
Appeal Decision

Site visit made on 14 February 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/R0660/W/16/3161426

Land at Pool Lane, Winterley

- 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 Footprint Land and Development against the decision of Cheshire East Council.
 - The application Ref 16/1728N, dated 8 April 2016, was refused by notice dated 1 September 2016.
 - The development proposed is an Outline Application for residential development of up to 33 units with all others matters reserved, except for access and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for an Outline Application for residential development of up to 33 units with all others matters reserved, except for access and landscaping at Land at Pool Lane, Winterley in accordance with the terms of the application, Ref 16/1728N, dated 8 April 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Footprint Land and Development against Cheshire East Council. This application is the subject of a separate Decision.

Procedural Matter

3. The application was submitted in outline with all matters, except for access and landscaping, reserved for future consideration. An indicative site plan has been submitted which has formed part of my consideration of this appeal.
 4. I have had regard to the signed Statement of Common Ground (SoCG) in reaching my decision, even though it is not required in appeals dealt with by way of written representations. Paragraph 3.1 of the SoCG explains that the parties agreed that 32 dwellings may be more appropriate on the site and I am mindful of plan ref: 13047 (PI) 101 C which shows 32 dwellings. However, the description of development proposes an upper threshold for the number of dwellings on the site which is for *up to* 33 units and given that matters of appearance, layout, and scale are all reserved for future consideration, I have therefore left the description of development found at the top of this decision as that which was applied for. I have considered the appeal on this basis.
 5. On my site visit, I took the opportunity, as requested, to view the appeal site from 26, 28 and 29 Pool Lane.
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6. A Section 106 agreement has been submitted as part of the appeal. I shall address the merits of this later in my decision. Nevertheless, I did, following an initial review of the document note that the plan contained within the agreement did not match the site location plan submitted by the appellant. However the appellant¹ indicates that the plan contained within the s106 agreement was agreed with the Council. This is not a point which the Council disputes having been given the opportunity to respond.

Main Issue

7. The main issue is whether, having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the development proposed.

Reasons

Approach to the decision

8. The current development plan for the administrative area of Cheshire East is the Crewe and Nantwich Replacement Local Plan (CNRLP). The Council, despite not referring to saved Policies RES.5 and NE.2 of the CNRLP in the reason for refusal, consider them to be relevant to this appeal. Saved CNRLP Policy RES.5 sets out that outside settlement boundaries all land will be treated as open countryside; new dwellings will be restricted to those that meet the criteria for infilling contained in saved CNRLP Policy which explains that development in the open countryside will only be permitted if it can satisfy certain criteria.
9. The sole reason for refusal places reliance upon Policies PG2 and PG6 of the emerging Local Plan Strategy Submission Version, March 2014 (Local Plan). The emerging Local Plan will in time replace, once adopted, the CNRLP. Policy PG2 of the Local Plan sets out the settlement hierarchy. In relation to sites in other settlements and rural areas it explains that *in the interests of sustainable development, growth and investment in the other settlements should be confined to small scale infill and the change of use or conversion of existing buildings in order to sustain local services. Affordable housing development of an appropriate scale on the edge of a rural settlement to meet a particular local need may be justified, although local needs can also be met within larger settlements, dependent on location.*
10. Policy PG6 of the Local Plan outlines the spatial distribution of development with *other settlements and rural areas are expected to accommodate in the order of 5 hectares of employment land and 2,000 new homes.*
11. It is common ground that the Council are currently unable to demonstrate a five-year supply of deliverable housing sites. Notwithstanding the approach for calculating this, paragraph 49 of the National Planning Policy Framework (the Framework) is engaged. Therefore policies relating to the supply of housing should be considered to be out-of-date, however, it is a matter of judgement for the decision maker as to the amount of weight to be attached rather than simply carry no weight or be disregarded². The Council consider that they have a solution to the borough's housing supply and as such this lends support to their opinion that a greater degree of weight should be attached to emerging

¹ SAS daniels LLP letter, dated 27 February 2017

² Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East, SCLG [2016] EWCA Civ 168

Policies PG2 and PG6 of the Local Plan. The appellant on the other hand, suggests they attract a limited weight.

12. Policies RES.5 and NE.2 of the CNRLP do seek to restrict new housing, despite the Council's contrary view. As such, they do have a significant effect on the supply of housing which is a view expressed in the Audlem Road/Broad Lane appeal decision³ which post-dates the decision at The Gables⁴. Even so, both policies seek to protect the open countryside from development. In this regard I accept that they are consistent to an extent with the Framework. I also note the parties' views⁵ on these policies and I have had regard to the other appeal decisions⁶ cited by the Council, but I consider that Policies NE.2 and RES.5 are not up-to-date, and I attach a limited weight to them.
13. In December 2016 some further interim views were received on the Local Plan by the Council from the examining Inspector, following the resumption of Hearing sessions in October 2016⁷. Despite these, it is evident that the final report is far from imminent given that the proposed Main Modifications are currently being consulted upon (6 February to 20 March 2017). The appellant suggests that objections have been made to these. Still, I must as a decision-taker have regard to paragraph 216 of the Framework in deciding the degree of weight to be attached to the emerging Local Plan.
14. Even with the Inspector's further interim views the Local Plan is not yet part of the development plan, nor has it been found to be 'sound'. As both policies referred to are also relevant to the supply of housing they are also not up-to-date. Added to this, the examining Inspector makes it very clear that he cannot firmly endorse it at this stage⁸ and those views are only an opinion despite the Council placing considerable reliance upon them. The consultation on the Main Modifications is yet to conclude, so the examining Inspector won't be in a position to make a formal decision on the Local Plan until sometime after. Thus, the spatial distribution for Winterley has yet to be established. In the meantime, it remains that there is a significant shortfall in the supply of housing land, even if the Council consider that they have an approach that would address this. But, given that the Local Plan is at an advanced stage, I attach emerging Policies PG2 and PG6 of the Local Plan a limited weight.

Whether an appropriate location

15. The Council contend that the development, when considered cumulatively with other approved developments would have an unacceptable harmful impact on the spatial distribution for Winterley.
16. The appeal scheme follows a scheme for 79 dwellings that was previously dismissed at appeal⁹ in February 2016. This scheme was an increase in 34 dwellings compared to that which was granted outline planning permission in January 2015¹⁰. This outline permission was for 45 dwellings and is referred to as 'phase 1'. Phase 1 is adjacent to the appeal site. The current appeal relates to land that formed part of the February 2016 appeal scheme, but which,

³ Appeal Statement of the Local Planning Authority, Appendix 9

⁴ Appeal Decision Ref: APP/R0660/A/14/2218286

⁵ SoCG, Principle of Development

⁶ Appeal Statement of the Local Planning Authority, Appendices 6 and 8

⁷ Appeal Statement of the Local Planning Authority, Appendix 4

⁸ Appeal Statement of the Local Planning Authority, Appendix 4, Paragraph 2

⁹ Appeal Decision Ref: APP/R0660/W/15/3130803

¹⁰ Appeal Decision Ref: APP/R0660/A/14/2216767

except for the access, lies outside of phase 1. It is referred to as 'phase 2'. Access into phase 2 would be from the busy Crewe Road which is lined by development on either side. The access would lead through the adjacent site (phase 1) which is being built out following the Council's decision to grant a reserved matters permission in June 2016¹¹ for 45 dwellings.

17. The Inspector in the February 2016 decision considered whether the development would be in an appropriate location. In this regard he set out that *"I am not persuaded that the level of development proposed, which is only 34 extra dwellings above those already permitted on a large proportion of the site, would give rise to an unsustainable pattern of development. Nor would it be of such a scale, or the emerging plan so far advanced, that it could reasonably be regarded as undermining or prejudicing the plan making process¹²."* The current scheme is for up to 33 dwellings and so in itself is a reduction of one dwelling compared to that considered previously. While I must determine this appeal based on the current circumstances, the February 2016 appeal decision is a consideration that is put forward by both parties.
18. The appeal site, like the development at Kents Green Farm¹³, is beyond the confines of the nearest settlement and the proposal would therefore be in the open countryside. Thus, in terms of the requirements of the development plan, the proposal would conflict with Policies NE.2 and RES.5 of the CNRLP. This is, however a point which the appellant accepts. However, this does not alter the presence of the existing ribbon development that extends along the southern side of Pool Lane from its junction with Crewe Road or the dense line of residential dwellings on both sides of Pool Lane beyond the western boundary of the appeal site. These dwellings start some distance from the appeal site and do not, in my opinion form a rural character. So, in this regard, I therefore concur with my colleague Inspector that there is, despite the site being adjacent to fields used for agriculture, a clear sense of being already within the village of Winterley rather than the open countryside.
19. The proposal would result in a stepped change in the site's character and appearance, moving away from the open field that is lined on each boundary by existing hedgerows and intermittently by Oak trees. The development would be very noticeable along Pool Lane, in particularly from those properties which directly face the southern boundary of the site. While the site may be of particular visual value to local residents, it is nonetheless not of any particular landscape value, except for the hedgerows and Oak trees which would largely be retained and added to. Moreover, the site does not play a significant role in the wider countryside setting that encompasses Winterley and I note that the Council's landscape officer raised no such concerns.
20. While I recognise and share the concerns of a number of residents in that the facilities and services on offer in Winterley are not wide ranging, I also understand through nearby appeal decisions that Winterley has been considered to be a sustainable location for new residential development. In terms of Winterley itself, I did, note two public houses and two places of worship. Hasslington, which is very close to Winterley does however offer a greater variety of facilities and services. I also understand there is sufficient capacity in existing medical practices for example to accommodate potential

¹¹ Council Application Ref: 16/1487N

¹² Appeal Decision Ref: APP/R0660/W/15/3130803, Paragraph 22

¹³ Appeal Decision Ref: APP/R0660/A/14/2225591

future occupants. Winterley is also served by a regular and frequent bus service that provides connections to Crewe and Sandbach which contain a greater range of facilities and services still.

21. Since February 2016 there have been a handful of planning applications determined by the Council. It is agreed between the parties that there has, been a reduction in the number of dwellings that benefit from planning permission in Winterley by at least four¹⁴. The findings of Inspector Schofield remain true in the sense of it will be a matter of judgement when new housing in Winterley is no longer sustainable. However, this view was expressed on the basis of a higher number of new dwellings on phase 2 and in Winterley.
22. Leaving this to one side for the time being, I recognise the Council consider the development should be proportionate and commensurate with the function and character of the settlement. In this regard I have been directed to population figures and the number of dwellings that benefit from planning permission. While I recognise the points made, in terms of the recent growth of Winterley, its likely continued growth over the next few years and the proposal at Hassall Road¹⁵, the housing figures in Policy PG6 of the emerging Local Plan is not an upper threshold for the spatial distribution of development. This would in itself run counter to the Framework's objective in paragraph 47 *to boost significantly the supply of housing* and despite intentions to facilitate a more gradual growth, in practice, the delivery of new homes does not always translate equally across each year in the plan period. Added to this, the Council is yet to identify specific sites to accommodate the new homes within *Other Settlements and Rural Areas*. This will come forward in the Site Allocations Development Plan Document, but work on this, I am informed, is yet to start.
23. I appreciate Winterley is a distinct village and the appeal proposal would result in its population increasing by roughly 10%. However, I am mindful that the proposal would relate well physically and visually to the existing built form along Pool Lane and the village itself, especially given that phase 1 extends to Crewe Road. As a result, and in light of the findings of the previous appeal decision, I do not therefore consider that the level of development proposed, which is actually less on phase 2 than the previous appeal scheme, would, even with the progress of the emerging Local Plan, mean that the proposal could be regarded as an unsustainable pattern of development. In terms of the Local Plan, as this has yet to be found sound, I do not consider that the proposal could be regarded as undermining or prejudicing the plan making process.
24. For these reasons, on this issue, I conclude that the appeal proposal would result in a limited harm and consequently conflict with CNRLP Policies NE.2 and RES.5 as the site lies in the open countryside and would not meet the criteria for infilling. I also conclude that the proposal would comply, with the limited weight that I attach, to emerging Local Plan Policies PG2 and PG6; which together seek to distribute development in accordance with the settlement hierarchy in the interests of sustainable development, growth and investment.

Planning Balance

25. In the circumstances that I have explained above, in the absence of a five-year supply of deliverable housing sites, policies relevant to housing supply are not

¹⁴ SoCG, Paragraphs 6.3 and 6.4

¹⁵ Appeal Ref: APP/R0660/W/16/3163461

considered to be up-to-date. Paragraph 14 of the Framework indicates that *where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.*

26. Paragraph 7 of the Framework explains there are three dimensions to sustainable development: economic, social and environmental. In economic terms, the provision of up to 33 new homes would contribute to promoting economic growth through jobs directly and indirectly associated with its construction. This attracts moderate positive weight. Future occupants of the scheme would also be likely to spend in the local economy. Nevertheless there is no evidence that local shops are failing or that community facilities are in need of additional finance. As such, I attach a limited positive weight. The development would generate Council tax and New Homes Bonus (NHB) for the Council, but it has not been established that there is or would be a direct beneficial link between monies from the NHB and or Council tax and Winterley. Thus, these do not attract any weight as benefits in the planning balance.
27. In social terms, the proposal would provide a mix of additional market and affordable housing in a location that the parties agree is currently a sustainable location. The affordable housing aspect of the scheme would equate to 30% of the dwellings proposed. I understand that there is a pressing need for market and affordable housing. Thus, given the position in respect of the Council's ability to demonstrate a five-year supply of deliverable housing sites, I attach significant positive weight to these matters.
28. Also the provision of on-site public open space would be a positive benefit, but I attach this moderate weight as any benefit is less likely to be gained by the wider community given its location. While I note residents' concerns regarding their living conditions, I note the indicative plans subject of this appeal have been revised since February 2016 and there would be landscape buffers along the southern and western boundaries. Taking these points, there is also no reason to suggest that the dwellings could not lead to a high quality built environment, however I only attach this neutral weight given that the scheme before me seeks outline planning permission with only matters of access and landscape before me. A financial contribution towards secondary education would only mitigate for the development rather than act as a benefit that weighs in favour of the proposal.
29. The proposal in environmental terms would utilise a vehicular access from Crewe Road that has been previously approved as part of phase 1. The proposal would result in a limited impact on the local highway network and the indicative layout demonstrates that a suitable and safe access for vehicular and pedestrian traffic could be provided. The site is, despite the nearby Winterley Pool Site of Biological Importance of low ecological value and the existing hedgerows and Oak trees would be added to by a combination of a native hedgerow and trees along the south and east boundaries. These would mitigate for the introduction the dwellings, even accounting for the slight level differences between the site and adjacent land to the south and east in particular. These factors all attract a limited positive weight.

30. I understand the proposal would result in the limited loss of some Best and Most Versatile agricultural land. However, the previous appeal decision explored this matter and it was concluded that in relative terms this would not conflict with Policy NE12 of the CNRLP. The evidence does not indicate that matters have changed in this respect and as such I find no reason to reach a different conclusion. I also note that there are no heritage objections, the site lies in Flood Zone 1 and outside an area of air quality management. However these matters attract a neutral weight.

Other Matters

31. Although it is suggested that bungalows form part of the appeal proposal, this is not a matter before me as this is an outline application which considers access and landscaping details only. While reference is made to phase 3, my findings relate to the development proposal that is before me and although reference is made to a development off Elton Lane, I do not have details of this proposal or whether the Council has reached a decision.
32. I appreciate that a separate outline proposal is subject of an appeal for the development of 29 dwellings on land to the north east of the site off Hassall Road¹⁶. I have nevertheless determined each appeal on their own merits, having regard to the matters at hand.
33. A Section 106 agreement has been submitted which aims to secure 10 dwellings or 30% of the proposed dwellings as affordable dwellings, split as 65% social rented dwellings and or affordable rented dwellings and 35% intermediate dwellings. The s106 agreement also seeks to secure provision of open space and LEAP on site, a management plan for the open space and a financial contribution towards secondary education for an additional classroom.
34. The planning obligations in the s106 agreement have to meet the tests in Community Infrastructure Levy Regulations (CIL) Regulation 122 in order for them to be taken into account in my determination of this appeal. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonable related in scale and kind to the development. These three tests are the same as those found in paragraph 204 of the Framework.
35. The Council has provided a CIL Compliance Statement which sets out the background to the obligations given, except for affordable housing. In this regard I have noted the Council's comments in their consultation responses and other submissions, together with The Interim Planning Statement: Affordable Housing (2011).
36. Based on the evidence before me, I am satisfied that the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. The Council has also confirmed that there would be no breach of CIL Regulation 123 with regard to the pooling of contributions. Thus, I am satisfied that the obligations would comply with the requirements of the CIL Regulations 2010 and with the tests set out in paragraph 204 of the Framework and with the advice of the Planning Practice Guidance. The s106 agreement can be fully taken into account in support of the appeal proposal.

¹⁶ Appeal Ref: APP/R0660/W/16/3163461

Conditions

37. I have had regard to Appendix 1 of the SoCG suggests a number of conditions. I have imposed a condition specifying that the development permitted shall be carried out as per the approved plans in the interest of certainty. A condition is necessary given the variation in ground levels nearby, to ensure details of these together with proposed ground and slab levels are established prior to the commencement of development in the interests of residents living conditions and the appearance of the site.
38. A condition is necessary to secure the implementation of the approved landscaping scheme to ensure the development reflects the area's character and appearance. Given the agricultural use of land and that near to the site, I have imposed a condition requiring investigation of the ground conditions and any remedial action if necessary is required. Also in light of the site's location, I have imposed one of the two suggested conditions regarding surface water drainage in the interest of the environment and to reduce flood risk.
39. I have been invited to attach a number of conditions by Mr Riley. A condition controlling the height of the houses nearest to No 29 and those to the south of the site would not be necessary, as the position of the access would shape the site's layout, including the provision of gardens and parking facilities. Also, a condition, despite its merits, requiring the continuation of a tree belt inside the Pool Lane hedgerow in the adjacent site would not fairly and reasonably relate to the appeal proposal. A condition controlling the use of the field gate on Pool Lane would not be necessary as it would not be appropriate to refuse planning permission on this basis.

Conclusion

40. In conclusion, while I found that limited harm would stem from the scheme's conflict with adopted development plan policies, I do not consider that this adverse impact would significantly and demonstrably outweigh the benefits, assessed against the policies in the Framework taken as a whole. For the reasons set out above, I conclude that the appeal should succeed.

Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) Details of the appearance, landscaping, layout, and scale, (including landscaping for the Public Open Space and within the curtilage of each plot and the design/layout of the internal highway) (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, but only in respect of those matters not reserved for later approval: Location Plan 13047 (Su) 100*; Landscape Boundary Treatment 2515 101 Rev A and Landscape Buffer Sections 2515 301 Rev A.
- 5) No development shall commence until details of existing ground levels, proposed ground levels and the level of proposed floor slabs for the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) The approved landscaping plan (2515 101 Rev A) shall be completed in accordance with the following:
 - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed in writing with the local planning authority.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree planting shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837:2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die or become severely damaged or seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
- 7) The development hereby permitted shall not commence until details of the detailed design, implementation, maintenance and management of a surface water drainage system has been submitted to and approved in writing by the local planning authority. This shall include:
 - a) Information about the design storm period and intensity (1 in 30 and 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes

(both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water.

b) A timetable for implementation.

The approved scheme shall be implemented in accordance with the approved timetable.

8) No development shall commence until:

- a) A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing, by the local planning authority;
- b) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the local planning authority;

Prior to the occupation of the development:

- c) The remedial scheme in the approved Remediation Strategy shall be carried out; and
- d) A Verification Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the local planning authority.

Richborough Estates