



Appeal Decision

Inquiry held on 6, 7, 8 December 2016

Site visit made on 8 December 2016

by Christina Downes BSc DipTP MRTPI

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

Decision date: 10 February 2017

Appeal Ref: APP/R0660/W/16/3147420

Land at 71 Main Road, Shavington, Cheshire CW2 5DU

- 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 A Gibbs against the decision of Cheshire East Council.
 - The application Ref 15/2147N, dated 10 May 2015, was refused by notice dated 1 October 2015.
 - The development proposed is development of up to 44 dwellings of mixed type and tenure with 30% affordable housing provision.
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Decision

1. For the reasons given below, the appeal is dismissed.

Procedural matters

2. The application was submitted with all matters reserved for future consideration apart from access. Before it was determined by the council, the proposal was amended to up to 43 dwellings. At appeal stage a revised illustrative layout was submitted. The Council had no objection to this being considered and, in view of its illustrative nature, I am satisfied that no party would be prejudiced by so doing. One of the consequences is that the open space provision has been improved and the Council did not pursue the reason for refusal relating to this matter.
3. After the close of the inquiry the Inspector examining the *Cheshire East Local Plan Strategy* (LPS) issued a further interim letter. I invited the main parties to submit their comments on this in writing. There was no suggestion by any of those concerned that this warranted the re-opening of the inquiry. I am satisfied that all parties have been given a fair opportunity to put forward their views on the matter and I have taken their responses into account in my decision.

Reasons

Planning policy and the context for decision making

4. The development plan includes the saved policies of the *Borough of Crewe and Nantwich Replacement Local Plan 2011* (LP), which was adopted in 2005. This included a housing requirement that was based on the *Cheshire 2011 Replacement Structure Plan* for the period 1996-2011. That period has now expired and the most recent work undertaken in connection with the emerging LPS established a much higher level of objectively assessed housing need.

5. The appeal site comprises an area of land that is partly within the settlement of Shavington but mainly outside of it. Saved policy RES.5 treats all land outside of settlement boundaries as open countryside where new dwellings will not be permitted unless they are required for a rural worker or meet the criteria for infilling. Saved policy NE.2 relates to the open countryside and contains similar provisions. The site is also located within the Green Gap (GG) where saved policy NE.4 restricts development that would result in physical erosion or adversely affect the character of the landscape. Policy NE.12 seeks to protect best and most versatile agricultural land.
6. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. There is no dispute that the appeal scheme would be contrary to saved policies RES.5, NE.2, NE.4 and NE.12. These policies, by virtue of Section 38(6) of the Act¹, have full statutory weight and provide the starting point for consideration of the proposal. In my opinion, the aforementioned policies are broadly consistent with the *National Planning Policy Framework* (the Framework). This recognises the intrinsic character and beauty of the countryside as a core planning principle and the benefits of best quality agricultural land. Whilst GGs are not specifically referred to, their objective of keeping settlements separate and protecting community identity accords with the social dimension of sustainability. I acknowledge that saved policy NE.4 is subject to constraint criteria but I am not convinced that its terms are stricter than green belt policy. Indeed the LPS Inspector has not indicated soundness issues with policy PG 4a (as proposed to be modified), which is broadly similar to saved policy NE.4.
7. On the other hand, the settlement and GG boundaries were both established within the context of lower housing needs that have since been superseded. There is no dispute that at the present time the council is unable to demonstrate a five-year supply of deliverable sites against its objectively assessed housing need. The appellant does not dispute that this is the most up-to-date assessment of housing need and the LPS Inspector has endorsed it in his interim letter. The council favours dealing with its backlog over an 8 year time period, an approach that is also supported by the LPS Inspector. On this basis there are 3.8 years of deliverable housing sites against requirement. To my mind that is a significant shortfall against Framework expectations. Paragraph 49 of the Framework makes clear that in such circumstances relevant policies for the supply of housing should not be considered up-to-date. Saved policies NE.2, NE.4 and RES.5 fall within these terms because they place a constraint on the supply of housing.
8. The emerging LPS is at an advanced stage and makes provision for past housing shortfalls and future needs through a supply framework that includes a number of strategic allocations. Some of these will be within the GG and countryside, although the detailed extent of both the settlement and GG boundaries is not due to be formally reviewed until a Site Allocations and Development Policies Document is produced. In the emerging LPS the appeal site is not included as an allocation and would remain within the GG, as presently defined.

¹ The Planning and Compulsory Purchase Act 2004.

9. The emerging LPS was submitted for examination in 2014 but has undergone a number of setbacks, including the suspension of the examination. The latest² interim letter sets out the Inspector's views on the council's emerging plan. In my opinion this was a positive outcome for the council and signalled a significant step forwards towards the adoption of the LPS. In order to appreciate the importance of the most recent interim letter it is necessary to have regard to the stages that have led up to it, which to a large degree have been guided by the Inspector himself. Following his 2015 interim letter the LPS underwent considerable change. The consequent modifications were subject to a period of public consultation in March and April 2016 and further hearings commenced in September 2016.
10. The December 2016 interim letter took account of the consultation on the modifications earlier in the year and the hearings sessions that followed. The context in which my colleague considered that the council had undertaken a comprehensive assessment of housing land supply and had established a realistic and deliverable means of meeting the objectively assessed housing need was essentially an iterative one. The LPS Inspector also made reference to further modifications proposed by the council as well as other changes that he considered necessary to make the plan legally compliant and sound. These will entail a further round of public consultation and my colleague made clear that no final conclusions could be reached on the soundness of the plan until this process had been completed and evaluated. Nevertheless, it is of importance that the Inspector indicated that the council's approach to housing land supply seemed soundly based. It is therefore unlikely that the further main modifications will relate to this matter or that further representations will be invited on it.
11. The LPS Inspector also made reference to the fact that the 2014 submission version of the LPS had not been withdrawn but had effectively been superseded by the proposed changes version of March 2016. He flagged up that the council would need to ensure that the situation is properly addressed to ensure that the final stage of the process is legally sound. It is understood that this is a matter on which the council is taking legal advice. However, there is no evidence to suggest that it is likely to stop the further progression of the LPS or that the public consultation already undertaken on the proposed modifications in March and April 2016 would somehow be null and void. If the LPS Inspector had considered this to be the case it seems unlikely that he would have endorsed the council's housing strategy in the way that he did.
12. It is appreciated that the detailed boundaries of the GG and settlements were not considered by the LPS Inspector. However, the principle of having a GG around Crewe and the constraints embedded in the policy has been supported. Furthermore, there is no suggestion that amendments are necessary to its extent at the present time, apart from to accommodate the allocated sites and also to reflect recent planning permissions. All of these elements of the plan are therefore likely to be adopted unchanged. The council expects to adopt the plan in mid-2017 although its ability to do so cannot be known for certain at this stage. It is appreciated that there is an unaddressed housing need right now. However, it is not an unreasonable proposition that the LPS will be

² The LPS Inspector issued earlier interim letters to the council in November 2014 and December 2015. The most recent letter was issued in December 2016, following the close of the inquiry relating to this appeal.

adopted before any houses could be delivered on the appeal site, even taking account of the reduced implementation timetable agreed by the appellant.

The effect on the GG and visual character of the landscape

13. The GG lies between Crewe and a number of smaller settlements to the south and east, including Shavington. The spatial and visual provisions of saved policy NE.4 are in the alternative and conflict with either would result in a breach of the policy. The reasoned justification states that its purpose is to provide added protection in order to maintain the definition and separation of existing communities and provide longer term support to protecting Crewe and its surrounding settlements from merging into one another. Whilst this is a spatial objective, there is no evidence that the policy was underpinned by any landscape character assessment. It seems to me that there is therefore no justification for the view that the countryside in the GG is of higher visual quality or value than equivalent areas of landscape elsewhere.
14. I note that policy PG 4a (as proposed to be modified) in the emerging LPS carries forward saved policy NE.4 in generally the same terms. This includes an explanation of the purposes of the designation and again, notwithstanding the same visual requirement, the justification is solely directed to the separation function, adding that the risk of coalescence is of concern due to the future growth of Crewe, the principal town in the district. The evidence base supporting the emerging LPS did though include a report by Envision entitled *New Green Belt and Strategic Open Gap Study* (2013). This relied on the Cheshire Landscape Character and Historic Landscape Character Assessments as a means of considering the landscape character of the individual gaps to the south and east of Crewe. Visual assessments were undertaken but these were confined to the narrowest parts of the gaps, including the part of the GG along Rope Lane and Crewe Road.
15. It seems clear to me that most built development of any substance would result in a degree of erosion and would thus conflict with policy NE.4 regardless of its visual impact. It is clearly not the case that a proposal would be acceptable in GG policy terms unless it were to result in actual coalescence. The policy is concerned with erosion, which is the process that eventually results in coalescence. However, in my opinion it is still necessary to consider the extent to which the erosion caused by the particular proposal in question would be harmful to the objective of maintaining the separation of settlements. This would depend on a number of factors. In this case the appeal site is relatively modest in size. The appeal development would extend built development further into the countryside, but only by a small amount. Furthermore, it would not alter the context of a visible settlement edge as existing houses along Main Road and Burlea Drive are clearly apparent from this part of the GG.
16. The site is within a relatively wide part of the GG. Its development would only result in a small reduction in the width of the open land between Shavington and Crewe from just over 1 km to some 955m. By contrast, the narrowest part of the GG, which is along Rope Lane and Crewe Road, is about 675m and 425m respectively. This means that the area of open land separating the two settlements would remain relatively extensive. It should also be noted that unlike in these two narrow locations, there is no intervisibility between the edge of Shavington and the edge of Crewe. That situation would not change.

17. The council's concern about the GG being "nibbled away" at its edges is a point about cumulative impact and precedent. There have been a number of planning permissions granted for development within the GG both by the council and on appeal. However, there is no evidence that in this case the appeal proposal would give rise to unacceptable additional cumulative impacts. The tree lined road corridor of the A500 forms a visual barrier within the gap at this point. This gives the impression that the GG between Shavington and Crewe is narrower than in fact it is, resulting in greater sensitivity to the visual perception of separation. However, views across the gap are only one factor in the consideration of whether a proposal would result in unacceptable erosion. The fact of the matter is that each proposal would impact on the GG differently and in the case of the appeal development I judge that whilst there would be harm from erosion, the degree of that harm would be relatively small.
18. I turn now to consider the effect on the landscape. As already commented the location within the GG does not give the countryside any special additional attribute in terms of its visual quality. In the circumstances I do not consider that the lack of a formal landscape and visual impact assessment by the appellant is a shortcoming. In any event more detailed evidence was provided for the inquiry. This information, and my site observations, are more than sufficient for me to reach an informed view on the landscape and visual impacts of the development.
19. The existing residential property and its immediate garden lie within the settlement. The land immediately to the rear is enclosed by a row of very tall conifers and runs parallel with the garden of 67 Main Road. This includes a dilapidated outbuilding and the council does not appear to dispute that it is part of the residential curtilage of No 71. Whatever its lawful use, it was confirmed that no enforcement action has been taken or is intended. It is thus not unreasonable to consider this part of the site as being previously developed land. The remainder of the appeal site is an open field. This part of the site reflects many of the features typical of the rural area to the north and east with its hedged and treed boundaries and relatively flat topography. My observation of the countryside within the GG is of a pleasant but unremarkable, agricultural landscape influenced by the proximity of the urban edge and other intrusions such as the A500. Whilst it is clearly valued by those living locally, there is no suggestion that it would fall within the definition of a "valued landscape" under paragraph 109 of the Framework.
20. There is no doubt that the appeal proposal would result in a substantial change to the site itself. This largely open piece of land would be replaced by a small housing estate. On the other hand, the conifers, which appear as an incongruous landscape feature, would be removed. This would result in a wider benefit and the existing boundary trees and hedgerows would be retained and reinforced to provide improved screening. There would also be an area of open space in the north-eastern corner and a strip of open land adjacent to the northern boundary to provide soft edges to the development. Whilst the change would be a permanent one and result in an adverse landscape impact, this would be localised in terms of the wider landscape area and the GG as a whole. Furthermore, the harm would reduce in time as the open spaces mature and mitigation planting becomes established.
21. Visual impacts would mainly affect people using Rope Footpath 3 who would have a high sensitivity to change. Those walking in a northerly direction start

- their journey in Main Road. At the kissing gate the countryside becomes evident and from then on the walk is a rural one. The footpath runs close to the eastern site boundary before striking northwards and across the GG towards the A500. Screening is provided by mature trees and hedgerow species, which are mainly deciduous in nature. In some places the screening is quite good but in others there are clear views into the site, especially towards the northern end of this boundary. The development would result in a substantial change in the view of those using this footpath on the left hand side for about 135m. When reinforcement planting had matured the impact would reduce to moderate adverse significance, in my judgement. Once past the site the view would be unaffected by the proposed development.
22. There would be more prolonged views for those walking towards the village in a southerly direction. The northern boundary of the site is also screened by hedgerows and mature trees, some of which are protected by Tree Preservation Orders. However, as with the eastern boundary there are gaps in the vegetation and these are particularly evident in the winter months. I judged that the new development would become apparent as the walker approaches, although existing trees and the benefit of distance would help ameliorate the effect until in relatively close proximity. The walk then continues down the eastern site boundary and the same changes would be experienced for the last 135m of the walk, although this time on the right hand side. Again I consider that the change would be substantial in nature but that its significance would reduce to moderate adverse over time as reinforcement planting becomes effective.
23. Rope Footpath 4 runs from Main Road across the GG but it is some distance to the west of the appeal site. There would be glimpses of the new development from this right of way but these would be against a backcloth of trees and also within the context of other built development within the village, including a group of new affordable homes being constructed along Main Street. The significance of the adverse impact would be small.
24. The appeal development would stand at depth behind the frontage housing along Main Road. The main public viewpoints would be through the gaps between existing residential properties. Some of the spaces are relatively large and although there is built form in the foreground it frames an open green view. The new access with its bellmouth would also open up a view of the new development. The change would be apparent to those walking and to a lesser extent to those driving along Main Road. I was told that this route is well used by pedestrians who walk to the primary school and the local shop located to the east. The change that these people would experience would be moderated by its intermittent nature and its distance. It is also likely to be reduced over time by mitigation planting along the southern site boundary but would nevertheless remain of moderate adverse significance, in my judgement.
25. Those living in the houses adjoining the site would experience considerable change. I was invited to view the site from the garden of 67 Main Street and I appreciate that the outlook from this property and its neighbours would be considerably altered. The present view of open green land would change to one of a built development. Whilst the effect on these residents should be taken into account when considering visual impact it is important to bear in mind that these are essentially private views and a relatively small number of people would be affected. The issue of residential amenity is a separate one but it is a

well-established planning principle that no-one has a right to a view across third party land.

26. Drawing the above points together, I consider that the landscape and visual effects identified by the council have been exaggerated. This is for three main reasons. The first is that it has not been recognised that the GG does not bestow the countryside within it with any additional quality or merit. The second is that sufficient attention has not been paid to the potential for mitigation planting to reduce the impacts over time. The third is that there has been insufficient regard to the localised nature of both the landscape and visual impacts, which would affect a very small part of the GG landscape and a relatively limited number of visual receptors.
27. In conclusion, the appeal proposal would be contrary to saved policy NE.4 in the LP and policy PG 4a (as proposed to be modified) in the emerging LPS. There would be harm in terms of both the erosion of the GG and the visual character of the landscape. However, in this case the adverse impact would be relatively limited. I return to the weight to be given to the policy conflict when considering the planning balance.

The effect on best and most versatile (BMV) agricultural land

28. The appeal site is classified as Grade 2 and 3a and thus best and most versatile agricultural land. Although it is at present not in agricultural use, it has potential for food production and clearly this would be lost permanently if the development were to go ahead. There is no dispute that there would be conflict with saved policy NE.12 of the LP. However, the policy is not wholly in accord with the Framework, which applies the filter of a "significant" development of such land. I am not convinced that the loss of 1.3 ha of what is an extensive resource around Crewe, could reasonably be considered significant in this context.
29. The protection of good quality agricultural land is clearly important in economic terms and this is recognised in the Framework. However, I agree with other Inspectors, the Secretary of State and indeed the council itself when they have concluded that it is a matter for the planning balance rather than a determinative issue.

The contribution to market and affordable housing

30. At the present time the Council's position is that it can demonstrate a 3.8 years supply of deliverable housing sites against requirement. The council has a relatively poor record of past delivery and there is no dispute that a 20% buffer is applicable in order to provide choice and competition in the market. Its shortfall, which is not insignificant, is to be dealt with over an 8 year time period. The LPS Inspector in his latest interim letter has endorsed this way of treating the backlog, which takes account of the particular circumstances in Cheshire East. The housing deficit is a matter that the council has actively sought to address through the emerging LPS. Its efforts in that respect have been endorsed by the LPS Inspector very recently. For the reasons already given the probability is that its strategy will be in place within a relatively short time period. This does not rely on the appeal site or the new homes that are being proposed. In these circumstances the current deficit is unlikely to persist for long and is likely to be resolved before any contribution from the appeal site could be made. These are material considerations of very substantial weight, in

my judgement. In the circumstances of this particular case I give limited weight to the proposed provision of market homes.

31. The proposal would include 30% affordable housing. The objective assessment of housing need indicates that there is a considerable unmet need for affordable housing in Cheshire East and that insufficient delivery is resulting in a worsening situation year-on-year. Much of the provision will be in association with private development and it cannot be assumed that in every case the full policy level will be achieved. Policy SC 5 (as proposed to be modified) in the emerging LPS seeks at least 30% but, in accordance with the Framework, this is subject to viability. The appeal scheme would include up to 13 affordable homes, which accords with this policy ambition, and is considered to be an important benefit.
32. Local objectors indicated that 449 affordable homes had been permitted in Shavington since 2014 by virtue of planning permissions granted for residential developments. This includes a scheme for 100% affordable housing on land in Main Road a short distance from the appeal site. The argument was made that further homes were not needed and that the proposed provision should not be considered a benefit. However, Cheshire East overall has a high affordable need as outlined above and in such circumstances the local situation is of less relevance.

Planning balance and whether the proposal is sustainable development

33. The appeal proposal would result in an adverse effect on the visual character of the landscape, an erosion of the GG and the loss of countryside and would be contrary to saved policies RES.5, NE.2 and NE.4 in the LP. It would also be contrary to saved policy NE.12 relating to best and most versatile agricultural land. I will now consider whether there are material considerations that might indicate that the decision should be made other than in accordance with the development plan.
34. At the present time the council is unable to demonstrate a five-year supply of deliverable housing sites against its objectively assessed need and the shortfall is significant. Policies RE.5, NE.2 and NE.4 restrict the supply of housing and should not therefore be considered up-to-date. The weight to be afforded to the conflict with these policies is a matter of judgement, having regard to the circumstances of the case³. I have concluded that there would be harm to the countryside and GG but that it would be limited.
35. The emerging LPS is at an advanced stage in the adoption process. The December 2016 interim letter is of considerable importance because it includes the examining Inspector's views on housing land supply and the GG. It takes account of the public consultation on modifications relating to these matters and concludes that the means by which the council intends to meet its objectively assessed housing need, including over the next 5 years, is soundly based. The appeal site is not required for this purpose and for the present time is shown to remain within the GG. The policy relating to that designation has also been supported by the LPS Inspector. Even though the JPS will be subject to a further round of public consultation and there are legal issues to resolve, it

³ This is based on the judgement of Lindblom LJ in the case of *Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government* [2016] EWCA Civ168.

seems reasonable to surmise that the matters on which this appeal decision turns are unlikely to materially change before the plan is adopted. In the circumstances I consider that substantial weight should be afforded to the conflict with the emerging LPS and the relevant draft policies therein.

36. There would be further harm caused by the loss of best and most versatile agricultural land. Although this is not a determinative issue for the reasons already given, it nevertheless should be recognised as an adverse factor in the planning balance.
37. I do not dispute that there would be social and economic benefits. These would include employment opportunities generated at construction stage and also indirectly as a result of new residents occupying the site. There would also be a boost to the local economy through additional spending and support for existing facilities and services. The council would receive the New Homes Bonus, which could provide a benefit if it were spent locally. I give limited weight to the provision of market homes for the reasons given above. However, the provision of 13 new affordable homes in an accessible location, where occupiers could undertake many of their journeys other than by car, would be a significant advantage of the scheme.
38. Paragraph 14 of the Framework establishes the presumption in favour of sustainable development and how it should be applied. When relevant policies are out-of-date, as is the case here, the test is whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. In this case I consider that the conflict with the emerging development plan and the environmental harm that I have identified are considerations of substantial weight and importance and would significantly and demonstrably outweigh the positive aspects of the scheme. The Framework makes clear that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously. My conclusion overall is that this would not happen in this case and that material considerations do not indicate that the decision should be made other than in accordance with the development plan. The appeal proposal would not be a sustainable form of development and the presumption in its favour would not apply.
39. I have had regard to the various appeal decisions raised by both the council and the appellant, including those where planning permission was granted for residential development in the GG around Shavington. However, these decisions all pre-dated the LPS Inspector's latest interim letter and the balance of considerations is not comparable. I have considered all other matters raised, including local objections relating to highway matters, drainage and infrastructure. However, these do not seem to me to be determinative or to alter my conclusion that the appeal should not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Scott Lyness Of Counsel, instructed by Ms N Folan

He called:

Mrs P Radia MA Senior Planning Officer with Cheshire East Council

Mr J Gomulski BA(Hons) BLD MCD CMLI Principal Landscape Architect with Cheshire East Council

*Ms N Folan LLB (Hons) Solicitor to Cheshire East Council

*Participant in the Planning Obligation session only

FOR THE APPELLANT:

Mr Paul Tucker Of Queen's Counsel, instructed by Mr Taylor

He called:

Mr S Taylor BA(Hons) MCD MRTPI Director of Satplan Ltd

Mr J Berry BA(Hons) DipLA CMLI AIEMA MArborA Partner of Tyler Grange

Mr P Wooliscroft MSc MIHT Director of Croft Transport Solutions

INTERESTED PERSONS:

Councillor S Edgar Borough Councillor for the Shavington ward

Mr W McIntyre Vice Chair of Shavington-cum-Gresty Parish Council

Mr H Ashworth Local resident

Mr W Atteridge BSc CEng Chair of Shavington-cum-Gresty Neighbourhood Plan Steering Group

Mrs B Kelly Local resident

DOCUMENTS

- 1 Highway statement of common ground between the appellant and council
- 2 Landscape statement of common ground between the appellant and council

- 3 Housing land supply statement of common ground between the appellant and council
- 4 Council's responses to the points raised by the Inspector prior to the inquiry
- 5 Statement delivered to the inquiry orally by Cllr Edgar
- 6 Statement delivered to the inquiry orally by Mr Ashworth
- 7 Statement delivered to the inquiry orally by Mr Atteridge
- 8 Affordable housing information for Shavington provided by Mr Atteridge
- 9 Internal Council consultee response to the 30 dwelling application proposal from Mr Hyde relating to affordable housing
- 10 Statement of common ground on planning matters between the appellant and council
- 11 Response from United Utilities regarding the foul drainage proposal
- 12 Draft conditions
- 13 Site visit itinerary and route
- 14 Executed planning obligation by agreement (dated 15 December 2016)
- 15 LPS Inspector's interim report, dated 13 December 2016, submitted by the council following the close of the inquiry
- 16 Responses relating to Document 15

PLANS

- A Application plans
- B Revised illustrative layout for 43 dwellings (drawing no: 16-250-PL05)