



---

# Appeal Decision

Site visit made on 28 February 2017

**by Siobhan Watson BA(Hons) MCD MRTPI**

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

**Decision date: 31 May 2017**

---

**Appeal Ref: APP/R0660/W/16/3165638**

**Birds Nest, Audlem Road, Audlem, CW3 0HF**

- 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 & Mrs Tonks against the decision of Cheshire East Council.
  - The application Ref 16/3040N, dated 21 June 2016, was refused by notice dated 26 September 2016.
  - The development proposed is housing development on land adjacent to Birds Nest for 20 dwellings.
- 

## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The application was made in outline with all matters reserved except for access. A proposed layout was submitted but only for indicative purposes. I have dealt with the appeal on this basis.

## Main Issues

3. The main issues are (i) the effect of the development upon the character and appearance of the countryside; (ii) the effect of the development upon ecology, including grass snakes; (iii) the effect of the development upon the living conditions of the occupiers of "Birds Nest" in respect of privacy; and (iv) whether the proposal makes adequate provision for affordable housing.

## Reasons

### Policy Background

4. Paragraph 49 of the Framework requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out at Paragraph 14 of the Framework and indicates that where relevant housing supply policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Paragraph 7 of the Framework establishes the three dimensions to sustainable development: economic, social and environmental.
  5. On 12 December 2016 the Planning Minister, Gavin Barwell published a Written Ministerial Statement (WMS) concerning neighbourhood planning. This requires that, where there are relevant policies for the supply of housing in a recently made neighbourhood plan (NP), these policies should not be
-

considered out-of-date unless there is a significant lack of supply and if a specific set of circumstances occur at the time of decision making. This set of circumstances is that:- (1) the WMS is less than two years old or the NP has been part of the development plan for two years or less; (2) the NP allocates sites for housing; and (3) the LPA can demonstrate a 3 year supply of deliverable housing sites. All these circumstances must occur together and, in this case, circumstance (2) does not occur because although the boundary of the NP takes in land which has planning permission for housing, the NP does not specifically allocate sites for housing.

6. The Council has confirmed that it can only demonstrate a housing land supply (HLS) of 3.9 years. Therefore, as the Council cannot demonstrate an up to date 5 year HLS, and because the Audlem Neighbourhood Plan 2015-2030 does not allocate sites for housing, the relevant policies for the supply of housing in the NP are out of date. I consider Policies H1 and H3 to fall into this category. That said, whilst I cannot give these policies full weight, this does not mean that they are irrelevant or should be disregarded.
7. I have had regard to the Council's position in respect of the emerging Cheshire East Local Plan Strategy (CELP). The Examining Inspector is of the view that the Council seems to have undertaken a comprehensive assessment of HLS and established a realistic and deliverable means of meeting need, including assessing the deliverability and viability of the proposed site allocations. However, there is no adopted Site Allocations Development Plan Document. Therefore, whilst the Council might be making good progress in finding a supply, the supply is not yet demonstrable.

#### *Character and Appearance*

8. The site is a field outside of the development boundary for Audlem as defined by the Crewe and Nantwich Replacement Local Plan 2011(LP). LP Policies NE.2 and RES.5 indicate that all land outside the settlement boundaries will be treated as open countryside where only certain types of development will be permitted. The proposal would not fall into any of the permitted categories.
9. The site is located at the end of the built up area of the village and forms a large gap of undeveloped land between existing dwellings. There is open countryside beyond the pair of houses to the north of the site and there are fields to the rear of the site. Whilst the land opposite is being developed for a large housing scheme, the appeal site appears as being beyond the built up part of the village as it has an open and rural character.
10. I have had regard to the appellants' Landscape and Visual Impact Assessment. I accept that the site does not have a specific landscape designation but the development would be clearly seen from Audlem Road and Heathfield Road. Paragraph 17 of the National Planning Policy Framework says that planning should take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside. The extension of the built up area of Audlem into the appeal site would encroach into the countryside and have a suburbanising effect which would destroy the rural character of the site.
11. Therefore, I conclude that the proposed development would harm the character and appearance of the countryside. Consequently, it would conflict with LP Policies NE.2 and RES.5 which, in combination, seek to protect the open

countryside from development. It would also conflict with NP Policy H1 which seeks to restrict new housing outside of the settlement boundary.

12. The Council's decision notice also refers to NP Policies H3, H4 and H5. NP Policy H3 is not directly relevant to this proposal as it refers to development within the settlement boundary. NP Policies H4 and H5 relate to the size and type (e.g. detached/terraced etc.) of homes but as these details are reserved for subsequent approval, these policies are not directly relevant either.

#### *Ecology and Grass Snakes*

13. Local residents say that grass snakes have been seen on the site, but no technical evidence has been presented to confirm their existence and no snakes were identified in the appellant's habitat survey. In any event, a reptile survey (along with a mitigation plan if necessary) could be submitted as part of a reserved matters application.
14. Paragraph 117 of the Framework supports the preservation, restoration and re-creation of priority habitats. The Council says that the site has wet grassland/rush pasture habitats which can be considered to be a Priority Habitat. Nonetheless, the site has no special ecological designation in either the LP or the NP.
15. The appellants' evidence suggests that, in 2015 a survey classified the majority of the site as marshy grassland, with improved grassland to the north east of the site. It also identified large areas of scrub, ruderals and bracken. However, a 2016 report later said that the land had degraded and was of low conservation value. The appellants have indicated that the degradation is due to the site being used for grazing and being mown. The Council argues that these impacts can be short lived but the appellant argues that the land could continue to be mown. Therefore I give most weight to the current condition of the site rather than what it was in the past or might be in the future.
16. In addition, the indicative layout demonstrates that it is possible to retain an area of grassland immediately adjacent to the pond and that an area beyond the site, to the other side of the pond, is also capable of providing habitat. I note that the Council considers this provision to be inadequate, but the layout is only indicative and such matters could be addressed at a later stage.
17. For the above reasons, I conclude that the proposed development would not cause demonstrable harm to ecology or to grass snakes. Consequently, I find no conflict with LP Policy NE.5; NP Policy D8 or Paragraphs 109-125 of the Framework which, in combination, seek to protect wildlife and biodiversity.

#### *Living Conditions*

18. The Council has identified that the indicative layout shows that Plots 9 and 10 would be some 8m to the boundary with "Bird's Nest". However, aside from the layout being for indicative purposes only, it is possible that the dwellings could be designed to avoid overlooking. This might be dependent upon the location of windows or how they would be glazed.
19. I therefore conclude that the proposed development would not harm the living conditions of the occupiers of "Birds Nest". Consequently, I find no conflict with LP Policy BE.1 or the Framework, which both seek to protect the amenity of existing occupiers.

### *Affordable Housing*

20. The Council indicates that there should be at least 6 affordable units provided. In order to create balanced and mixed communities, this is required under the Council's Interim Planning Statement, Affordable Housing (IPS), 2011. NP Policies H6 & H7 also require the provision of affordable housing. Whilst not a reason for refusal, this requirement was clearly indicated within the Officer Report and therefore it is evidence that I must take into account. The appellants have indicated that the scheme would make such provision by way of a planning condition to secure an affordable housing scheme. Notwithstanding this suggestion, during the course of the appeal, I invited the appellants to submit a legal obligation in this respect. This was at the same time that I gave the opportunity to submit an obligation to secure a financial contribution towards education.
21. At the end of the agreed timescale for producing the obligation, the appellants produced a unilateral undertaking in respect of the education contribution but no such provision was made for affordable housing. The appellants' reasoning for this was that, in their opinion, a condition could achieve the same objective. However, according to the Planning Practice Guidance (PPG)<sup>1</sup>, such a condition would not be appropriate. It advises that:
- (a) Planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act or an agreement under other powers. It says that such a condition is unlikely to pass the test of enforceability; and
- (b) A *negatively* worded condition limiting the development that can take place until a planning obligation *or other agreement* (my italics) has been entered into, is unlikely to be appropriate in the majority of cases. It indicates that planning obligations or other agreements should be made prior to granting planning permission as this is the best way to deliver sufficient certainty for all parties about what is being agreed. This is important in the interests of maintaining transparency.
22. The PPG says that, in exceptional circumstances, a negatively worded condition requiring a planning obligation to be entered into before development can commence may be appropriate in the case of *more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk* (my italics). No exceptional circumstances have been advanced in this case and the provision of 20 houses is not a complex or strategically important development. Therefore, such a condition is not appropriate and would be contrary to the clear advice of the PPG.
23. I therefore conclude that the proposal does not make adequate provision for affordable housing and consequently, I find conflict with the IPS and NP Policies H6 and H7.

---

<sup>1</sup> Paragraph: 010 Reference ID: 21a-010-20140306

## **Other Matters**

### Education Contribution

24. The Council has indicated that a financial contribution towards secondary education should be made of £49,028.07. The Council has explained that 20 dwellings would be expected to generate 4 primary school children and 3 secondary school children. The Council has confirmed that there is enough capacity in the primary school catchment area to accommodate the additional 4 children. However, forecasts show that the secondary school within the catchment area, Brine Leas, would have a 166 place deficit by 2022. The money would be spent accommodating the 3 secondary school children at Brine Leas and, along with contributions from 4 other planning permissions, would be put towards creating a class base.
25. Given the above factors, and had I been allowing the appeal, I consider that this contribution would be: necessary to make the development acceptable; directly related to the development; and proportionate to the scale of the development proposed. Therefore, it would pass the test in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. Furthermore, the contribution would satisfy the requirement of LP Policy BE.5. As the contribution would only be necessary to make the development acceptable, it is a neutral factor in the case, rather than a benefit.

### Other Appeal Decisions

26. I note the appellants' reference to the recent appeal decision<sup>2</sup> for up to 120 houses opposite the site. However, the two schemes are not directly comparable because the allowed scheme provided 30% affordable homes and therefore the social benefits of that scheme were greater.
27. The appellants have also drawn my attention to other appeal decisions on sites in Audlem<sup>3</sup>, Goostry<sup>4</sup>, and Sandbach<sup>5</sup>. I do not have the full details of those cases before me. That said, Fairview in Audlem was a smaller site and therefore its visual impact could not have been the same; the site in Goostry was in a different location and provided for 30% affordable housing; and the Sandbach site had a different visual context to the appeal site. Therefore, I do not consider that these appeals are directly comparable to the one before me.

### Number of Dwellings to be Provided in the Local Service Centres (LSCs)

28. I note the comments of interested parties in respect of housing numbers for the thirteen LSCs, of which Audlem is one. However, the Council has not yet formulated policies to determine how many dwellings each service area should provide and therefore, I give little weight to suggestions that the proposed 20 houses would be an over provision for Audlem.

## **Planning Balance**

29. There is an undersupply of housing which means that policies in respect of the supply of housing are not to be given full weight. However, this does not mean that there is no requirement for me to consider other effects of the

---

<sup>2</sup> APP/R0660/A/13/2204723

<sup>3</sup> APP/R0660/W/16/3149914

<sup>4</sup> APP/R0660/W/3129954

<sup>5</sup> APP/R0660/A/15/3001508

development. Whilst I find no harm to ecology or to living conditions, the development would cause demonstrable harm to the character and appearance of the countryside. Furthermore, the proposal would not provide for affordable housing.

30. On the other hand, the development would have an economic benefit due to the short term construction period and the longer term use of local businesses. It would have a significant social benefit by the provision of dwellings in a sustainable location.
31. However, the economic gain and the increase in housing numbers are outweighed by the combination of (a) the harm to the countryside and (b) the failure of the proposal to secure affordable housing. Overall, the proposal would not constitute sustainable development as defined by the Framework and would be contrary to the development plan as a whole.
32. I have taken into account all other matters raised, including representations made by interested parties, but none outweigh my overall conclusions.

**Conclusion**

33. Taking into account all the above factors, I conclude that the appeal should fail.

*Siobhan Watson*

INSPECTOR

Richborough Estates