



Appeal Decision

Site visit made on 29 April 2013

by David M H Rose BA (Hons) MRTPI

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

Decision date: 12 June 2013

Appeal Ref: APP/A0665/A/13/2191004

Land off Greenfields Lane, Malpas, Cheshire, SY14 8HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by William Corbett (Corn Merchants)¹ Ltd against the decision of Cheshire West & Chester Council.
 - The application Reference 12/03056/FUL, dated 3 July 2012, was refused by notice dated 8 October 2012.
 - The development proposed is described as residential development of 7 dwellings (including 3 affordable housing units).²
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Decision

1. The appeal is allowed and planning permission is granted for residential development of 7 dwellings (including 3 affordable housing units) at land off Greenfields Lane, Malpas, Cheshire, SY14 8HF in accordance with the terms of the application, Reference 12/03056/FUL, dated 3 July 2012, subject to the conditions set out in the Schedule to this decision.

Preliminary Matter

2. A draft legal agreement, under section 106 of the Town and Country Planning Act 1990, accompanied the planning application to provide a mechanism for the provision of the proposed affordable housing units. Its final form is as an executed Unilateral Undertaking, dated 1 May 2013, under the same section of the Act.

Main Issues

3. The main issues are:- the effect of the proposal on the countryside setting of Malpas and on its Conservation Area; and, whether the development would fail to take the opportunity to optimise the potential of the site and to create a development that would be both visually attractive and which would reinforce local distinctiveness.

¹ The Planning Appeal Form erroneously refers to the appellant as William Corbett (Chester) Ltd

² The description is taken from the 'Refusal of Planning Permission' as a summary of the 'Application for Planning Permission' which describes the proposal as 'Residential development of land (7 dwellings) off Greenfields Lane at rear of former corn depot site (3 of the 7 dwellings will be affordable by way of 106 agreement with Addington Fund as RSL). Access off Greenfields Lane over link access from existing turning head on adjacent site'

Background

4. There are a number of matters in the Officer's Report which provide important background to the appeal. Firstly, it is noted that the proposed development, within the open countryside, would conflict with Saved Policy HO7 of the Chester District Local Plan. However, the district has a significant shortfall in housing land supply and the National Planning Policy Framework indicates that in such circumstances planning applications for housing should be considered in the context of the presumption in favour of sustainable development.
5. Although the Council is pursuing the identification of its own housing targets through the emerging local plan, following the revocation of the North West Regional Strategy, the document is not at a sufficiently advanced stage to attract other than very limited weight. Similarly, the Malpas Neighbourhood Plan has not progressed to a stage to merit any material weight. Accordingly, planning permission should be granted for the proposed development unless any consequential adverse effects would significantly and demonstrably outweigh the benefits when assessed against the policies of the National Planning Policy Framework taken as a whole.
6. The National Planning Policy Framework identifies three strands to sustainable development, namely an economic role, a social role and an environmental role. The Council confirms Malpas to be a sustainable location, with a wide range of services and facilities, suitable for accommodating new housing. The proposal would thus contribute to economic growth and fulfil a social role by delivering a mix of market housing and affordable housing.
7. The local planning authority acknowledges that the development would not protect the natural environment; nor would it use brownfield land; and there might be other sites with better sustainability credentials. However, the Council is of the view that the proposal would be sustainable development as intended by the National Planning Policy Framework.

Reasons

The effect on the countryside setting of Malpas and on its Conservation Area

8. The appeal site is located on the north-eastern edge of Malpas, generally to the east of Chester Road, within the open countryside. Modern housing development abuts its western and southern boundaries.
9. The site lies a short distance from the Malpas Conservation Area which embraces the tight-knit historic core of the village and includes a north-easterly corridor along Chester Road, mainly along its north-western side, consisting of more open development within a wider countryside setting.
10. Looking first at the relationship of the site with the open countryside, the appeal site is enclosed to the west and south by housing estate development. When viewed from Chester Road, it forms a comparatively minor component of the rural aspect of the settlement in relation to the broad sweep of agricultural land to the east. Although open land permeates the scattered ribbon of development along the main road, providing a tangible link with the open countryside, the development of the appeal site as proposed would not impair this to any material degree.

11. From lower land to the east, along the minor road leading from the junction of Well Street with Well Meadow, the proposed development would be visually well-contained by adjoining housing development, particularly the immediate backdrop of imposing houses in Greenfields Lane; and it would not project materially further eastwards than the estate type development to the south. Added to this, the hit-and-miss ribbon of housing along Chester Road would provide a deeper and wider background of housing development. All-in-all, the degree of encroachment into the rural aspect of the settlement would be very minor.
12. In terms of the Conservation Area, the rural ambience of the settlement relies on the aggregation of open farmland which surrounds and permeates the eastern side of the settlement. The appeal site can be distinguished from the wide swathe of open countryside where one field succeeds another, or where a gap along the frontage of Chester Road leads into the rural vista, in so far as it has a strong degree of 'urban' containment. The development of the appeal site would neither break, to any material degree, into the succession of fields nor sever rural continuity or views from Chester Road. The character and appearance of the Malpas Conservation Area would therefore be preserved.
13. My attention has been drawn to an appeal decision, in 2006, for the erection of 2 dwellings in one of the gaps along Chester Road. The Inspector, in dismissing the appeal, found that the site made a positive contribution to the rural setting of Malpas and to the character and appearance of the Conservation Area. The characteristics of the current appeal site are very different; as is its contribution to what makes the Conservation Area special. Unlike the earlier site, the development of the land which is the subject of this appeal would not 'cause the harmful loss of a visually important area of open countryside'.³
14. Against this background, the proposal would not have an adverse effect on the countryside setting of Malpas or on its Conservation Area; and there would be no conflict with Saved Policies ENV24, ENV37 or ENV38 of the Chester District Local Plan.

Whether the development would fail to take the opportunity to optimise the potential of the site and to create a development that would be both visually attractive and which would reinforce local distinctiveness

15. The point at issue flows from paragraph 58 of the National Planning Policy Framework which indicates that 'planning decisions should aim to ensure that developments optimise the potential of the site to accommodate development'. The Council contends that where a green field is to be developed for housing, it should be used to its optimum to justify incursion into the countryside. In this case, with a maximum of 7 dwellings, the local planning authority would prefer to see the site laid out to reflect the character of adjoining development and to retain a greater proportion of open land. However, the scheme as submitted falls to be considered on merit.
16. The rationale for limiting the development to 7 dwellings is based on the ability of Greenfields Lane, a shared surface, residential, cul-de-sac to provide vehicular access to the site having regard to its overall design and configuration. The site is not otherwise accessible; and no other means to serve a more intensive form of development has been suggested.

³ Appeal decision APP/X0605/A/04/1171164 (paragraph 27)

17. The houses adjoining the site, in terms of density, plot size, scale, regimentation and limited landscaping provide a harsh urban edge to the settlement. The division between built development and the countryside is generally domestic in character.
18. By contrast, the proposed development, on its countryside edges, would be contained by established, reinforced and extended field boundary hedgerows which would provide it with immediate maturity; and an open, rough mown, grassed area and a new woodland copse would add further to its integration with the open countryside. The comparatively informal site layout, and the set back of the dwellings in the lee of the more imposing dwellings on higher ground to the west, would also contribute to a greater transition between built development and the rural landscape.
19. The local planning authority, in identifying the key elements of local distinctiveness, draw on the immediate setting of 'modern' estate development, seemingly spanning some 3 or 4 decades, at medium to high density, with a degree of rigidity and unassuming house designs. However, that pays scant regard to the wealth of cherished buildings and building styles in Malpas as a whole; and it ignores the countryside setting of the site as a contributory element to the identity of the settlement. It also fails to admit the possibility that new development could enhance the sense of place by refusing to mimic adjoining built form, some of which lacks the townscape qualities and rich heritage of the Conservation Area.
20. Turning to the submitted scheme, the proposed layout would have a degree of 'intimacy' provided by the close spacing of dwellings and the manner in which they would sit tightly alongside the cul-de-sac. Although plot widths would be greater than immediate counterparts, and footprints would be larger, the essential element of cohesive, tight-knit, grain would be a key component.
21. Moving on to look at the proposed house types, the three designs, although clearly distinguishable from each other, would follow a common theme of single storey form, steep roof pitches capable of accommodating an upper floor and similar window styles. Dormer windows, in very limited numbers, form an integral part of the design for Types 'B' and 'C' but each of them would be small in scale and set within a large expanse of roof. Although dormer windows are not a characteristic of the immediate locality, they are apparent elsewhere within Malpas and their use in the manner proposed would not be particularly eye-catching. In addition, principal rooflines would be simple and the addition of secondary projections and small dormers would not result in 'a series of convoluted or complex rooflines'.
22. In terms of the criticisms made of the dwelling in the south-east corner of the site, although it would have a shallow 'building-line', as would those immediately beyond, small front gardens are a notable feature of houses in Greenfields Lane. The plot depth would be no less than the recently constructed houses alongside; and, whilst it would almost fill the width of the plot, this would not be in marked contrast to the layout of other dwellings in the locality. In terms of the relationship with the proposed dwelling opposite, the separation and offset would avoid the larger house appearing oppressive or overbearing. Overall, given the wider characteristics of the locality and the juxtaposition of the proposed dwellings, there is nothing to suggest that this dwelling would appear 'squeezed in'.

23. Looking at House Type 'B', the double height glazed entrance would have an overall vertical emphasis and would be simple in style. The brick 'wings' each side would provide a 'framing' wall and a degree of solidity and robustness to reflect the way in which otherwise small apertures appear as 'secondary' components. Although the treatment would be somewhat striking, it would have the clear purpose of identifying the entrance to the house; and, taking into account the overall scale and configuration of the front elevation, it would not 'monopolize the form of the dwelling' or appear 'incongruous in its context'.
24. Taking the scheme as a whole, the close spacing of the proposed dwellings would be offset by their staggered arrangement and the set back of one dwelling from another; and the open space within the north-eastern part of the site would provide a broader, more open, setting particularly for House Types 'B' and 'C'. Although the dwellings would differ in design from those nearby, they would reflect various elements of local style with appropriate materials of construction and attention to detail. They would be well designed in their outward appearance consistent with the aim of Saved Policy ENV2 of the Chester District Local Plan.
25. The local planning authority's concerns about the proposed affordable dwellings appearing separate from the market housing is based on the premise that the 3 plots on the southern side of the cul-de-sac are intended to be the affordable units. Even if this were to be true, this group of dwellings would follow the general design principles for the site and, whilst they would be relatively simple in style, they would not stand apart from the open market properties. Moreover, whichever units subsequently make up the affordable provision, there is no reason to suppose that they would not appear well-integrated with the development as a whole, taking account of the limited scale of the development and the configuration of dwellings around a common cul-de-sac.
26. To my mind, the scheme would add to local distinctiveness, reflecting the aims of Saved Policies GE7, ENV21 and ENV22 of the Chester District Local Plan, where new buildings in well landscaped surroundings would be a fitting edge of settlement form of development. It would also be consistent with a key message in the National Planning Policy Framework of seeking to promote the delivery of a wide choice of high quality homes and to secure good design without imposing architectural styles.
27. Overall, there is an overriding constraint on the number of dwellings which could be provided on the site. Nonetheless, it provides an opportunity for large footprint dwellings in larger than 'average' plots; and the submitted scheme demonstrates that such a form of development could be accommodated in an apt manner. The proposal would, thus, neither fail to take the opportunity to optimise the potential of the site nor to create a development that would be both visually attractive and which would reinforce local distinctiveness.

Other Matters

28. The preparation of a Neighbourhood Plan is not well-advanced and, with a marked shortfall in housing land supply, it would be inappropriate to delay a decision on a small scale scheme which would contribute to the objectives of sustainable development.

29. It is noted that one of the main aims of the 'Action for Green Fields' group is to preserve the integrity of the village and its Conservation Area for future generations. However, the desire to stall all development until the local community and the Council has completed current work on the level of housing provision and site allocations, would be at odds with the National Planning Policy Framework which indicates that planning should proactively drive and support sustainable economic development to deliver, amongst other things, the homes that the country needs. Although the site might constitute Grade 1 and/or Grade 2 agricultural land, the resultant conflict with Saved Policy EC20 of the Chester District Local Plan would be outweighed by the significant and pressing shortfall in housing land supply.
30. It is said that there are currently 2 other development proposals in Malpas which cumulatively involve a potential of 200 houses. Each of these would represent significantly larger scale development than proposed on the appeal site. As such, and taking account of site specific circumstances, a favourable decision on the current appeal is likely to be of little materiality in the consideration of those very different projects. In addition, the degree to which the current proposal, by itself, might undermine the prospect of development on what others perceive to be more preferable, brownfield, sites would be minimal.
31. Note has been taken of the planning history of the site and the 3 unsuccessful proposals to develop it for residential purposes. However, circumstances have changed with the passage of time and the current lack of readily available housing land and the key messages set out in the National Planning Policy Framework are factors of importance in this appeal.
32. Although attention has been drawn to Saved Policies ENV17 and ENV29, relating to the protection of important areas of green space and areas of local nature conservation value, the appeal site is not designated as such. It is confirmed to be of little ecological value and there would be no conflict with Saved Policy ENV27 of the Chester District Local Plan.
33. A number of representations point out that the community infrastructure in Malpas is at full capacity. However, this view is not endorsed by either the local planning authority or the relevant providers and the development would not be in conflict with Saved Policies GE4 and GE5 of the Chester District Local Plan.
34. Moving on to more detailed matters, the observations about the proposed access and highway safety, notably during the construction period, relate to the design of Greenfields Lane with particular reference to its narrowness; curvature; slope and camber; shared usage, including children at play; and reported and illustrated problems encountered in icy or snowy conditions.
35. There is no doubt that construction traffic would add dangers and inconvenience for the duration of the building works. However, with appropriate construction traffic management measures, and extra caution by local residents, the impact would not be so severe to outweigh all other considerations and lead to the dismissal of the appeal on this ground alone. Moreover, the level of traffic likely to be generated by the completed development would be insufficient to make the existing part of Greenfields Lane, or its junction with Chester Road, inherently unsafe. Accordingly, the proposal would accord with Saved Policies TR13 and TR19 of the Chester District Local Plan.

36. The concerns about potential loss of privacy and sunlight for residents in Depenbech Close and Greenfields Lane were set out in the Officer's Report and it was concluded that 'as a result of the layout, orientation and ground level changes it is considered that there are acceptable distances between neighbouring properties to ensure that the residential amenity of both future occupiers of the proposed development and existing residences are not unduly affected by the proposed scheme'.
37. In this regard the dwellings to the rear of Greenfields Lane would be on lower land and separating distances would be reasonably generous. Whilst the relationship between the Type 'A' dwellings and the adjacent houses in Depenbech Close would be likely to result in some mutual overlooking, it would not be sufficient to dismiss the appeal. In neither situation would the proposal result in loss of sunlight taking account of orientation and spacing.
38. The local planning authority has confirmed that the requirement of Saved Policy SR7 for on site open space provision would be exceeded. However, reference is made to Saved Policy SR5 which expects developers to pay a commuted sum to improve provision for play areas in the immediate locality where there is a proven deficiency. However, without clear evidence of an alleged deficiency, the lack of an obligation providing a commuted sum does not tell against the proposal.
39. Similarly, although Saved Policy MI1 requires agreements to secure provision of education facilities where development gives rise to a requirement to provide additional or expanded services, no justification is set out.

Conditions

40. In terms of conditions, the standard period in which the development is to begin is imposed and the approved drawings are listed for the avoidance of doubt and in the interests of proper planning. Reference to Drg nos. 15A and 17 has been excluded as the levels shown are indicative; a condition requiring agreement on proposed finished site levels and finished floor levels is therefore necessary. Details of the external materials of construction will be required to ensure that they are appropriate to the locality.
41. The local planning authority's draft condition on landscaping has been modified as it would otherwise require details of elements already shown in drawing nos. RAL/163-01 and 02.
42. In respect of highways, a condition is sought requiring design details in accordance with the Highway Authority's specification. However, the Highway Officer's comments, which post-date amendments to the site layout 'at the request of Highway Officer', confirms that 'the internal site layout accords with the design principles we would expect to see and is suitable for adoption'. Thus, the only element which needs to be conditioned is the implementation of the works.
43. Similarly, as the Highway Officer has endorsed the design of the link between Greenfields Lane and the site, there is no need to require the submission of further details. Although the Officer notes that '..... the road will require land outside of the site boundary and in adjoining ownership to be controlled to enable the access road to be provided in a suitable manner', the land between the existing cul-de-sac and the site is included within the application site and notice has been served on the owners.

44. As to the conditions which seek to control traffic movements and construction methods, a combined condition, incorporating a method statement for the construction of foundations to take account of concerns about piling, would be more appropriate. Restrictions on working hours are necessary, given the proximity of neighbouring dwellings.
45. The condition relating to a programme of archaeological work is justified by Saved Policy ENV32 of the Chester District Local Plan and the potential for undisturbed archaeological deposits relating to the medieval or earlier settlement, in addition to historic landscape features, which may be revealed and destroyed by the proposed work.
46. The draft condition requiring a scheme of external lighting is said to be 'in the interests of the amenity of adjacent occupiers and in the interests of public safety and convenience'. Whilst it is important to ensure that lighting of the public domain does not spill out into the countryside, a continuing restriction on external domestic lighting would be unduly onerous.
47. The local planning authority seeks the removal of permitted development rights in order to control future extensions which '..... could result in the development appearing even more cramped and could potentially compromise the residential amenity of neighbouring residential properties'. The potential for extensions to the side or front of the proposed dwellings would be very limited; but scope would exist to extend on to rear gardens. Given the size of the House Type 'B' and 'C' plots, the distance between existing and proposed dwellings and relative plot levels, restrictions on 'permitted' extensions would be unreasonable. However, it should apply to the more restricted and relatively elevated plots with House Type 'A', in order to protect the living conditions of residents in Depenbech Close. The condition has been reworded to identify the specific restrictions and to avoid ambiguity.
48. Finally, in relation to affordable housing, Saved Policy H03 of the Chester District Local Plan confirms that the Council will seek to negotiate the provision of an element of affordable housing where it is demonstrably lacking in order to meet local need. The Strategic Housing Market Assessment indicates an annual need of approximately 13 affordable units in the Malpas Ward and it identifies a policy threshold of up to 40% provision on eligible sites, with a reduction to 35% where the tenure split reflects a preference for affordable rented tenure.
49. The provision of 3 affordable units, as intended by the Unilateral Undertaking, would meet this objective. The deed would be fairly and reasonably related to the proposed development and it would pass the statutory tests contained in Regulation 122 of the Community Infrastructure Regulations 2010.
50. However, even though the Council has not made any observation on the terms of the undertaking, I note that clause 5.2 states:- 'The location of the Affordable Dwellings shall be in accordance with the planning permission granted pursuant to the Application'. However, the location/House Type of the affordable units has not been specified. Moreover, there appears to be a drafting error in clause 5.6 in that the reference to sub-clause (a) in sub-clause (c) should be sub-clause (b); and, similarly, the reference to sub-clause (b) in sub-clause (d) should be sub-clause (c). Given these seeming deficiencies, limited weight attaches to the undertaking and it is necessary to impose a condition to secure the affordable housing element of the project.

51. The Parish Council explains that it was given to understand that the properties would be sold to individuals with local agricultural connections and asks that agricultural occupancy conditions be imposed. However, that is not the basis of the application and such a condition would be unnecessary as the proposed development would represent an acceptable, limited, extension to the settlement.

Conclusion

52. From my consideration of the main issues, and other matters set out above, I have found that the conflict with Saved Policies HO7 and EC20 of the Chester District Local Plan would be outweighed by the acknowledged shortfall of housing land within the district and that the proposal should be allowed when assessed against the policies in the National Planning Policy Framework taken as a whole.
53. I have considered all other matters raised, including the references to the availability of properties in Malpas for sale or rent, concerns about the impact of the development on property values and loss of view from nearby houses, but find nothing of sufficient materiality to change my decision to allow the appeal.

David MH Rose

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drg nos. 02A, 03, 04A, 05A, 06A, 07A, 08, 09, 10A, 11, 14B, 16, RAL/163-01 and RAL/163-02.
- 3) No development shall take place until details of proposed site levels and finished floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings 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.
- 5) No development shall take place until details of the soft landscaping works, including species, specifications and planting plans have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) No dwelling shall be occupied until that part of the highway providing access to it has been constructed up to and including binder-course level and a timetable for the laying of the surface course has been approved in writing by the local planning authority. The works shall be completed in accordance with the approved timetable.
- 7) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) measures to manage traffic movements in Greenfields Lane;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) measures to control the emission of dust, noise, vibration and light spill;
 - vi) wheel washing facilities; and
 - vii) a method statement for the construction of foundations.
- 8) No works, or vehicular movements into or out of the site, shall take place outside 08:00 hours to 18:00 hours Mondays to Fridays, 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays.

- 9) Notwithstanding the provisions of Schedule 2, Part 1, of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development shall be permitted within Classes A, B and C in respect of House Type 'A'.
- 10) No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 11) No development shall take place until a scheme for the lighting of public areas 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 shall thereafter be retained as such.
- 12) 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 in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. 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 3 housing units;
 - 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.

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