



Appeal Decision

Site visit made on 22 June 2015

by **G D Jones BSc(Hons) DMS DipTP MRTPI**

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

Decision date: 6 August 2015

Appeal Ref: APP/R0660/W/15/3010061
187A Crewe Road, Shavington, Crewe CW2 5AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr G Scott against the decision of Cheshire East Council.
 - The application Ref 13/1841N, dated 23 April 2013, was refused by notice dated 28 August 2014.
 - The development proposed is described as outline application for residential development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council maintained that it could demonstrate a National Planning Policy Framework (Framework) compliant supply of housing land at the time of determining the appeal planning application. However, it has subsequently advised that, as it is currently unable to robustly demonstrate a five year supply of housing land, it has now chosen not to defend the part of the first reason for refusal which relates to the housing land supply. This is reflected in the Council's main appeal evidence and I have determined the appeal on that basis.
3. The proposal is for outline planning permission with all matters reserved for future approval except for access. The details submitted with the application include documents and plans which make reference to layout, appearance, landscaping and scale. An indicative layout plan shows 30 dwellings, in the form of 15 pairs of semi-detached properties, arranged around a T-shaped cul-de-sac. The Design and Access Statement indicates that the houses are expected to be two-storey. Whilst not formally part of the scheme, I have nevertheless treated these details as a useful guide as to how the site could be developed.
4. The first refusal reason includes reference to Policy PG 5 of the emerging Cheshire East Local Plan Strategy – Submission Version (the eCELP). I note that while it is reasonably well advanced it is not clear from the information before me whether there are any outstanding objections to Policy PG 5. I am also mindful that the eCELP examination has been suspended and that further work is being undertaken such that the housing strategy of the eCELP is likely to change. For these reasons, therefore, with reference to paragraph 216 of the Framework I am able to attribute only limited weight to eCELP Policy PG 5.

5. The evidence makes reference to potential planning obligations under Section 106 of the Town and Country Planning Act 1990, for instance the appellant's Final Comments, June 2015, states that a Unilateral Undertaking would be submitted before 12 June 2014. However, I have not been provided with a copy of any such document and, so far as I am aware, no planning obligations have been completed for the appeal development. Consequently, I have considered and determined the appeal on that basis.

Main Issue

6. The main issue is whether any harm arising from the proposed development is outweighed by any other considerations, such that the proposed development would be sustainable.

Reasons

Context

7. The appeal site measures roughly one hectare and is an area of largely open grassland, which the evidence indicates is used to exercise show dogs. It is located on the northern edge of the village of Shavington to the rear of the dwellings that front Chestnut Avenue to the south. There are other residential properties to the east accessed off Crewe Road, as well as an on-going housing development the access to which would also serve the appeal development. There is a commercial use to the west and equine livery immediately to the north, beyond which there are four water bodies. The site is within comfortable walking distance of a range of services and facilities and adjacent to bus routes to Crewe and Nantwich. It is also an identified site in the Cheshire East SHLAA – Update January 2013 and stands just beyond the Shavington settlement boundary within a Green Gap as identified in the Borough of Crewe and Nantwich Replacement Local Plan 2011, February 2005 (the Local Plan).
8. The Framework outlines a presumption in favour of sustainable development, which it indicates has three dimensions – economic, social and environmental. Plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas. Planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.
9. In respect to housing delivery, the Framework requires the Council to meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. Paragraph 49 says that housing applications should be considered in the context of the presumption in favour of sustainable development and 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. In this case the main parties agree that there is not a Framework compliant supply of housing land, such that paragraph 49 is engaged.
10. Design is part of sustainable development and this includes taking into consideration the effect of development on open spaces. Development should

contribute to protecting and enhancing the natural and built environment. As part of this, it should help to minimise pollution and mitigate/adapt to climate change including moving to a low carbon economy. The Framework also states that due weight should be given to relevant development plan policies that pre-date the Framework according to their consistency with it.

11. Although it is a weighty material consideration, the Framework does not change the statutory status of the development plan. Policy NE.2 of the Local Plan says that all land outside the defined settlement boundaries will be treated as open countryside, with only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area, being permitted. It goes on to say that an exception may be made where there is the opportunity for the infilling of a small gap with one or two dwellings in an otherwise built up frontage. Local Plan Policy RES.5 says that outside settlement boundaries all land will be treated as open countryside, with new dwellings restricted to those that meet the criteria for infilling contained in Policy NE.2; or are required for a person engaged full time in agriculture or forestry, subject to several criteria.
12. I recognise that the settlement boundaries identified in the Local Plan are out of date as they do not provide for housing requirements beyond March 2011. Nonetheless, the purpose of Local Plan Policies NE.2 and RES.5 extends beyond containing built development within settlements; they also act to protect the open countryside in order to safeguard its character and appearance. Although the Framework does not seek to protect the countryside for its own sake, these Local Plan Policies do encompass the intrinsic character and beauty of the countryside in the terms of the Framework; and to that extent they are consistent with it.
13. Local Plan Policy NE.4 states that in Green Gaps, in addition to the provisions of Policy NE.2, approval will not be given for new buildings or the change of use of existing buildings or land which would result in erosion of the physical gaps between built-up areas or adversely affect the visual character of the landscape except where no alternative location is available. The objective of Policy NE.4 is to prevent the merging of Crewe with neighbouring settlements, including Shavington, in order to retain their separate identities. I note the appeal decisions referred to by the appellant regarding the application of this Policy¹. However, all of these decisions predate a reasonably recent judgment, which concludes that NE.4 is not a policy that comes within paragraph 49 of the Framework². While I am mindful that it is scheduled to be considered by the Court of Appeal later this year, at this stage this Judgment continues to apply.
14. Other Local Plan policies cited in the reasons for refusal include Policies NE.5, concerning nature conservation and habitats, and NE.9 regarding protected species.

¹ Appeal decisions: APP/R0660/A/12/2173294, APP/R0660/A/13/2194875, APP/R0660/A/13/2198755, APP/R0660/A/14/2211721 and APP/R0660/A/12/2170820

² Cheshire East BC v Secretary of State for Communities and Local Government & Richborough Estates Partnerships LLP [2015] EWHC 410 (Admin); 2015 WL 685485

Character, Appearance and Separation

15. While I know that the appeal site is surrounded by development to the west, south and east, there is nothing in the evidence that gives me reason to believe that the appeal development would meet any of the exception criteria set out in Policies NE.2 and RES.5 of the Local Plan. On that basis, as the site stands beyond the designated settlement boundary, the proposed development conflicts with Policies NE.2 and RES.5. There is also no clear evidence that there is no suitable alternative location for the development in the terms of Local Plan Policy NE.4.
16. The site is screened to a large extent from the surrounding public domain by existing development and planting to the west, south and east. From the north views from the southern fringes of Crewe are also fairly limited due mainly to the intervening distance and planting. Nonetheless, due to the scale of the development proposed, its presence would be apparent from the public domain, albeit that its effect on the landscape and countryside would be tempered. This is principally due to the circumstances described above and because it would be seen within the context and, in some views, against the backdrop of the neighbouring development. In addition to public views, although there is intervening boundary treatment and planting, the occupiers of the dwellings in Chestnut Avenue that abut the southern boundary have a reasonably open outlook across the appeal site and the open countryside beyond.
17. Given the nature of the development proposed, namely the use of a greenfield site on the edge of a settlement, some degree of landscape harm would occur. Although the residents of neighbouring properties would experience a change in their outlook and the proposed development would be visible to some extent from the public domain, the visual intrusion would be somewhat limited, given that the scheme would not introduce features that would be uncharacteristic of the immediate area and as the site is partly surrounded by the existing settlement. Furthermore, due to the outline nature of the proposal, further opportunities exist to secure an appropriate design and landscaping scheme at the reserved matters stage.
18. I am also mindful of the evidence regarding the potential effect of the development on trees along and close to the appeal site. The appeal is not accompanied by an arboricultural survey, nor is there any other form of thorough assessment of the effect of the proposed development on the health of trees. I recognise that the reserved matters stage offers the opportunity to arrange the site layout to take account of these trees. However, given the nature of the appeal development, there is a reasonable likelihood that the proposals might harm the health of these trees to the detriment of the area's character and appearance.
19. Due to the open, undeveloped nature of the site, its development would erode the physical gap between Crewe and Shavington in the terms of Local Plan Policy NE.4. I do, nonetheless, acknowledge that due to the limited width of the site along with the development to the east and west, the proposed scheme would result in only limited erosion of the Green Gap.
20. For these reasons, therefore, the proposed development would have a harmful effect on the character and appearance of the area and would reduce the degree of separation between Crewe and Shavington, albeit that the harm

arising would be somewhat limited. Consequently, in these respects, it would conflict with Local Plan Policies NE.2, RES.5 and NE.4.

Biodiversity

21. The Framework sets out that, in determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. The appeal proposal is accompanied by an Extended Phase 1 Habitat Survey (the Habitat Survey), which among other things recommends that a full Great Crested Newt survey be undertaken. The evidence indicates that this has not been done.
22. I acknowledge the appellant's evidence in respect to Great Crested Newts, including the site's history and its existing use, the use of the surrounding land, the site's boundary treatment and distance from the nearest water bodies and that these water bodies are affected by feeding herons. The appellant suggests that in the circumstances this matter could be addressed by way of a planning condition. However, notwithstanding the appellant's evidence, there is insufficient information before me to assess the potential impact of the proposed development on Great Crested Newts as a protected species. Moreover, the facts of the case do not amount to exceptional circumstances in the terms of Circular 06/2005 such as to justify the use of a planning condition along these lines³.
23. While the Habitat Survey describes the grassland habitats present on the site as mown amenity grassland the Council's evidence indicates that a number of the plant species present are indicative of restorable semi-improved grassland habitats and that grassland of this type may qualify as a Local Wildlife Site. Furthermore, the Council's uncontested evidence is that the Habitat Survey was conducted at a poor time of year to undertake such surveys. The appellant acknowledges that this issue should have been assessed as part of the planning application process and suggests that the relevant sections of the site could be surveyed and mitigation devised where necessary and that this could be controlled via condition.
24. I have given consideration to the possibility of using a planning condition along the lines suggested. However, there is simply insufficient information before me to adequately assess the significance of the grassland habitat or what the appeal development's potential effect on it might be. On balance, the evidence indicates that it may be significant, at least in part. There is no evidence that the proposed development would not be harmful to any such habitat or that any such harm could be mitigated. On that basis this matter could not be reasonably controlled by way of a planning condition.
25. For the reason outlined in the Character, Appearance and Separation section above, there is a reasonable likelihood that the proposals could harm the health of nearby trees. In addition to their contribution to the character and appearance of the area, these trees are likely to perform a role as a natural conservation resource in the terms of Local Plan Policy NE.5.
26. Overall, therefore, from the information before me, the proposed development would be likely to pose a risk to biodiversity. Consequently, in this regard, it conflicts with Policies NE.5 and NE.9 of the Local Plan and with the Framework.

³ Paragraph 99, Circular 06/2005 - Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System, 16 August 2005

Local Infrastructure

27. The Council's Committee report in respect to the appeal development and Appeal Statement both outline several matters that it considers should be secured via planning obligations if planning permission were to be granted. The Council's position on these matters is broadly unchallenged by the appellant. Indeed the appellant's appeal submissions refer to the intention to complete a legal agreement to secure such planning obligations; however, so far as I am aware, this has not happened.
28. In summary, the matters identified by the Council to be secured by planning obligation are the provision of affordable housing on-site at a rate of 30% of the total development, with a split of 65% social or affordable rented and 35% intermediate tenure; a payment of £54,231 for primary school education provision; and a commuted payment of £24,000 for the provision of off-site public open space and play equipment.
29. The provision of the affordable housing in line with the Council's adopted policy appears to be common ground between the main parties and could be secured via a suitably worded planning condition. However, while I note the appellant's submissions, I am not satisfied that the other matters could be dealt with in this way. In my view they would require planning obligations.
30. In coming to this view I have had particular regard to the Planning Practice Guidance which states "in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. ... [In these circumstances the appropriateness of using a condition and] the heads of terms or principal terms need to be agreed prior to planning permission being granted ...". With reference to this guidance, my attention has not been drawn to any 'exceptional circumstances' in this regard. There is also no clear evidence to show that the detail of these other obligations is fully agreed between the parties.
31. The education contribution would be necessary to ensure that primary school-aged residents of the development would be provided with adequate school facilities in accordance with the requirements of Policy BE.5 (Infrastructure) of the Local Plan and paragraph 72 of the Framework. An obligation to secure enhanced public open space and play equipment would be necessary to ensure that residents of the proposed development would have access to such facilities in accordance with Local Plan Policy RT.3 (Recreational and Open Space and Children's Playspace in New Housing Developments) and paragraph 73 of the Framework. The Council's Committee report indicates that there is public open space and children's play space within Shavington, which is easily accessible from the application site and that the contribution would be used towards upgrading this site.
32. Having considered these obligations in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations, I am satisfied that they would be directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms. The Council's evidence also indicates that none of the payments which

are sought would result in the pooling of more than five obligations for any one infrastructure project or type of infrastructure through planning obligations.

33. Therefore, in the absence of planning obligations to secure the requisite education facilities and off-site open space and play equipment, I am not satisfied that the effect of the development on local infrastructure would be adequately offset. Consequently, in this regard, the proposed development would conflict with Policies BE.5 and RT.3 of the Local Plan and with the Framework.

Planning Balance and Sustainable Development

34. For the reasons outlined above the appeal development would conflict with Policies NE.2, NE.4, NE.5, NE.9, RES.5, BE.5 and RT.3 of the Local Plan.
35. In terms of the economic and social dimensions of sustainable development, the appeal proposal would increase the supply and choice of housing, including affordable homes, in a location that is reasonably well-served by existing local services, on an under-used site. The development would also contribute towards economic growth during the construction phase and the additional population would assist the local economy and help support the sustainability of facilities in the area. These matters, particularly the housing delivery in view of the current shortfall, carry weight in favour of the proposals but they must also be balanced against the impact of the development on local infrastructure.
36. In terms of the environmental dimension, while the development offers potential for the incorporation of energy efficiency measures as well as additional planting, as outlined above the development of the site would cause harm to the character and appearance of the area, reduce the degree of separation between Crewe and Shavington and pose a risk to biodiversity.
37. Although there are several considerations and benefits that weigh in favour of the appeal, in my judgement these are significantly and demonstrably outweighed by the identified harm such that overall the proposal would not represent sustainable development in the terms of the Framework. Consequently, there is no presumption in its favour.

Other Matters

38. In coming to my decision I have also taken into consideration other concerns raised locally as well as the other planning decisions referred to, including insofar as they influence on the character and appearance of the area. However, they have not led me to any different overall conclusion. In doing so, I have also taken into account the appellant's comments regarding the nature and profile of these local submissions.

Conclusion

39. Based on the information before me, the proposed scheme would not represent sustainable development. On this basis and given the identified conflict with the development plan, on balance, the appeal should be dismissed.

G D Jones

INSPECTOR