identified as a priority for future growth. Based on the split identified by CBLP Policy H2, Congleton would be expecting a minimum of 920 houses, which assumes some provision in rural areas, but as the third largest town in the area, substantially more growth could be possible. However, as the Council cannot demonstrate a 5-year land supply, the Framework indicates that CBLP Policy H2 should be considered out of date.
43. A Community Strategy<sup>13</sup> has been adopted, prioritising the regeneration of Crewe, the revitalisation of Macclesfield and the delivery of sustainable growth for towns. Whilst

---

<sup>10</sup> Cheshire East Local Development Framework: *Core Strategy*

<sup>11</sup> Development Plan Document

<sup>12</sup> Department for Communities and Local Government

<sup>13</sup> *Ambition for All: Cheshire East's Sustainable Community Strategy 2010-2025*

this report gives some substance to the Council's intentions in respect of future direction, it carries little weight as a document setting out planning policy in relation to this appeal.

44. The Council has adopted, for development control purposes and pending adoption of the Core Strategy, an *Interim Planning Policy for the Release of Housing Land* [IPP] to manage the release of land to maintain a 5-year housing land supply. This indicates that housing land will be released adjacent to the settlement boundary of Crewe and as part of mixed developments in town centres and regeneration areas. This document, which has been subject to consultation, only carries limited weight. It is not intended that this would prejudice consideration of future alternative options of the future development strategy. The Council has resolved to grant permission, subject to legal agreements, to three sites adjacent to Crewe totalling 1,101 dwellings and this is not considered to prejudice the upcoming Core Strategy or site allocations DPD.
45. In March 2012, the Council considered modifications to the IPP for public consultation, which included peripheral development to towns that are Key Service Centres, which includes Congleton, subject to limitations. These include a maximum site size of 1Ha or 30 dwellings on sites that are peripheral, self contained with defensible boundaries and which do not represent the subdivision of a larger site. However these proposed amendments do not carry any weight at this stage.
46. The SHMA<sup>14</sup> suggests a considerable pent up demand for market housing along with an imbalance between affordable housing demand and supply. Under the various objectives of the Council, it is accepted that housing development would be necessary in or adjacent to Congleton beyond the present limits of development set out in the CBLP, and there is no evidence that a requirement of less than 1,150 dwellings pa for the authority is possible.
47. The Council recently consulted on a strategy<sup>15</sup> to guide future development within Congleton that will provide input to the Site Allocations DPD. This identified a need for 3,500 houses for the town by 2030 and indicated areas for this number of houses. One area identified is a potential mixed use development option on the west side of the town between Sandbach Road and Holmes Chapel Road, to include up to 500 houses, outdoor sports pitches and facilities, employment land, and community facilities set within a strong landscape framework; the area included the appeal site. Whilst this process relates to local consideration of development as part of the Neighbourhood Planning Front Runners is ongoing, it indicates that the site, as part of a larger area, is being considered for future development.
48. Two other sites in Sandbach that are subject to appeal decisions<sup>16</sup> have been specifically mentioned, but both of these decisions have been quashed. They do not therefore indicate, at this stage, any circumstances that have a bearing on this appeal.
49. Advice in *General Principles*<sup>17</sup> indicates that applications should not be refused on the sole ground of prematurity and that refusal of planning permission on grounds of prematurity will not usually be justified. Whilst the town is a Neighbourhood Planning Front Runner, the process being undertaken is to inform a Site Allocations DPD that is programmed for adoption by the end of 2014. *General Principles* also advises that where a DPD is at the consultation stage, with no prospect of early submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question. Taking account of Government advice and the fact that a draft of the Core

---

<sup>14</sup> Cheshire East 2010: Strategic Housing Market Assessment [SHMA]

<sup>15</sup> Draft Congleton Town Strategy Consultation: Cheshire East Local Plan

<sup>16</sup> APP/R0660/A/10/2140255 & 2143265: Appeals by Richborough Estates on the "Abbeyfields site", land off Marriot Road/Forge Fields and south of Hind Heath Road, Sandbach, Cheshire  
APP/R0660/A/10/2141564: Fox Strategic Land and Property on land off Abbey Road and Middlewich Road, Sandbach, Cheshire

<sup>17</sup> The Planning System: *General Principles*



Strategy and the Site Allocations DPD have yet to be produced for public consultation, it is considered that there is little justification for delaying a decision or, as the Council suggest, for considering other sites that the Council contend offer increased levels of sustainability.

#### *Other Matters*

50. English Heritage has confirmed that the SAM is not included on their "Heritage at Risk" register and is under good management. The appellants have challenged the scheduling of the SAM and this is being considered by English Heritage, but its status as a SAM remains. English Heritage are satisfied that, subject to the northern part of the site surrounding the SAM being used for grazing in an agricultural regime and the siting of any new footpaths towards the edges of the site, that the setting of the SAM would not be prejudiced. The original indicative scheme has been amended to introduce grazing land around the SAM, the moving of footpaths away from the SAM towards the periphery and the use of fencing to separate footpaths from the grazing land. These changes, subject to detail, would ensure that the setting and condition of the SAM is not adversely affected.
51. The parish boundary between Somerford Parish and Congleton Town West runs along the eastern edge of the site. Concern has been raised by the Council, the parish council and third parties about development crossing this line, with future residents having little in common with other residents of rural Somerford Parish. Whilst development of the site would breach this administrative line, this in itself does not provide a reason to reject the proposal.
52. Both the appellants and the Council have referred to various other appeal decisions. However, each proposal is assessed on its own merits and these other cases are of little direct relevance because any assessment is necessarily based on the specific circumstances of this appeal.
53. A number of issues in relation to highway safety have been raised in third party representations. The Highway Authority has indicated in principle that a satisfactory access could be provided off Sandbach Road and this would be subject to detailed submission as part of the reserved matters. The proposals also include the provision of improved off-site highway improvements, including footways and bus stop facilities and the provision of footpath and cycleway connections to both Sandy Lane and Holmes Chapel Road, as well as junction improvements. These are detailed in the Transport Assessment and supplemental information submitted as part of the application and could be subject to an appropriate condition requiring provision in accordance with an agreed programme prior to development commencing. These factors are adequate to ensure no harm to highway safety.

#### *Unilateral Undertaking*

54. Two S106 Unilateral Undertakings have been submitted. Statutory tests are set out in the Community Infrastructure Levy Regulations 2010 [CILR] indicating that an obligation must be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind. Both undertakings cover the submission of details of all open space and play areas and an offer to either transfer such land to the Council or otherwise provide a scheme of management, the payment of a highways contribution, and a travel plan contribution.
55. The proposal is in outline with landscaping, which would include open space provision and play areas, reserved for subsequent approval. Future management of such open space, by either the appellants or a subsequent developer, could be covered by conditions. The Council accept that the submission of details is not necessary but have required it for completeness. The Framework indicates that planning obligations should

only be used where it is not possible to address otherwise unacceptable impacts through a planning condition.

56. The highways contribution would be towards upgrading the traffic light controller and pedestrian facilities at the Rood Hill traffic light junction. The Council indicates that this is a critical junction within the town network and already at or near full capacity and that additional loading would have a detrimental impact. This junction is some 1.6 miles from the site. The evidence submitted by the appellants following a transport assessment indicates no material impact on the performance of this junction and the Council presented no highway evidence to identify any problems with this junction arising from the proposed development. It would not be on any main pedestrian route used by future residents. This highway improvement would therefore not be necessary to make the development acceptable in planning terms, be directly related to the development nor be fairly and reasonably related in scale and kind.
57. The travel plan contribution is to allow the Council to monitor the travel plan and its performance. The travel plan is an essential element related to achieving sustainable transport choices for future residents and this fulfils the statutory tests set out in the CILR.
58. In conclusion, in relation to both undertakings, the obligations relating to open space and play areas and to the highway contribution would not meet the tests set out in Regulation 122 of the CILR and cannot be taken into account in determining this appeal. The contribution for travel plan monitoring can be taken into account.
59. In addition, Paragraph 2.6 of the second undertaking dated the 9 February 2012, states that the previous undertaking dated the 20 December 2011 shall not take effect. However, it is not possible for a unilateral undertaking to state that it supersedes a previous unilateral undertaking. This clause would be ineffective and the Council would be able to select which undertaking they would wish to enforce.

## Conclusions

60. Drawing together the conclusions on this appeal, the site is within the open countryside and its development would not be in accordance with saved CBLP Policy PS8 or the Framework. The proposal would locally harm the character and appearance of this area of countryside contrary to saved CBLP Policies GR5 and GR3 and guidance within the Framework. These matters weigh significantly against allowing the appeal. However, the development would not unduly intrude into more distant views of landforms that provide the setting of Congleton and nor would the setting of the SAM be prejudiced. The loss of best and most versatile agricultural land would be contrary to the intentions of the Framework, but this carries neutral weight as it applies to other sites also being considered for development.
61. The Council has failed to demonstrate a 5-year land supply of deliverable sites, which is not in accordance with guidance in the Framework and the proposal represents sustainable development on a sustainable site. The development would also secure the provision of affordable and low cost housing. These matters carry substantial weight in support of the appeal.
62. *General Principles* also indicates that applications should not be refused on the sole ground of prematurity and, taking account of Government advice, there is little justification for delaying a decision or, as the Council suggest, for considering other sites that the Council contend offer increased levels of sustainability.
63. In relation to both S106 undertakings, the obligations relating to open space and play areas and to the highway contribution fail to meet the tests set out in Regulation 122 of the CILR and cannot be taken into account in determining this appeal, but the contribution for travel plan monitoring can.

64. Whilst it is concluded that the site is within the open countryside and would locally intrude into the character and appearance of this area, this is outweighed by the need to secure a 5-year supply of deliverable housing land that would also contribute to providing affordable and low cost housing. The proposal would represent a sustainable development that could achieve a high quality of housing of a suitable mix that would use the land efficiently and effectively. It would not be premature or prejudice the development of other sites and nor would it lead to an unwarranted loss of best and most versatile agricultural land. For these reasons, and taking account of local representations and all other matters, the appeal is allowed.

### **Conditions**

65. Conditions have been considered in accordance with the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. Wording has been adjusted where necessary. The plan to which this decision relates is specified for the avoidance of doubt and in the interests of the proper planning of the area. A condition relating the submission of reserved matters to reflect the submitted illustrative masterplan is necessary as this plan sets out the parameters upon which this decision is based.
66. A landscape management plan and proposals for tree protection are necessary to ensure long-term management of open areas and protection of existing trees in the interests of character and appearance, and conditions to protect nesting birds and badgers to ensure biodiversity is protected. Investigation and treatment of any land contamination is required to ensure the living conditions of future occupiers and conditions relating to foul and surface water drainage to prevent overloading of existing drainage systems. In the interests of sustainability, conditions regarding future energy provision and use of a travel plan are required.
67. To ensure highway safety, conditions are necessary relating to off-site highway works and a construction management plan, which would also cover matters relating to protection of living conditions of nearby residents and pollution of the environment. Archaeological investigation is required to ensure adequate investigation is carried out prior to any building and a condition regarding affordable housing to ensure a suitable contribution to the housing needs of the area.

*Andrew Jeyes*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, scale and access, (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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with Drawing No 4332-P-01B.
- 5) Applications for reserved matters approval shall limit development to that shown on the illustrative masterplan Drawing 4332-P-03 Rev J.
- 6) Prior to the commencement of development a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for a period of 25 years for all landscaped areas and open spaces, including the Conservation Grazing Area but excluding domestic gardens, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved. The scheme shall include the following elements:
  - a] A detailed method statement for the removal or long-term management/control of Canadian pondweed and Himalayan balsam on the site. The method statement shall include proposed measures to prevent the spread of Canadian pondweed & Himalayan balsam during any operations including mowing, strimming or soil movement. The method statement shall also contain measures to ensure that any soils brought to the site are free of the seeds, roots and/or stems of any invasive plant covered under the Wildlife and Countryside Act 1981;
  - b] Details of the extent and type of new planting;
  - c] Details of management responsibilities;
  - d] Details of maintenance regimes;
  - e] Details of any new habitat created on site; and
  - f] Details of treatment of site boundaries and/or buffers around water bodies.
- 7) 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 existing trees, shrubs and hedges growing on the site 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 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.
- 8) Prior to any commencement of any works between 1<sup>st</sup> March and 31<sup>st</sup> August in any year, a detailed survey by a suitably qualified person is required to check for nesting birds. Where nests are found in any building to be converted or demolished, or any hedgerow, tree or scrub to be removed or on the ground, a 4m exclusion zone is to be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to the local planning authority.

- 9) No development shall take place until a further badger survey report has been submitted to and agreed in writing by the local planning authority. The survey is to be undertaken by a suitably qualified person using recognised survey techniques. The survey report is to include a mitigation strategy together with a buffer zone around the badger sett unless otherwise agreed in writing with the local planning authority. The approved mitigation strategy is to be implemented in accordance with a timetable to be agreed in writing by the local planning authority.
- 10) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology that has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures. If ground 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 prior to the first use or occupation of any part of the development hereby approved.
- 11) The development hereby permitted shall not be commenced until a scheme, including a timetable of implementation, to limit the surface water run-off generated by the proposed development and manage the risk of flooding from overland flows of surface water has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the agreed timetable and the approved details.
- 12) None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved in writing by the local planning authority.
- 13) No development shall take place until details of how the proposed development will secure at least 10% of its predicted energy requirements from decentralised and renewable or low-carbon sources has been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details, which shall thereafter be retained.
- 14) Prior to the first occupation of any dwelling a detailed Travel Plan, based on the structure of the Interim Framework Travel Plan [Report Reference 1234/3/A] submitted with the application by Ashley Helme Associates, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 15) No dwelling shall be occupied until that part of the service road that provides access to it from a public highway has been constructed up to at least wearing course level in accordance with detailed design and construction plans that have been submitted to and agreed in writing by the local planning authority.
- 16) No development shall take place until a detailed scheme for off-site cycleway, footpath, bridleway and bus stop facilities and for all proposed improvements at off-site highway locations as detailed in the Transport Assessment and supplemental information prepared by Ashley Helme Associates, together with a programme of implementation, has been submitted to and approved in writing by the local planning authority. No development shall take place until the approved works have been implemented in accordance with the approved details and programme of implementation.

- 17) No development shall take place until a detailed scheme of on-site cycleway, footpath and bridleway facilities together with a programme of implementation has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and programme.
- 18) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The construction management plan shall cover the following matters:
- Hours of working;
  - Delivery hours, where these are outside the hours of working;
  - The method, timing and duration of any pile driving activities;
  - The location of the contractor's compound;
  - The location of contractor's and visitor's parking areas;
  - Measures to prevent the deposition of extraneous matter on the public highway; and
  - Dust mitigation.

The approved management plan shall be implemented for the duration of the construction of the development.

- 19) No development shall take place until the implementation of a programme of archaeological work has been carried out in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority. The work shall be carried out in accordance with the approved scheme.
- 20) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing outlined below. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of the dwellings;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

For the purpose of this condition, the following definitions apply:

**Affordable housing** is:

Affordable housing includes social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Affordable housing should:

- Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.
- Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.

**Social rented housing** is:

Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. It

may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency as a condition of grant.

**Affordable rented housing** is:

Rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime<sup>34</sup> but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

**Intermediate affordable housing** is:

Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent but does not include affordable rented housing.

The definition of affordable housing does not exclude homes provided by private sector bodies or provided without grant funding. Where such homes meet the definition above they may be considered, for planning purposes, as affordable housing.

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Nadia Sharif, of Counsel

Instructed by Caroline Elwood, Solicitor,  
Cheshire East Council

She called:

Adrian Fisher BSc[Hons] M.TPI MRTPI

Strategic Planning and Housing Manager,  
Cheshire East Council

Jan Gomulski BA[Hons] BLD MCD MLI

Principal Landscape Architect,  
Cheshire East Council

### FOR THE APPELLANTS:

Paul G Tucker, QC

Instructed by Marc Hourigan of Hourigan Connolly

He called:

Marc Hourigan BA[Hons] BPI MRTPI

Director, Hourigan Connolly

Philip Rech BA BPhilD CMLI

Director, FPCR Environmental and Design Ltd

Malcolm Reeve

BSc FISoilSci CSci MBIAC MCIWEM

Director and Principal Consultant,  
Land Research Associates Ltd

George Venning MA

Principal Consultant, Levvel Ltd

Paul Chadwick BA[Hons] MIFA FSA

Director, CgMs Consulting

Simon Helme BEng[Hons] MSc MIHT

Director, Ashley Helme Associates

### INTERESTED PERSON:

Donald Muir

Chair of the Sandy Lane Action Group



## DOCUMENTS AND PLANS

- 1 Drawing No 1234/04D - Proposed Site Access Junction Sandbach Road Option 1; submitted by the appellants.
- 2 Drawing No 1234/05D - Proposed Site Access Junction Sandbach Road Option 2; submitted by the appellants.
- 3 Opening statement by Paul G Tucker; on behalf of the appellants.
- 4 Opening statement by Nadia Sharif; on behalf of the Council.
- 5 Rebuttal statement of Adrian Fisher to the evidence of Simon Helme; submitted by the Council.
- 6 Response by George Venning to the Rebuttal statement of Adrian Fisher; submitted by the appellants.
- 7 Response by Simon Helme to the Rebuttal statement of Adrian Fisher; submitted by the appellants.
- 8 Rebuttal statement by Philip Rech to the evidence of Jan Gomulski; submitted by the appellants.
- 9 Rebuttal statement of Adrian Fisher to the evidence of George Venning; submitted by the Council.
- 10 Committee report re land off Hassall Road, Sandbach, Cheshire [LPA Ref 11/3414C]; submitted by the appellants.
- 11 Maps of parish boundaries; submitted by the appellants.
- 12 Extracts from Institute of Environmental Management and Assessment: *Guidelines for Landscape and Visual Assessment*; submitted by the Council.
- 13 E-mails between the appellants and the Council; submitted by the appellants.
- 14 Extract from Development Management Policy Annex: Information requirements and validation of planning applications; submitted by the appellants.
- 15 Congleton Borough Local Plan Policies GR1 and GR2; submitted by the Council.
- 16 Joint note of Mr Venning [appellants] and Mr Fisher [Council] on the Role of the SHMA and affordable housing: Agreed as an addendum to the Statement of Common Ground.
- 17 Draft Congleton Town Strategy Consultation: Cheshire East Local Plan: submitted by the appellants.
- 18 Unilateral Undertaking in respect of land at Abbeyfields, Sandbach, Cheshire; submitted by the appellants.
- 19 Council's response Draft S106 Unilateral Undertaking: submitted by the appellants.
- 20 Signed S106 Unilateral Undertaking dated the 20 December 2011; submitted by the appellants.
- 21 Correspondence concerning the S106 Unilateral Undertaking; submitted by the appellants.
- 22 List of policy support relating to matters within the S106 Unilateral Undertaking; submitted by the appellants.
- 23 Landscape impact visual effects comparison table; submitted by the appellants.
- 24 Appeal decision and report re APP/R4408/A/10/2138041 at former North Gawber Colliery and CISWO Sports Pitch, Carr Green Lane and Spark Lane, Mapplewell, Barnsley, South Yorkshire; submitted by the appellants.
- 25 Drawing No 4332-P-03 Rev J: Revised Illustrative Master Plan; submitted by the appellants.
- 26 Revised suggested conditions agreed between the Council and the appellants.
- 27 Further draft amended S106 Unilateral Undertaking; submitted by the appellants.
- 28 Letters of notification of the resumption of the Inquiry; submitted by the Council.
- 29 Statement of Common Ground: Sustainability: Agreed addendum to the Statement

- of Common Ground in respect of sustainability.
- 30 Signed S106 Unilateral Undertaking dated the 9 February 2012; submitted by the appellants.
  - 31 Saved policies supporting matters within the S106 Unilateral Undertaking; submitted by the Council.
  - 32 Interim Policy Note: *Public Open Space Provision and New Residential Development*; submitted by the Council.
  - 33 Photographs of open space relative to certain sites within the Cheshire East: Strategic Housing Land Availability Assessment; submitted by the appellants.
  - 34 Plan of area around appeal site showing location of certain facilities; submitted by the appellants.
  - 35 Legal submissions on the materiality of alternative sites; submitted by Mr P Tucker QC.
  - 36 Closing submissions on behalf of the Council.
  - 37 Closing submissions on behalf of the appellants.

#### **DOCUMENTS SUBMITTED AFTER CLOSURE OF THE PUBLIC INQUIRY**

- 38 Further submissions relating to the National Planning Policy Framework and other matters; submitted by the appellant.
- 39 Statement of the Local Planning Authority relating to National Planning Policy Framework; submitted by the Council.
- 40 Response of the appellants to the Council's comments on the National Planning Policy Framework; submitted by the appellant.
- 41 Statement of Local Planning Authority relating to National Planning Policy Framework - response to appellant's comments; submitted by the Council.