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## Appeal Decision

Inquiry held on 14 - 17 October 2014

Site visit made on 17 October 2014

**by Olivia Spencer BA BSc DipArch RIBA**

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

**Decision date: 15 December 2014**

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**Appeal Ref: APP/R0660/A/14/2214018**

**Land off Waggs Road, Congleton, Cheshire**

- 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 Bellway Homes Ltd against the decision of Cheshire East Council.
  - The application Ref 13/3764C, dated 5 September 2013, was refused by notice dated 10 December 2013.
  - The development proposed is erection of 104 residential dwellings, including open space together with associated works including landscaping, the formation of an access, site works and other necessary works.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Inquiry an application for costs was made by Cheshire East Council against Bellway Homes Ltd. This application is the subject of a separate Decision

### Preliminary matters

3. A section 106 unilateral undertaking to provide 30 percent of the development as affordable housing and contributions towards Traffic Regulation Orders (TRO) was submitted at the Inquiry.
4. During the course of the appeal amended drawings BHWL223/01 P, EA/5228-100-02 C, EA/5228-100-03 C, EA/5228-100-04 C and revised House type floorplans and elevations were submitted. These show amendments to the parking court adjacent to plot 64 and omission of side facing ground floor window from this unit. The alterations allow for a pedestrian link between the proposed development and Meadow Avenue. During the course of the Inquiry further amended plans were submitted omitting a thin strip of land adjacent to Fol Hollow from the defined site of the proposed development. These are minor amendments and the interests of no 3<sup>rd</sup> parties would be prejudiced by my taking them into consideration. I have considered the appeal on this basis.
5. Since the close of the Inquiry the Inspector's Interim Views on the Legal Compliance and Soundness of the Submitted Local Plan Strategy has been published. The main parties were given the opportunity to comment. I have

taken this and the comments received into consideration in coming to my decision.

### **Main Issues**

6. Having regard to all the evidence, written and oral, and my observations at the site visit, I consider the main issues are:
  - the effect of the proposed development on highway safety in Waggs Road and Fol Hollow and
  - whether the Council can demonstrate a 5 year supply of deliverable housing sites.

### **Reasons**

#### *Highway safety*

7. Waggs Road and Fol Hollow is an historic route from the centre of Congleton and the width of these roadways is restricted by existing buildings and steep banks to either side. Fol Hollow, which extends beyond the 30 mph limit of the town, has the character of a country lane. Waggs Road has housing to each side and gives access to a primary school situated to the north east of the site.
8. The site is within approximately 1 km walking distance of the town centre where shops, services and public transport are available. There is a Primary School in Waggs Road to the east of the site. A survey undertaken by the Congleton Sustainability Group (CSG) indicates that more than 50 percent of local trips from dwellings in the vicinity of the site are walking trips. This is a good indication that occupiers of the proposed development would also frequently choose to walk to access town centre facilities, the school and transport links.
9. However, much of the footway along Waggs Road falls below the recommended minimum width of 2 metres set out in Manual for Street (MfS) and on the southern side of the road the footway is not continuous. In places the footway narrows to approximately 1 metre, sufficient only to allow an unaccompanied adult or a wheel chair to pass. 1.5 metres width, which MfS indicates would provide space for an adult walking with a child or walking alongside a pushchair, is available along a considerable proportion of the route into the town centre on one side of the street or the other, but not as a continuous footway along a single side. Indeed on the southern side, a section of the street has no footway, much of it in that part of Waggs Road where the footway on the northern side is at its narrowest.
10. Agreed footway measurements of the continuous northern footway between the proposed location of the appeal site access road and the town centre indicate that of the 925 metres distance, only 128 metres of footway has a width of, or greater than, the recommended 2 metres. Between the site access and the pedestrian entrance to Marlfields Primary School, a distance of some 356 metres, there is only 18 metres of footway that is 2 metres wide or more. Where pedestrians are unable to pass others on the footway they may have no choice but to step into the carriageway.
11. There is no significant disagreement between the appellant and CSG as to the number of additional walking trips that would be generated by the development. CSG estimate an additional 19 walking trips in the morning peak

- period 0800 - 0900, TRICS data used by the appellant indicates a maximum of 23. Whilst this equates to an average of approximately 1 additional pedestrian movement every 3 minutes over the hour, the more likely reality is that at least some will walk in family or friendship groups and that there will be a cluster of pedestrians in Waggs Road immediately before school opening time.
12. The total number of additional walking trips per day generated by the development is anticipated to be 150. Some will be to the north and west, but the majority are likely to be to and from the town centre. Whilst other routes to the town centre are available, the most direct walking route is along Waggs Road. Not all will use the main access to the site, some pedestrians will join Waggs Road further east via Meadow Avenue or Stony Lane. However, all of these points join Waggs Road south west of its narrowest part on the approach to the town centre. The proposed development would thus give rise to a significant number of additional pedestrians using the substandard footways along Waggs Road.
  13. It is the case that existing residents use this route, and have done so to date without giving rise to recorded personal injuries. The increased numbers of daily walking trips would however result in a corresponding increase in the likelihood of pedestrians passing each other on the narrow footways, and at times stepping into the carriageway. The result would be an increased risk to the safety of pedestrians in Waggs Road.
  14. A single vehicle access to the development is proposed from Waggs Road, adjacent to no.124, just within the existing 30 mph zone. The Council has undertaken vehicle speed measurements at the proposed access and it is agreed that an 85 percentile figure of 30 mph in each direction is the appropriate design figure. On this basis, the proposed 43 metre visibility splay in the non leading direction west of the junction would meet the standard set out in MfS. To the east there would be a Y distance of just 35 metres to the wheel tracks of on-coming vehicles or approximately 30 metres to the kerb. MfS 2 advises that although for simplicity the Y distance has previously been measured along the nearside kerb of the main arm, vehicles will normally be travelling at a distance from the kerb and a more accurate assessment of visibility splay is therefore made by measuring the nearside edge of the vehicle track. Whichever of these measurements is used, visibility would fall short of the recommended stopping sight distance (SSD) for vehicle speeds of 30 mph.
  15. MfS 2 advises that the Y distance should be based on recommended SSD values but does note that *a reduction in visibility below recommended levels will not necessarily lead to a significant problem*. The appellant has put forward a package of measures to restrict traffic speeds in Waggs Road and provide widened footways on the south western approach to the school, but asserts that the proposed mitigation measures are not necessary to ensure a safe junction. However, no site specific evidence has been provided to support this view. The junction would be sited beyond the built up southern street frontage and within sight of the un-restricted Fol Hollow. Drivers of vehicles approaching from the east may not therefore anticipate vehicles emerging from the site and vehicles on this approach will be travelling on a downward gradient. I find no basis in this instance therefore for concluding that a visibility splay below recommended levels would be appropriate.

16. The measures proposed by the appellant include speed humps and 2 stretches of footway build-out. Provision is made also for contributions towards the implementation of TROs in the s106 unilateral undertaking. It is suggested that these could include a 20 mph speed restriction in the vicinity of the school and access only restrictions. There is no dispute that reduced speeds and widening of the footway, albeit over a limited length, would be beneficial in terms of safety for all road users. However, there can be no certainty that measures requiring a TRO would be implemented.
17. The Council acknowledge that road humps on the approach to the access could reduce speeds sufficiently subject to detailed design. I have little doubt therefore that the scheme shown on drawing SCP/13145/GA01 C or something very similar to it could meet the terms of a 'Grampian' condition prohibiting development until a scheme of works sufficient to reduce traffic speeds to provide a SSD at the access was in place.
18. However, no public consultation has been carried out on the road hump proposals and at present the detailed design of the humps is un-specified. The Council has no adopted policy on speed humps but advises that similar proposals have been rejected as a result of objections from residents. What the result of any consultation on a detailed version of the submitted scheme, or indeed any alternative scheme would be is unknown. I cannot in these circumstances be confident that a scheme of speed reduction provided by way of a Grampian condition could or would, in this case take account also of potential effects on road users and local residents. Given these uncertainties, and notwithstanding my conclusions in paragraph 17, neither the submitted proposals nor a Grampian condition can reasonably be relied on to overcome the adverse effects the proposed development would have on the safety of pedestrians and drivers in Waggs Road.
19. Results of a traffic survey undertaken by local residents broadly reflect those submitted by the appellant that demonstrate that the roads operate within their capacity, and the Council has revised its position in this regard resolving on 15 September 2014 to amend the reasons for refusal. In so doing it noted that the proposal would not cause or exacerbate congestion problems on the local highway network. I have no reason to disagree.
20. The absence of footways along Fol Hollow is not unusual for a country road and occupiers of the proposed development would have access to the existing footpaths around Astbury Mere which provide links to the north and west of the town. Whilst the Council has expressed concern over the width of this road, surveys undertaken by the appellant indicate that even at its narrowest points 2 cars can pass. The traffic surveys indicate that HGVs do not frequently use the route and there are a number of places along the road where larger vehicles can pass. Forward visibility is restricted by the winding nature of the road, but this and the varying width of the road will have the benefit of discouraging higher vehicle speeds and use of the route by larger vehicles. Given the fewer additional trips predicted in this direction I do not therefore consider the proposed development would result in a significantly increased risk to the safety of drivers or pedestrians in Fol Hollow.
21. Nevertheless, for the reasons given above I conclude that the proposed development would have an adverse effect on highway safety in Waggs Road contrary to Policies GR1 and GR9 of the Congleton Borough Local Plan First

Review 2005 (LP) which seek to ensure that proper consideration is given to the needs of pedestrians and the provision of safe access to the public highway.

*5 year housing land supply*

22. The Council's emerging Local Plan (eLP) has a Plan period of 2010 to 2030 and includes a total housing requirement of 27,000 giving an annualised average of 1,350 dwellings per annum (dpa). Examination of the eLP is not yet complete and the Plan has yet to be adopted. There is no dispute that for the purposes of this appeal, 5 year housing land supply is therefore to be considered against the Full Objectively Assessed Needs (FOAN) of the area.
23. It is the Council's case that a FOAN figure of 1,180 dpa takes account not just of household projections based on Sub National Population Projections but also the influences of demographic change, household formation, migration, economic activity, employment, market signals and affordability. The information on each of these available to the Inquiry was limited. However with regard to jobs growth, the Council has assumed a figure of around 0.2 percent. This equates to the lowest of the 2012 Cheshire, Halton & Warrington Econometric Model (CHWEM) baseline projection jobs growth rates and is significantly below historic jobs growth in the area in the past 2 decades, including periods of economic recession. The more recent March 2014 run of the model, now called the Cheshire & Warrington Econometric Model (CWEM) indicates an average future jobs growth rate of some 0.8 percent.
24. This suggests housing need arising from jobs growth in the area is likely to be significantly higher than assumed by the Council in its 1,180 figure. Whilst I acknowledge that some projected economic growth may be achievable through increased productivity, the degree of discrepancy between the Council's conclusions and the projections of the CWEM gives rise to considerable doubt as to the validity of an FOAN figure based on 0.2 percent jobs growth. In his Interim Views on the Cheshire East Local Plan Strategy 6<sup>th</sup> November 2014 the Local Plan Inspector reached a similar view. In this context the 1,350 dpa put forward by the appellant based on just 0.4 percent jobs growth, represents a far more plausible FOAN against which to assess housing land supply. Given its very modest assumptions in this respect I am not persuaded that this figure equates to a 'policy-on' housing requirement which actively promotes economic growth, but rather a minimum credible figure of objectively assessed need.
25. The Planning Policy Framework (the Framework) says at paragraph 47 that in addition to a supply of specific deliverable sites, sufficient to provide 5 years worth of housing against housing requirements, an additional buffer of 5 percent should be provided to ensure choice and competition in the market for land. Where there has been a record of under delivery of housing, local planning authorities should increase the buffer to 20 percent.
26. In support of its position that a 5 percent buffer is appropriate in this instance the Council refers to an appeal decision for a site in Suffolk in November 2013 ref APP/W3520/A/13/2199563 where the Inspector concluded that 10 years was the appropriate period over which to consider the history of delivery. This decision however pre-dates publication of the PPG. The PPG advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. However, it also notes that the factors behind

persistent under delivery may vary from place to place and, therefore, there can be no universally applicable test or definition of the term.

27. In this case not only has there been a continuous under-delivery in every year since 2008 but the accumulated shortfall is also very substantial; considerably greater than that identified in the Suffolk decision. I concur therefore with the findings of the majority of recent appeal decisions in Cheshire East and the recently expressed view of the Local Plan Inspector that, having regard to national policy to boost significantly the supply of housing, a 20 percent buffer is appropriate here.
28. Turning now to supply, in its September 2014 Housing Land Position Statement the Council relies on shorter lead in times than those applied in the 2013 Strategic Housing Land Availability Assessment (SHLAA) and increased build rates on sites over 200 dwellings. These assumptions are disputed by the appellant and some time was spent at the Inquiry exploring potential delivery on a number of sites. However, as set out in the Statement of Common Ground, the main parties agree that using the Council's supply figure against a FOAN of 1,350 dpa with a 20 percent buffer, the best that the Council can demonstrate is 4.58 years supply of deliverable housing sites. In view of this it is not necessary for me to come to a conclusion on detailed supply figures.
29. I conclude therefore that the Council cannot demonstrate a 5 year supply of deliverable housing sites. Paragraph 49 of the Framework sets out that in these circumstances relevant policies for the supply of housing should not be considered up-to-date. In this case the relevant policies referred to in the reasons for refusal of planning permission are LP Policies PS8 and H6 which insofar as they seek to restrict residential development outside settlement boundaries in the open countryside, limit the supply of housing.

#### *Sustainable development*

30. In accordance with the Framework housing applications should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social and environmental dimensions and the interrelated roles that they perform. The provision of 104 homes, of which 31 would be affordable dwellings, would be a significant benefit that weighs in favour of the appeal proposal. Its provision would also support economic growth in the area.
31. The appeal site lies within an area known as Priestly Fields that has survived largely unchanged for many centuries and forms part of the rural setting of Congleton. The construction of 104 dwellings on the site would fundamentally alter its appearance resulting in the loss of its rural and agricultural character. Protection of the natural and historic environment is part of the environmental role of the planning system as set out in paragraph 7 of the Framework. In simple terms the proposal would conflict with this objective. That said, whilst suburban development would extend further along the northern end of Stony Lane, the proposed housing would be seen here in the context of existing housing in Meadow Avenue. From further south, down the slope and along Lambert's Lane the appeal site is largely concealed by the ridge of the hill. Gardens and planting would form the southern boundary of the site and where visible at all only glimpses of the houses would be seen. From Fol Hollow the enclosing banks, rising ground and vegetation would largely screen the buildings none of which would sit on the road frontage. The visual impact of

- the development on the wider landscape character would therefore be limited and the weight I give to harm in this respect is therefore modest.
32. The harm I have identified in respect of highway safety however would be in direct conflict with the objective of the social role of the planning system to support the well-being of the community. In promoting sustainable transport and healthy communities the Framework states that planning decisions should take account of whether safe and suitable access can be achieved and a safe and accessible environment created. Whilst town centre facilities, services and transport links would be nearby, access to these facilities by pedestrians would in the majority of cases be along the sub-standard footways of Waggs Road. The proposed road junction would fail to provide safe highway conditions. A package of works to the highway sufficient to appropriately limit these impacts cannot be assured and in their absence, the detrimental effect of the development on the safety of highway users would I consider be severe.
33. Having concluded that relevant policies for the supply of housing are out-of-date, paragraph 14 of the Framework is engaged. The benefit of the provision of housing is substantial and I have noted also the contribution this would make to the local economy. Nevertheless, as set out above, the proposal would conflict with the objectives of the social role of the planning system and cannot therefore be considered sustainable development. I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
34. For these reasons I conclude that the appeal should be dismissed.

*Olivia Spencer*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|   |   |
|---|---|
| Anthony Crean QC                        | Instructed by Cheshire East Borough Solicitor |
| He called                               |   |
| Mr N Jones BSc MSc DipTE CIHT CMIT      | Principal Development Officer (Highways)      |
| Mr G Stock BA MA MRTPI AIEMA            | Partner Deloitte LLP                          |
| Mr B Haywood BA(Hons) MA MBA MRTPI MCMi | Major Applications Team Leader                |

### FOR THE APPELLANT:

|                                 |   |
|---------------------------------|---|
| Paul G Tucker QC                | Instructed by Mr D Diggle Turley Planning         |
| He called                       |   |
| Mr D Roberts IEng FIHT FCIHT    | SCP Transport Planners & Infrastructure Designers |
| Mr D Diggle BSc(Hons) MCD MRTPI | Director Turley Planning                          |

### INTERESTED PERSONS:

|                                       |                                   |
|---------------------------------------|-----------------------------------|
| Mr P Minshull BSc CEng MICE           | Congleton Sustainability Group    |
| Dr D Roffe MA(Cantab) PhD FRHistS FSA | Protect Congleton Civic Society   |
| Cllr P Bates                          | Congleton Town Council            |
| Cllr G Baxendale                      | Ward Member Cheshire East Council |
| Mrs J Unsworth                        | Local Resident                    |

## DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Further amended plans BHWL223/01 E, BHWL223/01 Q and EA/5228-100-02 D submitted by the appellant
- 2 Draft s106 unilateral undertaking submitted by the appellant
- 3 CIL Regulations compliance statement submitted by the Council
- 4 Appeal decision APP/G2815/A/13/2209113 submitted by the appellant
- 5 Bushell v SoS submitted by the appellant
- 6 Closing submissions – Land south of Old Mill Rd Sandbach submitted by the appellant
- 7 Amendment to Mr Diggle’s proof of evidence appendix 7
- 8 Supplementary note on housing land supply submitted by the Council
- 9 2no. statements - Mr P Minshull
- 10 Statement – Dr Roffe
- 11 Extract from the draft s106
- 12 Extract from MfS 2
- 13 Suggested conditions submitted by the Council



- 14 Statement of Common Ground (SOCG) in respect of Housing Land Supply
- 15 Email correspondence regarding build times and lead-in
- 16 Moss Farm Congleton site plan
- 17 Crewe Road site –extract from planning statement
- 18 Statement - Cllr Bates
- 19 Email correspondence re Chelford submitted by the appellant
- 20 Costs application against the appellant by the Council
- 21 Agreement on walking trips between P Minshull and D Roberts
- 22 Extract from PPG
- 23 R v Warwickshire County Council
- 24 Bundle of documents – housing supply submitted by the appellant
- 25 Further statement – Mr Minshull
- 26 Email correspondence re highway matters submitted by the appellant
- 27 Stratford on Avon District Council v SoS
- 28 Response to the statement from Dr Roffe submitted by the appellant
- 29 Signed s106 submitted by the appellant
- 30 Addition to SOCG on Housing Land Supply
- 31 Statement – Mrs J Unsworth
- 32 Email correspondence – South Macclesfield Development Area
- 33 Extract from PPG – conditions
- 34 Agreed footway measurements Waggs Road
- 35 Extract from PPG – deliverable site

Richborough Estates