



Appeal Decision

Site visit made on 17 March 2015

by Mark Dakeyne BA (Hons) MRTPI

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

Decision date: 7 July 2015

Appeal Ref: APP/A0665/W/14/3001859

Land off Boundary Park, Parkgate, Neston, Cheshire CH64 6TN

- 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 Elan Homes Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 14/04145/FUL, dated 26 September 2014, was refused by notice dated 9 December 2014.
 - The development proposed is the erection of 33 No dwellings with associated garages, car parking, landscaping, public open space, means of access and site infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 33 No dwellings with associated garages, car parking, landscaping, public open space, means of access and site infrastructure at land off Boundary Park, Parkgate, Neston, Cheshire CH64 6TN in accordance with the terms of the application, Ref 14/04145/FUL, dated 26 September 2014, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Elan Homes Ltd against Cheshire West & Chester Council. This application is the subject of a separate decision.

Procedural Matters

3. The Cheshire West & Chester Council Local Plan (Part One: Strategic Policies) (CWCLP) was adopted on 29 January 2015. Policies GEN1 and H4 of the Ellesmere and Neston Local Plan (ENLP), referred to in the decision notice, are replaced by policies of the CWCLP. The main parties have dealt with the changed development plan position in their statements.
4. A completed legal agreement under Section 106 of the Planning Act (S106) dated 12 March 2015 between the appellant and the Council has been submitted. The obligation includes provision for contributions for off-site affordable housing, open space and playing pitches. I will deal with the S106 later in this decision.

Main Issues

5. The main issues are:
 - (i) the effect on the character and appearance of the area; and,

(ii) whether the affordable housing proposed would create a mixed and balanced community.

Reasons

Character and Appearance

6. The appeal site, which comprises improved gently sloping grassland used for horse grazing, is on the edge of Neston with housing development to the north and west. Running along the eastern boundary of the site in a small cutting is the Wirral Way, a recreational walking and cycling route following a disused railway line. New housing development is taking place beyond the Wirral Way. Land to the south of the site is open grazing land crossed by footpaths.
7. The Boundary Park estate, immediately to the north, is a low density development of detached houses. Along Old Quay Lane and fronting Moorside Lane to the west are well-established houses and cottages in generous plots, including some of Victorian origin. Beyond Old Quay Lane is a cul-de-sac of detached dormer style properties, Manor Close. The development on the far side of the Wirral Way is higher density housing with linked properties grouped around central mews.
8. In this context the proposal for predominantly detached houses¹ on the appeal site would not be out of character with the existing dwelling types in the area. The eight semi-detached houses would provide a contrast to the detached dwellings and would reflect the existence of smaller dwellings in the wider area. Although most of the smaller dwellings would be located at the western end of the site, this allows the extension of the estate road from Boundary Park to be fronted by mainly detached houses to reflect the character of the approach road. Moreover, the eastern part of the site, adjacent to Boundary Park, would be lower density.
9. The development would be largely self-contained in that it would not front onto a vehicular thoroughfare or existing public footpath. The backs of those properties visible through vegetation from the Wirral Way would not be out of character with other dwellings seen from this route. So far as Old Quay Lane is concerned, I note that some time ago a previous Inspector commented on the effects of adding to the built-up frontage but the proposed dwellings backing onto it would be about 13m from the lane with trees retained to the boundary. The impact of the layout on the rural character of Old Quay Lane would not be a reason to resist the development.
10. Detached houses fronting onto open space would be the main characteristic of the development when seen from more distance viewpoints to the south. The inclusion of six of the semi-detached dwellings in the western section of the development amongst detached houses would not be readily perceived from those passing near to the development.
11. The appellants indicate that the density of the development would be around 24 dwellings per hectare (dph) which is somewhere in the middle of the range of densities in the area², albeit that housing to the west of the Wirral Way tends to be lower density. In my view the proposal would achieve a reasonable balance, taking into account the character of nearby development and the need

¹ Of the 33 dwellings proposed 25 would be detached (about 75%)

² Stated as being between 13 dph and 32 dph

to make efficient use of land. It is noted that submissions to the examination into the CWCLP indicated that the existing allocation, not the whole of the appeal site, would be retained with a projected output of 33 dwellings

12. In conclusion the proposal would have an acceptable impact on the character and appearance of the area. There would be compliance with Policies ENV2 and ENV6 of the CWCLP as the development would take full account of the characteristics of the development site, its relationship with its surroundings and views into and out of the site and would respect local character through appropriate layout and design.

Mixed and Balanced Community

13. The eight semi-detached houses would comprise the affordable dwellings. As indicated above, most would be sited towards the western part of the site but the development would not give rise to a significant grouping of affordable units, taking into account the layout and number of such dwellings proposed. The four dwellings by the western boundary would be between detached houses on Plots 7 and 12. The pair of dwellings fronting the same cul-de-sac would have two detached houses on either side. The semi-detached houses on the extension to Boundary Park would be amongst an avenue of detached houses.
14. The affordable dwellings would be of a similar design and materials to the open market houses, incorporating gabled roofs, brick and render elevations and a traditional fenestration pattern, all features evident on some or all of the market housing. The only significant difference would be the semi-detached form. There is no substantive evidence before me to suggest that these are not amongst the type of units needed, despite concerns that the requirement is for single person units and those with special needs. Indeed a Registered Housing Provider has expressed an interest in the units.
15. For the above reasons the affordable housing proposed would create a mixed and balanced community. The proposal would comply with Policy SOC1 of the CWCLP as the affordable housing would be dispersed throughout the site and the market and affordable homes would be indistinguishable apart from the house type and would achieve the same high quality design. The proportion of affordable housing, with the off-site contribution, would meet the target of 30% set out in Policy SOC1, the target deriving from an objective of creating balanced and mixed communities.

Other Matters

16. The majority of the site (about 80%) is allocated for housing by Policy H1 of the ENLP. The allocation refers to 25 dwellings which is an indicative number but approximates to the amount of development that would be achieved on that part of the site. The remaining portion at the western end adjacent to Old Quay Lane is sandwiched between existing housing and the lane with the same characteristics as the allocated site. There do not appear to be any good planning reasons to exclude it from the proposal. Indeed doing so would result in it being effectively landlocked as Old Quay Lane would not be a suitable access for a residential development on this sort of scale. Taking the above into account the proposal as a whole could not be considered to be premature pending the CWCLP (Part 2) – Land Allocations and Detailed Policies and the Neston Neighbourhood Plan.

17. Neston is identified as a key service centre for surrounding areas by Policies STRAT2 and STRAT8 of the CWCLP where at least 200 dwellings will be accommodated. In this respect Neston is seen as a sustainable location. The 33 dwellings would contribute to the housing requirement in the area, including eight affordable units. The fact that approaching 200 dwellings are committed does not prevent dwellings above that figure being allowed provided that the development is of an appropriate scale and design to reflect the scale and character of the settlement and has regard to the availability of services, facilities and public transport as is the case with the appeal proposal. Furthermore, the demonstration of a five year housing supply does not preclude further housing development
18. There are two Grade II listed buildings on Moorside Lane but they are separated from the development site by intervening gardens. The setting of these heritage assets would not be affected.
19. The proposed dwellings would achieve reasonable separation distances from existing properties and their gardens. I note that the dwellings on Plots 1, 17, 27 and 28 would be side-on to the nearest houses on Boundary Park rather than back to back which would assist in safeguarding privacy.
20. The layout includes a reasonable amount of natural surveillance, with dwellings facing onto the open space, so has been designed to reduce the risk of crime. The footpath link to Old Quay Lane would allow residents to access footpaths which link to the town centre, increasing the permeability of the site. This benefit would outweigh any concerns that arise from the provision of a through footpath.
21. Some of the plots would be affected by overshadowing from adjacent trees but the particular properties have reasonably deep back gardens so an acceptable living environment would be created. Most existing trees would be retained and new planting would take place, including eighteen new trees, ensuring suitable landscaping for the site. Of those trees to be removed the majority are in poor condition or of limited amenity value.
22. The Phase 1 Habitat Survey submitted with the application indicates that existing species in the vicinity of the site could be taken into account by protection and mitigation measures. A separate Great Crested Newt Survey indicates that this protected species is not present in the adjacent pond or likely to use surrounding land. The adjacent Local Wildlife Site would be unlikely to be adversely affected and would be fenced off to prevent access from the development site.
23. The highway layout within the site would be acceptable with a mix of conventional estate roads with footpaths and shared surface cul-de-sacs. Parking provision of at least 2 spaces per dwelling would be satisfactory.
24. The evidence before me indicates that the highway network, including Boundary Park, would be capable of accommodating the additional vehicle movements from the development without causing capacity or safety issues. The visibility to the north at the junction of Boundary Park with Moorside Lane is impaired by the road alignment and bridge over the old railway. However, there does not appear to be any record of recent accidents at the junction, despite local residents referring to near misses and the lack of reference in the Transport Statement to this deficiency.

25. The site is at low risk of flooding (Zone 1) and the drainage proposals show greenfield run-off rates. The run-off, if discharged to the existing surface water sewer, would be unlikely to exacerbate any surface water flooding issues in the area. So the development would be acceptable in these respects. Details can be controlled by condition.
26. In considering the acceptability of the scheme in relation to trees, ecological interests, highway safety and drainage, I have had regard to the fact that the majority of the site is a development plan allocation and there has not been any significant objections from statutory or specialist consultees.
27. Construction would cause some disruption but this would be temporary and would be mitigated by a Construction Method Statement which could be the subject of a condition.

Obligations

28. The affordable housing obligation responds to identified needs and is supported by Policy SOC1 of the CWCLP which, on sites of 10 or more dwellings, seeks up to 30% affordable housing. The S106 facilitates a financial contribution of £118,000 towards two off-site units which, in combination with the eight units on site, would result in 30% affordable housing.
29. The development would not generate a requirement for a playing pitch on its own. Indeed, provision of a small isolated playing pitch on the site would not be appropriate. Although there is an informal area of open space proposed there would be a shortfall against development plan requirements. The requirement for contributions to the provision of playing pitches and off-site open space in the vicinity is supported by Policy REC 2 of the ENLP and Policy SOC 6 of the CWCLP.
30. The Council has indicated that the contributions to playing pitches and open space would not lead to the pooled contributions limit set out in Regulation 123 of the Community Infrastructure Levy (CIL) Regulations being exceeded. The limitations on pooled contributions do not apply to affordable housing.
31. The obligations within the S106 are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within CIL Regulation 122. I have taken them into account in the decision.

Conditions

32. I have considered the conditions suggested by the Council and raised elsewhere in the appeal documentation. I make changes and simplify and combine conditions suggested by the Council where necessary to avoid repetition and for clarity, having regard to the tests set out at paragraph 206 of the Framework.
33. A condition setting out the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. Conditions to control materials, landscaping and tree protection are required in the interests of the appearance of the development. The open space needs to be managed appropriately so that it provides a suitable amenity for the residents. Boundary treatments are specified and are part of landscaping. I consider that the green mesh fence to

the boundary with the local wildlife site would be visually appropriate so a separate condition reserving the details is not necessary.

34. A number of conditions are needed to implement the recommendations of the relevant ecological surveys and in the interests of protected species and the integrity of the adjacent wildlife site (paragraph 22 refers). The Habitat Survey indicates that badgers are unlikely to be present on the site or immediately adjacent to it so a further survey is not necessary. Controls on construction are required in view of the scale of the development, its proximity to existing dwellings and the nature of the vehicular access.
35. Highways and drainage infrastructure and parking, including cycle provision, needs to be secured in a timely manner. The landscaping drawing shows hard surfaced finishes. Construction details are not required for planning purposes. Details of lighting are necessary to protect the living conditions of existing and proposed residents, safeguard protected species and prevent light pollution on the settlement edge. The affordable housing should be secured by condition as it is a benefit of some significance associated with the scheme.
36. The requirements of conditions relating to the programme for landscaping, the management of open space, ecology, drainage, external lighting and affordable housing need to be agreed before the commencement of development as they are integral to the design and phasing of the development. Tree protection and construction management needs to be put in place before the works start.
37. In view of the findings of the Ground Investigation Report and given the controls exercised through the Building Regulations further details of ground conditions are not required. The Council suggest a number of conditions dealing with drainage matters which can be suitably encompassed in a single condition requiring schemes to be approved. Building over or near to a public sewer is a matter which would be addressed by the Building Regulations.

Conclusions

38. The proposal would be acceptable judged against the main issues and the other matters raised by local residents. The proposal would provide housing, including affordable homes, in a reasonably sustainable location and would have economic benefits from construction jobs, increased local spend and the New Homes Bonus. The development would give rise to building on greenfield land but the social and economic benefits would outweigh any environmental harm. The proposal would achieve sustainable development in accordance with the National Planning Policy Framework and would comply with the development plan overall. Therefore, it should be approved without further delay.
39. For the reasons given above the appeal should be allowed.

Mark Dakeyne

INSPECTOR

Attached – Schedule of Conditions

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (i) Site Location Plan Drawing No BP-LP-001 Rev A
 - (ii) Site Layout Drawing No BP-PL-001 Rev E
 - (iii) External Finishes Layout Drawing No BP-EF-001 Rev D
 - (iv) Site Layout – Planning Colour Drawing No BP-PL-002 Rev E
 - (v) Landscaping Layout Drawing No BP-LL-001 Rev G
 - (vi) Street Scenes Drawing No BP-SS-001 Rev B
 - (vii) Howden House Types 1 & 2 Drawing No BP-HOW/01 Rev A
 - (viii) Marford House Type Drawing No BP-MAR/01 Rev A
 - (ix) Alston House Type Drawing No BP-ALS/01 Rev A
 - (x) Bunbury House Type Drawing No BP-BUN/01 Rev A
 - (xi) Bordesley House Type Drawing No BP-BOR/01 Rev A
 - (xii) Warminster II House Type Drawing No BP-WAR2/01 Rev A
 - (xiii) Alvechurch House Type Drawing No BP-ALV/01 Rev B
 - (xiv) Chesham House Types T1 & T2 Drawing No BP-CHES/01 Rev A
 - (xv) Chesham House Type T1 Drawing No BP-CHES/02 Rev A
 - (xvi) Chesham House Type T2 Drawing No BP-CHES/03 Rev A
 - (xvii) Mellor House Type Drawing No BP-MEL/01 Rev A
 - (xviii) Mellor House Type Drawing No BP-MEL/02 Rev A
 - (xix) Lincoln House Type 1 Drawing No BP-LIN T1 Rev A
 - (xx) Lincoln House Type 2 Drawing No BP-LIN T2 Rev A
 - (xxi) Beeston House Types 1 and 2 Drawing No BP-BEE/01 Rev A
 - (xxii) Garages Drawing No BP-GAR/01 Rev A
 - (xxiii) 1800mm High Close Boarded Fence Ext Work Fence G-06 Rev A.
 - (xxiv) Typical Garden Gates Ext Works Fence G-16 Rev A
 - (xxv) 1800mm High Standard Screen Wall Ext Works G-11 Rev B.
- 3) The erection of dwellings shall not commence until representative samples of the types and colours of materials to be used on the external elevations of the proposed dwellings and garages have been deposited with and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved materials.

Landscaping, Open Space and Tree Protection

- 4) No development shall commence until details of a programme for the implementation of the hard and soft landscaping, including boundary treatments, shown on Landscaping Layout Drawing No BP-LL-001 Rev G, have been submitted to and approved in writing by the local planning authority.
- 5) The hard and soft landscaping shall be carried out in accordance with the approved details and implementation programme. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this five year period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted.
- 6) Prior to the commencement of the development, an open space management plan shall be submitted to and approved in writing by the local planning authority. The open space shall be managed in accordance with the approved details.
- 7) No works, including ground preparation, shall commence on the site until all existing trees and hedges to be retained as indicated in the Arboricultural Method Statement dated 8 April 2014 are fully safeguarded by protective fencing

and ground protection in accordance with the Method Statement and Tree Protection Plan Drawing No Arbtech TPP 01. Such tree and hedge protection measures shall be retained for the duration of the construction works.

Ecology

- 8) Prior to the commencement of the development, a detailed statement of Reasonable Avoidance Measures in respect of amphibians shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the Reasonable Avoidance Measures.
- 9) No trees, hedgerows or shrubs shall be removed between 1 March and 31 August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance. The acceptability of the survey shall be agreed in writing with the local planning authority prior to the commencement of the removal of the trees, hedgerows or shrubs.
- 10) Prior to the commencement of the development, a Local Wildlife Site (LWS) protection plan shall be submitted to and approved in writing by the local planning authority. The LWS protection plan shall include methods of preventing residual polluted surface water run-off into the adjacent LWS, protection of the existing hydrological regime in the adjacent LWS, construction methodology to protect the LWS during works, homeowner information and signage.

Construction Management

- 11) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include:
 - i) routes and timings for construction and delivery vehicles;
 - ii) the parking of vehicles for site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) location of the site office;
 - vi) hours of construction and deliveries;
 - vii) the erection and maintenance of security hoarding or fencing;
 - viii) wheel washing facilities;
 - ix) measures to control the emission of dust and dirt during construction;
 - x) details of any piling; and,
 - xi) a scheme for recycling/disposing of waste resulting from construction works.

Highways and Parking

- 12) All roads and footpaths within the development hereby approved shall be constructed in accordance with the approved Landscaping Layout Drawing No BP-LL-001 Rev G. No dwelling shall be occupied until that part of the highway and footway which provides access to it has been constructed to a minimum of binder-course level. The final surface courses shall be completed in accordance with a programme submitted to and approved in writing by the local planning authority prior to the occupation of any part of the development.
- 13) Parking within the development hereby approved shall be constructed in accordance with the approved Landscaping Layout Drawing No BP-LL-001 Rev G. No dwelling shall be occupied until the parking to serve the dwelling has been completed to final surface course. The parking facilities shall thereafter be retained and remain available for parking in connection with the dwellings.

- 14) No dwelling shall be occupied until cycle parking for that dwelling has been provided in accordance with details to be submitted to and approved in writing by the local planning authority.

Drainage

- 15) No development shall commence until schemes for dealing with foul water, surface water and land drainage in connection with the development have been submitted to and approved in writing by the local planning authority. The schemes shall include programmes for the implementation of the works. The drainage schemes shall be implemented in accordance with the approved details and programmes.

Lighting

- 16) Details of any external lighting, including street lighting, shall be submitted to and approved in writing by the local planning authority before the commencement of the development. Development shall be carried out in accordance with the approved details.

Affordable Housing

- 17) The development shall not begin until a scheme for the provision of the eight affordable dwellings which form part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
- xii) the tenure of the affordable dwellings;
 - xiii) the timing of the construction of the affordable dwellings and its phasing in relation to the occupancy of the market housing;
 - xiv) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing;
 - xv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - xvi) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

END OF SCHEDULE OF CONDITIONS