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## Appeal Decision

Hearing held on 23 September 2014 and 4 November 2014

Site visit made on 23 September 2014

**by JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

**Decision date: 5 February 2015**

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### **Appeal Ref: APP/R0660/A/14/2220021** **Land off Wrens Close, Nantwich**

- 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 Mr F Lloyd-Jones against the decision of Cheshire East Council.
  - The application Ref 13/4904N, dated 19 November 2013, was refused by notice dated 10 April 2014.
  - The development proposed is the erection of 11 dwellings including access and associated infrastructure.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of 11 dwellings including access and associated infrastructure on land off Wrens Close, Nantwich in accordance with application Ref: 13/4904N, dated 19 November 2013, and subject to the conditions set out in the Annex to this decision.

### **Procedural matters**

2. Before the Hearing the Council formally withdrew the reason for refusal relating to the effect of the development on protected species.
3. The appellants submitted a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990, which deals with contributions towards education facilities and mitigating the effects on biodiversity. I shall refer to this in more detail below.
4. Amended plans were submitted at the Hearing on behalf of the appellants to correct an inconsistency with the plans which were submitted at application stage. The variation would have no effect on neighbouring properties, and I shall therefore take them into account.
5. Whilst the appeal was made in the name of Mr F Lloyd-Jones, it was clarified at the Hearing that the appellant is Thomas Jones and Sons Ltd.
6. After the close of the Hearing, the Inspector carrying out the examination into the Cheshire East Local Plan Strategy (CELPs) published interim findings on the legal compliance and soundness of the submitted Strategy in a letter dated 6 November 2014. Amongst other things he found shortcomings in the Council's assessment of housing need. I sought the views of the main parties on this letter, and I shall refer to this in more detail below.

## **Main Issues**

7. The main issues are:

- i) whether there is a 5 year housing land supply and appropriate buffer;
- ii) the weight to be attached to development plan policies, particularly Policy NE2;
- iii) whether the proposal represents sustainable development.

## **Reasons**

### *Housing land supply*

8. At the time that the application was refused, the Council accepted that it did not have a 5 year land supply. However, by the time of the Hearing, the Council argued that it had a 5 year supply and an appropriate buffer.
9. The development plan is the Borough of Crewe and Nantwich replacement Local Plan (LP), which set out housing requirement figures up to 2011. The Council accepts that this is out of date. The CELPS has been submitted for examination, and it would be fair to say that almost all aspects of its housing proposals have been highly contentious. This, and other concerns, led to an adjournment of the hearings, and then to the publication of the Inspector's interim findings set out in the letter of 6 November 2014. In view of the objections that have been made to the plan, and to the Inspector's concerns about the soundness of the plan, I attach very limited weight to its proposals.
10. There have been a large number of appeal decisions in Cheshire East in the last year or so, most of which have concluded that there is not a 5 year supply of housing land. Those decisions turn on the evidence provided in each case, and each reflects the circumstances that existed at the time at which the decision was made, and therefore those findings are only of limited assistance in this case.
11. Paragraph 47 of the National Planning Policy Framework (the Framework) requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs (FOAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework.
12. Until fairly recently, the now cancelled North West Regional Strategy has provided the evidence base for the FOAN, at 1150 dwellings per annum (dpa), which has been accepted as the only evidence-based and tested figure. Since then, more evidence has come forward in connection with the preparation of the CELPS, and the Council has put forward a figure of 1360 dpa as the annualised housing requirement for the district in the submitted CELPS. However, this is a "policy-on" figure, which takes into account different considerations over and above the FOAN, such as policies within the plan promoting economic growth, Green Belt constraints and housing needs from adjoining local planning authorities.
13. The FOAN argued for the Council is 1180 dpa, a figure derived from the 2011 DCLG household projections and the Council's own modelling work. The demographic evidence points towards a figure of 875 dpa, to which a further 305 dpa have been added in response to other considerations such as market

signals, local circumstances, affordability and economic growth. The CELPS Inspector had serious concerns about the level of the FOAN argued for the Council. He expressed reservations about the demographic methodology, the assumptions behind the forecasts, and the approach to household formation rates, migration, economic growth rates, market signals, affordability and housing for the elderly. He also expressed concern about the housing supply position, and, amongst other things, indicated that a buffer of 20% was justified.

14. I attach significant weight to these interim findings, which followed detailed examinations of the Council's case, along with those of other parties who are not represented in this s.78 appeal. In the light of these findings, I consider that the FOAN figure of 1180 is too low, and although it is not possible to arrive at a precise FOAN, I consider that it is likely to exceed 1360 dph. I also agree that a 20% buffer is the more appropriate one to apply in the light of persistent under-delivery.
15. The Council has now suspended the examination and is considering its response to the CELPS Inspector's letter. However, the Council has confirmed that it now accepts that it is unable to demonstrate robustly that it has a 5 year supply of housing land, together with an appropriate buffer. It has taken that view in respect of other cases before the Council and on appeal. Accordingly, I conclude on the first main issue that there is not a demonstrable 5 year housing land supply and appropriate buffer.

#### *Weight to be afforded to development plan policies*

16. Paragraph 14 of the Framework says that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, as is the case here.
17. Saved LP Policy NE.2 aims to restrict all development outside of settlement boundaries other than in specific circumstances, none of which apply here. The policy is a saved one, and is not time-limited. It is broadly consistent with one of the objectives of the National Planning Policy Framework (the Framework) which is to protect the character of the countryside.
18. The Council concedes that the housing policies of the plan which set out the target for the numbers of houses to be built during the plan period are out of date. Policy NE.2 is a significant mechanism for limiting the number of houses which can come forward, and is a counterpart to the policies setting out the number of houses to be provided. The geographical extent of the policy must be considered as being out of date, but I also consider that it fits within the broad scope of being a policy for the supply of housing. Whilst the objective of protecting the character of the countryside is consistent with the Framework, I nevertheless consider that Policy NE.2 can only be afforded very limited weight in this instance.

#### *Sustainability*

19. At the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. The Framework explains that for decision-taking, this means approving development proposals that accord with the

development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission 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; or specific policies in the Framework indicate development should be restricted.

20. In this case, relevant policies for the supply of housing land, and those restricting development outside of defined settlement boundaries in respect of their geographical extent are no longer up to date, as the application of these policies has failed to ensure that there is sufficient housing to meet the objectively assessed needs of the area.
21. The Council has objected to the proposal on sustainability grounds, but only in respect of the effect of the proposal on the character and appearance of the open countryside. Paragraph 7 of the Framework identifies three dimensions to sustainable development: economic, social and environmental, and I shall consider each of these in turn.
22. The proposal would have a modest impact on employment and economic growth through the employment created, and the purchase of materials and services in connection with the construction of the proposed dwellings. I afford these benefits limited weight.
23. In terms of the social dimension, I have referred above to the failure of the Council to demonstrate that there is sufficient housing land to meet the needs of the area. In view of the Government's stated aims to boost significantly the supply of housing and to widen the choice of high quality homes, I attach considerable weight to the contribution that the proposal would make towards meeting these objectives.
24. In respect of the environmental dimension, the Council argues that the harm that would be caused to the character and appearance of the countryside would be significant. The site lies mainly in a backland location, so that on three sides, it is bounded by houses and their gardens. Only the easternmost part of the site, where access would be obtained from Wrens Close would be clearly visible from the adjacent main road Peter Destapleigh Way. The eastern boundary is marked by a substantial hedge which would remain.
25. The site can be seen most readily by occupiers of the houses which border onto it. Although the appearance of the site has been somewhat marred by materials, portable buildings and other signs of use in connection with the recent occupation of the northern part of the site as a builders' yard, I recognise that the site is valued as a pleasant green interlude by neighbouring occupiers. However, the contained nature of the site and the limited extent to which the houses would be seen from public viewpoints means that the harm to countryside character and appearance would be limited.
26. In drawing these threads together, the limited harm that I have found that would be caused to the character and appearance of the countryside is the only matter which weighs against the proposal in terms of its sustainability. This is heavily outweighed by other sustainability considerations to which I have referred above. I consider that, taken in the round, the proposal constitutes sustainable development, and that the adverse effects of the proposal do not clearly outweigh the benefits of the scheme. In such circumstances, the

Framework indicates that permission should be granted, and I find that there are no other considerations of sufficient substance which would justify my not doing so.

### **Other matters**

27. Local residents and Council Members raised a number of concerns in their representations and at the hearing. The Highway Authority did not object to the proposal, but I have nevertheless given careful consideration to the highways issues raised. I visited the site during the morning peak, when I observed that traffic backed up from the traffic lights to the west, past the access to Wrens Close and in fact, way beyond to the east. However, I observed that drivers in queuing traffic readily gave way to cars exiting from Wrens Close. Visibility to the west for cars turning right might be restricted if large vehicles were queuing in the line of traffic to the immediate west of the access, but I saw that drivers took care before moving into the eastbound lane. I am not convinced that the small risk to safety is a sufficient reason to refuse planning permission.
28. I have had regard to concerns about the level of parking provision and the potential of obstruction for emergency service vehicles. The Council is satisfied that a refuse vehicle could enter and turn within the site, and thus I am confident that a fire engine could also obtain access. Residents fear that cars would be parked on the street, but each of the proposed dwellings would have 2 car parking spaces (not garages) and some would have space for a third vehicle. I consider that the risk of the road becoming so congested as to prevent access would be remote.
29. Local people also raised other concerns such as overlooking, the effect on wildlife and refuse storage. None of these concerns was shared by the council, and I consider that they do not amount to a sufficient reason to withhold permission for the development.
30. I have had regard to the provisions of Article 8, and Article 1 of the First Protocol of the Human Rights Act 1998, which respectively deal with the right to a private and family life and the right to property. However, these are not absolute rights, and, in this case, the public interest in securing housing needed for the area is an overriding consideration.

### **Conditions and obligations**

31. A set of conditions agreed by the main parties was submitted at the Hearing, which I have adapted where necessary in the interests of necessity, precision or enforceability. Conditions relating to external finishing materials, landscaping, tree protection measures and boundary treatments are needed in the interests of appearance. Details of bin and recycling storage are needed in order to promote sustainable development and in the interests of appearance.
32. Conditions to require the provision and retention of parking and turning areas, and a requirement to provide a footpath linking Wrens Close to Audlem Road are needed in the interests of highway safety. Measures to protect breeding birds are needed in order to promote biodiversity. A mechanism to deal with unexpected ground contamination is needed in order to protect the health of occupiers and neighbours, whilst the submission of a construction management plan is needed to protect the living conditions of neighbours and for highway

safety reasons. The submission of a travel plan is needed to promote travel other than by the private car, in the interests of minimising climate change.

33. The main parties agree that the submitted obligation meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and on the basis of the evidence before me, I see no reason to disagree.

**Conclusions**

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

*JP Roberts*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### **FOR THE APPELLANTS:**

Sean Taylor, BA (Hons), MCD, MRTPI  
Sat-Plan Ltd

Frazer Lloyd-Jones  
Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Ben Haywood, BA(Hons), MA, MBA, MRTPI, MCMI  
Major Applications Team Leader, Cheshire East Council

Tom Stanley  
McLoughlin Planning - 23 September 2014 only

Graham Stock  
Deloitte LLP – 4 November 2014 only

### **INTERESTED PERSONS:**

|                    |  |
|--------------------|--|
| Cllr Peter Groves  | Local member                                   |
| Cllr Andrew Martin | Local member and Leader, Nantwich Town Council |
| Gill Barry         | Local resident                                 |
| Jane Stafford      | Local resident                                 |
| Ronald Vernon      | Local resident                                 |
| Ted Perry          | Local resident                                 |

### **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 List of agreed conditions
- 2 Statement on planning obligation and CIL
- 3 Amended plans and schedule
- 4 Statement from Cllr Peter Groves
- 5 Statement from Gill Barry
- 6 Unilateral undertaking
- 7 Letter of notification
- 8 Consolidated bundle of evidence from the Council
- 9 Appeal decision APP/R0660/A/13/2209327
- 10 Letter from Stephen J Pratt (CELPS Inspector) dated 22 October 2014
- 11 Closing submissions for the Council re Old Mill Road Inquiry
- 12 Closing submissions for the appellants re Old Mill Road Inquiry

- 13 Committee report dated 14 January 2014 dealing with the Human Rights Act
- 14 Letter from J Lea and V Lea of 2 Burnell Close
- 15 Letter from Mr and Mrs McIlroy of 3 Burnell Close

DOCUMENTS RECEIVED AFTER THE CLOSE OF THE HEARING

- 16 Emails and enclosures from Sean Taylor dated 18 November 2014,  
17 December 2014 and 12 January 2015
- 17 Email from the Council dated 20 January 2015

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## **ANNEX**

- 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: Refs: 1887-201, 1887-202 Rev A, 1887-203, 1887-204 Rev A, 1887-205 Rev A, 1851-110A, 1887-101 and SCP/14045/ATR02.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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.
- 4) Prior to the commencement of development detailed plans of secure bin storage facilities for both recyclable and household waste that is adequate for the size of the development shall be submitted and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the bin storage facilities pertaining to that dwelling have been constructed and made available for use in accordance with the approved details. The approved facilities shall thereafter be retained.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out 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.
- 7) No development or other operations shall commence on site until a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedgerows growing on or adjacent the site has been submitted and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme, which shall be in place prior to the commencement of work. The approved protection scheme shall be retained for the full duration of the development hereby permitted and shall not be removed during such works without the prior written permission of the local planning authority.
- 8) 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 shown as being fenced off on the approved protection scheme.

- 9) No development shall take place until details of the positions, design, materials and type of boundary treatment to be erected have been submitted and approved in writing by the local planning authority. The development hereby approved shall not be occupied until the scheme has been implemented in accordance with the approved details.
- 10) No dwelling hereby permitted shall be occupied until the parking and vehicle turning areas associated with that dwelling as shown on the approved plans have been constructed and made available for use. Thereafter, these areas shall be reserved solely to the parking and turning of vehicles and shall not be obstructed in any way.
- 11) Prior to the first occupation of the development hereby permitted, a 2m wide footpath fronting Peter Destapleigh Way to connect to the joint use surface of Wrens Close to the existing footpath at the junction of Peter Destapleigh Way and Audlem Road shall be constructed in accordance with details to be submitted and approved in writing by the local planning authority.
- 12) Prior to the commencement of development, detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted and approved in writing by the local planning authority. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter they shall be retained.
- 13) Prior to any commencement of works between 1 March and 31 August in any year, a detailed survey shall be carried out to check for nesting birds on or immediately adjoining the site and the results shall be submitted and approved in writing by the local planning authority. Where nests are found in any building, hedgerow, tree or shrub to be removed, a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted shall be submitted to the local planning authority for approval before any further works within the exclusion zone take place.
- 14) If, during the course of development, any ground contamination is found, work shall cease on the site until such time as measures for the remediation of this source of contamination have been submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures.
- 15) Prior to the first occupation of the development hereby approved, a Travel Plan shall be submitted and approved in writing by the local planning authority. The Travel Plan shall include a timetable for implementation and provision for monitoring and review. No part of the development shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation before occupation have been carried out. All other measures in the approved Travel Plan shall be carried out in accordance with the approved timetable.
- 16) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan Statement 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 and include details of :

- 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) details of any piling required including the method (using the best practicable means to reduce the impact of noise and vibration on neighbouring properties), hours, duration and means of prior notification to the occupiers of potentially affected properties
- vi) details of the responsible person who could be contacted in the event of a complaint
- vii) mitigation measures in respect of noise and disturbance during the construction phase, including monitoring methodology, screening, and construction traffic routes
- viii) waste management, including a prohibition of burning on site
- ix) a scheme to minimise dust emissions, including details of suppression measures and monitoring, and
- x) wheel washing facilities.

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