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## Appeal Decision

Hearing held on 18 March 2014

Site visit made on 18 March 2014

**by Joanna Reid BA(Hons) BArch(Hons) RIBA**

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

**Decision date: 22 May 2014**

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**Appeal Ref: APP/R0660/A/13/2201738**

**Main Road, Shavington cum Gresty, Shavington CW2 5DY**

- 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 Miss Ann Lander, Wulvern Housing against the decision of Cheshire East Borough Council.
  - The application Ref 13/0003N, dated 19 December 2012, was refused by notice dated 2 July 2013.
  - The development proposed is erection of 17 affordable dwellings – 5 no. 3 bedroom houses, 8 no. 2 bedroom houses and 4 no. 1 bedroom apartments.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 17 affordable dwellings – 5 no. 3 bedroom houses, 8 no. 2 bedroom houses and 4 no. 1 bedroom apartments at Main Road, Shavington cum Gresty, Shavington, CW2 5DY, in accordance with the terms of the application, Ref 13/0003N, dated 19 December 2012, subject to the conditions set out in Schedule A at the end of this Decision.

### Application for costs

2. At the Hearing an application for costs was made by Miss Ann Lander, Wulvern Housing, against Cheshire East Borough Council. This application is the subject of a separate Decision.

### Procedural matter

3. The Council confirmed at the hearing that it does not seek to defend reason for refusal 1, which alleged conflict with Policies NE.2, NE.4 and RES.8 of the *Borough of Crewe and Nantwich Replacement Local Plan 2011* (LP) in relation to the need for the affordable housing on a rural exception site in the countryside and within the designated Green Gap. I too have no reason to conclude other than that the proposal would satisfy these Policies, so I shall deal with the appeal accordingly.

### Main issue

4. From what I have said above, from my inspection of the site and its surroundings, and from the representations made at the hearing and in writing, I consider that the main issue in this appeal is the effect that the proposed development would have on the character and appearance of the surrounding area.

## Reasons

5. The appeal site has a wide frontage to Main Road and it adjoins development on 3 sides, but it is outside the settlement boundary of Shavington village designated in the LP, so it is within the countryside in policy terms. Along its north-western boundary, trees, which are subject to (Main Road, Shavington) Tree Preservation Order 1985 (TPO), and a hedgerow, provide a partial screen to the mainly open countryside beyond, and they would do so whether or not they are in leaf. From Main Road, the site forms a gap at the edge of the village. The levels at the site are uneven and the north-eastern part of the site is a little higher than in Main Road. The proposed 100% affordable housing development would include 13 houses and 4 flats.
6. LP Policy RES.8 is a rural exceptions policy which aims to permit affordable housing in rural areas outside settlement boundaries where, amongst other things, the layout and design of the scheme is appropriate to the character of the settlement.
7. The *Cheshire East Local Plan - Local Plan Strategy Submission Version* (ELP) was published in March 2014, and attention was drawn to emerging Policies SD 2, SC 6 and SE 1, which are concerned with sustainable development, rural exception housing and design, respectively. However, as the ELP is at a relatively early stage these Policies attract little weight.
8. The existing nearby development includes 2-storey houses, 1½-storey chalet dwellings and bungalows in a variety of types and styles, so the proposed 2-storey dwellings would be in character. Their form would be simple, but their detailing, including the porch canopies, and the variety in their roof forms and materials, would harmonise with the existing development. Most nearby dwellings are detached or semi-detached, but there are terraced dwellings only a little further along Main Road, so the 3 pairs of semi-detached houses and the 3 short terraces would be in keeping. Although some of the existing dwellings are set back a little more than others on both sides of the road, and the spacing of some varies, most reflect the alignment of Main Road. So, the informal broadly linear layout of the proposed dwellings would respect the established pattern of development.
9. The plots would be narrower than those on the opposite side of Main Road, but the openness in front and behind most of the dwellings and on each side of the site would maintain the generally spacious character in this part of the village. As there are around 6 or 7 dwellings in a similar length of Main Road on either side of the site and opposite, the 6 modest dwelling blocks would reflect the rhythm in the street scene. The variety in the design of the short terraces and semi-detached pairs, and in the spaces between them, would complement the street scene in Main Road. At roughly 42 dwellings per hectare, the density of the development would achieve an acceptable balance between maintaining the existing semi-rural character and making good use of the site. Thus, the proposal would respect the pattern, character and form of its surroundings.
10. There would be one access to the site, so the proposed soft landscaping, including trees and a hedgerow along most of the boundary to Main Road, would partly screen the dwellings and their parking. The land taken up by hard surfaces would be kept to a minimum because the on-site road would be a shared surface for pedestrians and vehicles. Most dwellings would be well set back from Main Road, but all would have generous back gardens. The layout of

the development would safeguard the trees which are subject to the TPO, and they would provide a sylvan backdrop to the scheme. These trees and the existing hedgerow, which would be retained, would partly screen views of the development from the countryside throughout the year, so the rural character of the landscape beyond the site would be conserved. Thus, the well-designed scheme would contribute positively to the sense of place in the village and it would recognise the intrinsic character and beauty of its countryside setting.

11. My colleagues' appeal decisions for applications ref 7/06599, 7/06604 and 7/17135 were made over 20 years ago under previous plan policy, and none of the proposals were for rural exception housing. My colleague's comments in the Inspector's Report into the LP were related to the settlement boundary, which this proposal would not change. The LP Inspector also found that, instead of the views over attractive undulating fields identified by the 1990 appeal Inspector, the trees and hedgerow on the rear boundary obscure much of the countryside from Main Road. As rural exception housing is acceptable in the countryside, and the scheme would maintain the semi-rural character in Main Road, these decisions and the LP report are not relevant to the proposal before me, which I have dealt with on its merits and in accordance with its site specific circumstances and relevant national and Development Plan policy.
12. I consider that the proposed development would not harm the character and appearance of the surrounding area. It would satisfy LP Policy BE.2, which seeks a high standard of design, and LP Policy RES.8. It would also satisfy the *National Planning Policy Framework* (Framework) which aims to always secure high quality design for all existing and future occupants of land and buildings, and to take account of the different roles and character of different areas.

#### *Other matters*

13. The appellant has submitted a planning obligation which aims to ensure that the affordable dwellings would be rented to people in housing need with a local connection to Shavington, in accordance with LP Policy RES.8. As open market housing at the site would be contrary to local and national policy, because it would be in the countryside, the obligation would be necessary to make the development acceptable in planning terms. It would also be directly related to the whole of the development, and because it would affect all of the dwellings it would be fairly and reasonably related in scale and kind to the development. As the obligation would satisfy all 3 of the statutory tests in *The Community Infrastructure Levy Regulations 2010* (the CIL), I shall take it into account.
14. The obligation for a financial contribution for off-site habitat creation and enhancement is necessary because the proposal would cause the loss of 0.4 hectares of barn owl foraging habitat, and semi improved grassland with a small area of tall herb and scrub at the site. It would satisfy LP Policy NE.5 which aims to protect, conserve and enhance the natural resource, and the Framework, which aims to minimise impacts on biodiversity. The contribution would be directly related to the development because it would mitigate the loss of habitat that the proposal would cause. It has been calculated in accordance with Defra's *Costing potential actions to offset the impact of development on biodiversity – Final Report 3 March 2011*, and it would fund barn owl boxes and habitat creation and/or restoration projects, so it would be fairly and reasonably related in scale and kind to the development. As the obligation

would meet all 3 of the statutory tests in Regulation 122 of the CIL and the tests in paragraph 204 of the Framework, I shall take it into account.

15. Although the Council had withdrawn its concerns about the local need for the affordable housing, which is supported by its decision to refuse planning permission on design grounds only for the revised application for 17 affordable dwellings at the appeal site, ref 14/0476N, on 17 March 2014, it was raised by interested parties. An email was put in which showed that on 17 March 2014 there were 40 entries on the housing register registered with a Shavington Parish postcode, but there was almost no supporting data, so it attracts little weight. By contrast, the *Cheshire East Strategic Housing Market Assessment 2013 Update* shows that the annual need for 31 affordable dwellings in the Wyburnbury and Shavington sub-area identified in the *Cheshire East 2010 Strategic Housing Market Assessment* has increased to 54 affordable dwellings. Even when all of the affordable dwellings at Stapeley Water Gardens are delivered, they will be insufficient to make up the existing 5 year shortfall for 2009/2010 to 2013/2014. Other sites in the area, presently with and without planning permission, could, in time, also provide affordable housing, but insufficient evidence was put to me to show that the proposal would not be necessary to meet the existing local need.
16. In the light of nearby flooding events related to Pusey Dale Pumping Station, and the increase in demand for drainage that would arise from the proposal, the main parties agreed that a condition should be imposed for foul and surface water drainage details to be approved by the Council, if planning permission were to be granted. The outlook for some nearby residents would change, and for some change can be difficult to accept. However, due to the relationships between the proposed and existing dwellings, the scheme would not harm the living conditions of nearby residents with regard to privacy, outlook, and daylight and sunlight. It would satisfy the Council's guidance, and the Framework, which seeks to always secure a good standard of amenity for all existing and future occupants of land and buildings.
17. Highway safety and the free flow of traffic in and around Main Road and the lack of a footpath opposite part of the site were not concerns of the Council in its reasons for refusal, and I see no reason to disagree. Whilst the position of the access would not meet the Council's guidelines on junction spacing, the highway authority has explained that its position is necessary to achieve adequate sightlines and that it is acceptable for the scale of the proposal. Also, the appellant's ecological assessments demonstrate that, apart from the financial contribution referred to above, and the imposition of the Council's suggested conditions, there would be no reasonable likelihood that any protected species, or other wildlife, on or around the site would be adversely affected by the scheme.
18. I have taken into account all of the other matters raised, including the concerns raised by local residents, but none of the points against the proposal are sufficient, individually or cumulatively, to outweigh the planning considerations that have led to my conclusion. Therefore, planning permission should be granted subject to the imposition of conditions.

#### *Conditions*

19. The Council's suggested conditions have been considered in the light of the advice in the Framework, the national web-based *Planning Practice Guidance*,

and the model conditions in Appendix A of Circular 11/95 *The Use of Conditions in Planning Permissions*. The condition identifying the approved plans is reasonable and necessary for the avoidance of doubt and in the interests of proper planning. Conditions to control external lighting, construction working hours, and for a construction method statement, are necessary to protect the living conditions of nearby occupiers. The external lighting condition is also necessary in the interests of biodiversity. The condition for foul and surface water drainage details is reasonable and necessary in the interests of public health and to reduce the risk of flooding. At the hearing the main parties agreed that as the affordable housing is acceptable in the countryside as an exception to local and national policy, this provides the exceptional circumstances whereby the condition withdrawing permitted development rights for extensions, alterations and development within the curtilages of the dwellinghouses, is reasonable and necessary to ensure that the dwellings remain affordable to meet local needs. Also, as noted by the Council at the hearing, the removal of permitted development rights for development within the gardens of the houses on Plots 3, 4, 9, 10, 11, 12, 13, 14, 16 and 17 would be necessary to protect the trees which are subject to the TPO.

20. As the site was in agricultural use and a former pond may have been filled, the condition to investigate and to deal with potential contamination is necessary in the interests of public health. Conditions for external materials, hard and soft landscape works and levels are reasonable and necessary to protect the character and appearance of the area. The condition to control levels is also necessary to protect the privacy of nearby occupiers. The tailpiece in the landscaping condition is reasonable to give the Council discretion to approve a different size or species, should a specified tree or shrub be unsuited to the site. The conditions for tree protection, levels and the construction method statement are necessary to protect the trees which are subject to the TPO. The conditions for surveys and measures during bird nesting seasons, and for breeding bird features, are necessary in the interests of biodiversity. The conditions for road construction details and the construction method statement are necessary in the interests of highway safety. These conditions have been imposed.
21. Piling is not proposed so the condition to control the timing of piling operations is not necessary. The planning obligation for affordable housing is more precise than the Council's suggested condition, so the condition is not necessary. These conditions have not been imposed.

### **Conclusion**

22. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

*Joanna Reid*

INSPECTOR

## **Schedule A**

- 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: 5327/01M, 5327/02, 5327/10B, 5327/11B, 5327/12B, 5327/13B, 5327/14B, 5327/16A, 1658/02 and 1658/03.
- 3) Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0900 hours to 1400 hours on Saturdays nor at any time on Sundays or Public Holidays.
- 4) No development shall take place until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before any dwelling hereby approved is occupied.
- 5) No development shall take place until details of all external lighting have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed in accordance with the approved details and shall be retained as approved thereafter.
- 6) No development shall take place until (a) a contaminated land Phase I report assessing the actual and potential contamination risks at the site has been submitted to and approved in writing by the local planning authority, (b) should the Phase I report find that a Phase II investigation is necessary, a Phase II investigation shall be carried out and the results shall be submitted to and approved in writing by the local planning authority, (c) should the Phase II investigation find that remediation is necessary, a Remediation Strategy shall be submitted to and approved in writing by the local planning authority, and the remediation scheme in the approved Remediation Strategy shall be carried out and (d) a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority before any part of the development hereby approved is occupied.
- 7) No development shall take place until samples and details of the materials to be used in the construction of the external surfaces of the development 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.
- 8) Notwithstanding the details shown on the approved plans, no development shall take place until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include boundary treatment, hard landscaping, planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), and schedules of plants, noting species, plant sizes and proposed numbers and densities. All hard and soft landscape works shall be carried out in accordance with the approved details within the first planting season following the completion of the development or in accordance with a programme approved in writing by the local planning authority. If within

a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 9) Before any works take place that involve the loss of any hedgerow, tree or shrub or the demolition of any buildings between 1 March and 31 August in any year, a detailed survey shall be carried out to check for the existence of nesting birds. Where nests are found, a 4 m exclusion zone shall be created around the nest until breeding is complete. Completion of nesting shall be confirmed by a qualified person, who has been approved in writing by the local planning authority, in a report which has been submitted to and approved in writing by the local planning authority before any works involving the removal of that hedgerow, tree or shrub or demolition of that building takes place.
- 10) No development shall take place until details of features to be incorporated in the development suitable for use by breeding birds including house sparrows and swifts have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the features shall be retained as approved thereafter.
- 11) No development shall take place until details of existing and proposed ground levels on and adjoining the site and finished floor and finished roof levels for the development hereby approved to Ordnance Survey Datum have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved level details.
- 12) No development shall take place until construction details of all roads within the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 13) No development or other operations in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening, or any operations including the use of motorised vehicles or construction machinery) shall take place until a services layout (including all services and foul and surface water drainage) has been submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in accordance with the approved services layout and the Arboricultural Method Statement and tree protection measures shown on plan 1658-02 (hereinafter called the approved protection scheme).
- 14) No operations shall take place in connection with the development hereby approved (including tree felling, tree pruning, demolition work, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the tree protection measures required by the approved protection scheme are in place. The tree protection measures shall remain in place throughout the construction phase of the development

hereby approved and shall not be repositioned or removed without the written approval of the local planning authority.

- 15) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- 16) No development shall take place, including any works of demolition, 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) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the siting of temporary buildings
  - v) measures to control the emission of dust and dirt during construction
- 17) Notwithstanding the provisions of *The Town and Country Planning (General Permitted Development) Order 1995* as amended (or any order revoking and re-enacting that Order with or without modification), no development within Classes A, B, C or E of Part 1 of Schedule 2 of that Order shall be carried out.

End of Schedule A

Richborough Estates



## **APPEARANCES**

### FOR THE APPELLANT:

Ann Lander	Appellant, Wulvern Housing
Stephen Goodwin BA(Hons) MCD MRTPI	Director, Goodwin Planning Services Ltd
David Tilley	Director, North West Design Associates Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Daniel Evans BA MCD MRTPI	Principal planning officer, Cheshire East Borough Council
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### INTERESTED PERSONS:

Cllr David Brickhill	Ward and Borough Councillor, Cheshire East Borough Council
William McIntyre	Parish councillor, Shavington-cum-Gresty Parish Council
Mrs S Webster	Local resident
David Leake	Local resident
Robert Trotter	Local resident

## **DOCUMENTS PUT IN AT THE HEARING**

- 1 Statement of Common Ground.
- 2 *Cheshire East Strategic Housing Market Assessment 2013 Update*, put in by the appellant.
- 3 Email of 17 March 2014 15:57 from the Council's strategic housing development officer, put in by Cllr Brickhill.
- 4 Bundle of documents from United Utilities, put in by Mrs Webster.
- 5 Arboricultural Implication Study dated December 2012, put in by the appellant.
- 6 Borough of Crewe and Nantwich (Main Road, Shavington) Tree Preservation Order 1985, put in by the Council.
- 7 Decision notice ref 14/0476N dated 17 March 2014 and application plans, put in by the Council.
- 8 Policies SD 2, SC 6 and SE 1 of the *Cheshire East Local Plan - Local Plan Strategy Submission Version*, put in by the Council.
- 9 Cheshire East SHLAA 2012 Sites of 10 or more dwellings map and definitions, put in by the Council.
- 10 Email of 12 June 2013 13:34 from the Council's principal nature conservation officer, put in by the Council.
- 11 The appellant's application for costs.