



Appeal Decision

Site visit made on 5 December 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 30th January 2018

Appeal Ref: APP/R0660/W/17/3177499

Land at Shavington Villa, Rope Lane, Shavington, CW2 5DT

- 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 Kirkham against the decision of Cheshire East Council.
 - The application Ref 17/0295N, dated 18 January 2017, was refused by notice dated 13 April 2017.
 - The development proposed is a residential development of up to 29 No dwellings and associated infrastructure with access to be taken from Rope Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for a residential development of up to 29 No dwellings and associated infrastructure with access to be taken from Rope Lane at Land at Shavington Villa, Rope Lane, Shavington, CW2 5DT in accordance with the terms of the application, Ref 17/0295N, dated 18 January 2017, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application is in outline with all matters reserved for future consideration except for the means of access. Drawings showing an indicative layout of the development were submitted with the application, and I have had regard to these in determining this appeal.
3. At the time the application was determined by the Council, the Cheshire East Local Plan Strategy (CELPS) was still an emerging document. However, the CELPS was subsequently adopted in July 2017 and now forms part of the statutory development plan. I have determined the appeal on this basis. In this regard, Policy NE.2 of the Borough of Crewe and Nantwich Replacement Local Plan has now been superseded by Policy PG6 of the CELPS. Policy NE.2 is therefore no longer relevant to this appeal.
4. A legal challenge has been made against the adoption of the CELPS by a party unrelated to this appeal, on grounds concerning air quality data. However, that does not change the legal status of the plan, which should be presumed to have been lawfully adopted unless or until the plan is quashed by the Court.

Main Issues

5. The main issues are:
 - (a) Whether the Council is able to demonstrate a 5 year supply of deliverable housing sites;
 - (b) The effect of the development on the character and appearance of the Open Countryside and the surrounding landscape; and
 - (c) The effect of the development on the Strategic Green Gap between Willaston, Rope, Shavington and Crewe in which it would be located.

Reasons

Housing land supply

6. The Council's ability to demonstrate a 5 year supply of deliverable housing sites is one of the main issues in determining this appeal. It affects whether or not the appeal is to be considered against the 'tilted balance' set out in the fourth bullet point of paragraph 14 of the National Planning Policy Framework ('the Framework').
7. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the Council is unable to demonstrate a 5 year supply. Where paragraph 49 of the Framework applies, paragraph 14 states that 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 taken as a whole.
8. The Council asserts in its statement that it is able to demonstrate a 5 year supply of deliverable housing sites. However, the appellant has drawn my attention to a recent appeal decision¹ elsewhere in the Borough that found that the 5-year supply position should be considered marginal, and potentially in doubt. That Inspector concluded that it would be both cautious and prudent to regard policies for the supply of housing as not being up-to-date, thus engaging the 'tilted balance' at paragraph 14 of the Framework.
9. The Council subsequently referred me to evidence it had submitted in relation to another case that had recently been subject to a Public Inquiry. However, that decision² was published on 4th January 2018, and similarly concluded that the Council's 5 year supply position was marginal. Accordingly, the Inspector considered that appeal against the 'tilted balance' at paragraph 14 of the Framework.
10. Both of these recent appeal decisions were determined following a Public Inquiry, which would have allowed the Council's housing land supply to be scrutinised in detail. In both cases the Council's supply position was found to be marginal, and the 'tilted balance' was applied. I see no reason to take a different view, and I therefore regard policies for the supply of housing as being not up-to-date. Accordingly, I have considered the appeal against paragraph 14 of the Framework. I return to this matter in the overall balance, below.

¹ APP/R0660/W/17/3166469

² APP/R0660/W/17/3168917

Open countryside and landscape effect

11. The appeal site consists of a small grazing paddock and part of a domestic garden, located on the north western edge of Shavington. It adjoins existing residential properties on 3 sides and open countryside to the north west. A public footpath runs across the adjoining field, from which the site is visible.
12. At present, the site has the character of an open rural field. It is partly bounded by hedgerows and contains some prominent trees. The development would change the character of the site to that of a housing area, and would have an urbanising effect in this regard. The development would be clearly visible from along the nearby footpath. However, from this perspective it would appear as a continuation of the established settlement edge. In this regard, the development would not extend beyond the line established by the properties on either side. The development would also be partly screened by existing trees and bushes, which could be supplemented with additional planting when landscaping is considered at reserved matters stage. From the footpath, the impression of walking through an agricultural landscape would not be significantly altered. Whilst the site itself would be subject to significant change, any harm to the character of the wider landscape would be limited. The change in outlook from some adjoining properties would be more significant, although there is scope to provide appropriate separation distances between properties at reserved matters stage.
13. The Council has drawn my attention to a recent appeal decision³ that relates to a nearby site to the west. That Inspector concluded that the proposed development would significantly erode the Strategic Green Gap between Shavington and Crewe. However, that site protrudes out significantly from the existing settlement edge, and is largely surrounded by open land. That is not the case here. I have therefore determined the appeal on its own merits.
14. Whilst the harm that the development would cause to the wider landscape would be limited, the appeal site is identified as being within the Open Countryside under Policy PG 6 of the CELPS. This policy, and Policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan, seeks to restrict new housing development in the Open Countryside unless one of a limited number of exceptions are met. The development would not meet any of the exceptions in these policies, and it would therefore be contrary to them.

Green Gap

15. The appeal site is located within the Strategic Green Gap between Willaston, Rope, Shavington and Crewe, as defined by Policy PG 5 of the CELPS. Policy PG 5 seeks to restrict the construction of new buildings that would result in the erosion of physical gaps, adversely affect the visual character of the landscape, significantly affect the undeveloped character of the Green Gap or lead to coalescence between settlements. Green gaps have been a feature of planning policy in the Crewe and Nantwich area for a number of years, and were supported by the Inspector who examined the CELPS.
16. The boundaries of the Strategic Green Gaps are largely defined by Policy NE.4 of the saved Borough of Crewe and Nantwich Replacement Local Plan (2005). The appellant contends that as these were drawn up over 17 years ago, they

³ APP/R0660/W/16/3147420

are now out of date. However, I do not support that view. The reliance on these boundaries, pending further review, has recently been found sound by the CELPS Inspector as a practical interim solution. Moreover, there is no indication at this stage that the status of the appeal site is likely to change in any forthcoming review.

17. In terms of the effect of the development on the physical gap between Shavington and Crewe / Willaston, this is approximately 1 kilometre in width at this point. The development would not involve any further outward encroachment beyond the settlement edge established by the properties on either side. In this regard, it would comprise the infilling of a small break in an otherwise fairly consistent settlement edge. Any erosion of the gap between Shavington and Crewe / Willaston would therefore be minimal, and the development would not contribute towards a coalescence of settlements.
18. I have considered the Council's argument that the current proposal would set a precedent for similar developments on other Strategic Green Gap sites. However, no directly similar or comparable sites to which this might apply were put forward. I have therefore considered this proposal on its individual merits.
19. Notwithstanding the above, insofar as the development would affect the undeveloped character of this part of the Green Gap, it would be contrary to Policy PG 5 of the CELPS (2017). Moreover, it has not been demonstrated that suitable alternative locations outside of the Strategic Green Gap are unavailable. The development would therefore also be contrary to Policy NE.4 of the Borough of Crewe and Nantwich Replacement Local Plan (2005).

Other Matters

Planning obligation

20. A signed and dated planning agreement has been submitted that relates to onsite affordable housing provision and a financial contribution towards open space provision. With regard to affordable housing, this is clearly necessary in order to meet local need and to comply with Policy SC 5 of the CELPS. With regard to the open space contribution, this would be spent on improving the children's play area at Vine Tree Avenue, which is 0.2 miles from the appeal site. Open space provision in new development is required by Policy SE 6 of the CELPS, and the sum has been calculated using a standard methodology that has been adopted by the Council. Given the proximity of the Vine Tree Avenue play area, and the additional demand that the development would create, I consider that this obligation is directly related to the development. Moreover, the Council state that no other developments have contributed towards the improvement of the Vine Tree Avenue play area. I am therefore satisfied that the pooling restrictions set out in the CIL Regulations would be complied with.

Other considerations

21. The development would result in the loss of an area of the best and most versatile agricultural land. The appellant's statement indicates that this is at Grade 2. As such the development would be contrary to Policy SE 2 of the CELPS which expects development to safeguard high quality agricultural land. At present, the site is mostly used as a grazing paddock, although around a quarter of the site comprises a domestic garden. It is not connected to a wider

- agricultural holding and is largely surrounded by residential development. Its potential to contribute to the agricultural economy is therefore limited. Moreover, in comparison to the overall resource of high grade agricultural land in the surrounding area, and in Cheshire East, its loss would be modest. Nevertheless this harm would add to the weight against the proposal.
22. The proposed access would be onto Rope Lane. Whilst this is close to a bend in the road, there is adequate visibility in both directions at this point. A number of minor accesses are positioned nearby but there would be sufficient visibility between them to allow for safe access and egress. The number of vehicle movements associated with a development of this size would not be sufficient to place undue strain on the highway network. I further note that the Highway Authority has not objected to the development on these grounds.
23. The Council is currently preparing a Site Allocations and Development Plan Document that will identify additional sites for development. A pre-publication draft is expected to be published for consultation in early 2018. As this document is at an early stage of preparation I attach limited weight to it.
24. Design and layout are reserved matters and do not fall to be addressed at this stage. From the evidence before me, I am satisfied that the site is capable of being developed in a way that would be sympathetic to the pattern, form, and design of the surrounding area. Similarly, the precise location of the affordable units would be determined at reserved matters stage.
25. A full Great Crested Newt survey of a pond within 250m of the proposed development has not been completed. However, I note that the Council's Nature Conservation Officer considers that this species is not reasonably likely to be affected by the proposed development. I see no reason to take a different view.
26. My attention has been drawn to a number of recently approved housing developments in the vicinity. However, there is no persuasive evidence before me that Shavington is incapable of accommodating an additional development of this size, or that its infrastructure is at capacity.
27. An interested party states that the development fails to identify 25% of the properties to be set aside for older residents. However, there is no adopted policy before me that would require this, and the Council has not referred to this matter in its submissions.
28. Any disturbance caused during the construction period would be temporary, and could be mitigated by an Environmental Management Plan, which could be secured by condition.

Conditions

29. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard outline conditions, I have imposed a condition that requires the development to accord with the approved plans insofar as they relate to access. This is necessary in the interest of certainty.
30. A condition requiring the submission and approval of an Environmental Management Plan is necessary in order to protect the living conditions of neighbouring occupiers during the construction process. Conditions relating to

land contamination are necessary to ensure the site does not create undue risks to future and neighbouring occupiers of the development. Further conditions relating to surface water drainage and flood risk are necessary in order to ensure that the site is adequately drained and does not result in an increase in flood risk. These are pre-commencement conditions as any development works could affect how the site is drained, or could disturb any contaminants within the ground.

31. Conditions requiring the installation of electronic charging points and the provision of Residents' Travel Information Packs are necessary in order to comply with local policy and to limit any effects on air quality. Further conditions relating to measures for breeding birds, roosting bats, hedgehogs, and replacement hedgerows are necessary in order to deliver habitat enhancements, and to accord with the recommendations of the submitted Phase 1 Habitat Survey. An additional condition requiring that an updated package of arboricultural information is provided at reserved matters stage is necessary to ensure that existing trees are protected. Finally, a condition requiring details of existing and proposed ground / floor levels to be provided is necessary in order to protect the character and appearance of the area.
32. The Council suggested a further condition that would have required any soil brought to the site for use in garden areas or soft landscaping to be tested for contamination and suitability for use prior to importation to the site. However, it is unclear why this condition is necessary, and the Council has provided no clear justification in this regard.

Overall Balance and Conclusion

33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. An important material consideration is the presumption in favour of sustainable development at paragraph 14 of the Framework. As set out above, recent appeal decisions have found the Council's 5 year supply position to be marginal, and have therefore applied the 'tilted balance' at the 4th bullet point of paragraph 14. I have adopted the same approach here.
34. In terms of the adverse impacts of the development, the appeal site is within the Open Countryside and a Strategic Green Gap between Shavington and Crewe. In this regard, it would be contrary to Policies PG 5 and PG 6 of the CELPS, and saved Policies NE.4 and RES.5 of the Borough of Crewe and Nantwich Adopted Replacement Local Plan. However, as set out above, the harm to the surrounding landscape would be limited, and there would be no significant erosion of the physical and visual gap between Shavington and Crewe. In these circumstances, and in the context of the 'tilted balance' at paragraph 14 of the Framework, I attach limited weight to the conflict with these policies. The development would also involve the loss of an area of best and most versatile farmland, although this would be modest in scale.
35. In terms of the benefits of the development, up to 29 dwellings would be provided that would contribute to the Council's 5 year supply position. Thirty percent of these dwellings would be affordable. The development would also be in a relatively accessible location in walking distance of local services and facilities. Furthermore, there would be economic benefits including the creation of employment, and the purchasing of materials and furnishings. The planning

obligation would also provide a contribution towards improving the nearby Vine Tree Avenue children's play area.

36. On balance, and taking all matters into consideration, I conclude that the adverse impacts would not significantly and demonstrably outweigh the benefits of the development. The development would therefore comprise sustainable development as set out in the Framework. In this case, the conflict with the development plan would be outweighed by other material considerations.

37. For the reasons given above I conclude that the appeal should be allowed.

Thomas Hatfield

INSPECTOR

Richborough Estates

Schedule of Conditions

Reserved Matters

- 1) Details of the appearance, landscaping, layout, and scale, (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.
- 2) 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.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, insofar as they relate to access: 2212-101; 2212-110 Rev E.
- 5) The reserved matters shall be accompanied by an updated comprehensive package of arboricultural information in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations. Any mitigation proposed shall be implemented in accordance with the approved details.
- 6) The reserved matters shall make provision for replacement hedge planting for any hedgerows to be removed as part of the development hereby permitted.
- 7) The reserved matters shall include details of the boundary treatments to any garden or boundary fencing including gaps for hedgehogs. The gaps to be 10cm by 15cm and located at least every 5 metres.
- 8) The reserved matters shall include details of the existing ground levels, proposed ground levels, and the level of proposed floor slabs.
- 9) The development hereby approved shall be carried out in full accordance with the site Flood Risk and Drainage Management Strategy (Betts Hydro, dated December 2016).

Pre-commencement conditions

- 10) No development shall take place until an Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i) the hours of construction work and deliveries;
 - 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) wheel washing facilities;

- vi) details of any piling required, including the method of piling, hours, duration and prior notification to the occupiers of potentially affected properties;
 - vii) details of the responsible person (for example the site manager/office) who could be contacted in the event of complaint;
 - viii) mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - ix) waste management – there shall be no burning of materials on site during construction; and,
 - x) a scheme to minimise dust emissions arising from construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- 11) No development shall take place until:
- (a) A Phase II ground investigation and risk assessment has been submitted to, and approved in writing by, the LPA, and:
 - (b) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the LPA.
- Prior to the first 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 LPA, prior to the occupation of the development.
- 12) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 13) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The drainage design must include information about the design storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)) & any temporary storage facilities included, to ensure adequate drainage is implemented on site. If the design utilises an infiltration solution, the developer must provide satisfactory infiltration test results in line with BRE 365 and CIRIA C697 guidance notes. Locations for the infiltration tests should also be located relevant to the design. The development shall be implemented in accordance with the approved details.

- 14) Foul and surface water shall be drained on separate systems.

Pre-slab level conditions

- 15) No development shall take place above slab level until details of overnight electric vehicle charging points, required for each dwelling with dedicated off road parking, has been submitted to and approved in writing by the Local Planning Authority. The charging points shall be installed prior to the first occupation of the development.
- 16) No development shall take place above slab level until detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including house sparrow and roosting bats has been submitted to and approved in writing by the Local Planning Authority. The approved features shall be installed prior to the first occupation of the development hereby permitted and thereafter retained.

Pre-occupation conditions

- 17) Prior to the first occupation of the development, a Residents' Travel Information Pack shall be submitted to and approved in writing by the Local Planning Authority. The pack shall include local information on sustainable transport options including walking, cycling, public transport and other local options as an alternative to the private car. The agreed pack shall be issued to the occupants on the initial sale of the properties and kept within any property information pack as applicable.

Richborough Estates