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## Appeal Decision

Site visit made on 8 October 2015

**by Karen L Ridge LLB (Hons) MTPL**

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

Decision date: 19 November 2015

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**Appeal Ref: APP/A0665/W/15/3032663**

**Land at The Mersey View Club, Forest Hill, Mersey View, Overton Hill, Frodsham, Cheshire WA6 6HH**

- 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 Mersey View Pleasure Grounds Limited against the decision of Cheshire West and Chester Council.
  - The application Ref. 14/03835/OUT, dated 25 July 2014, was refused on 1 April 2015.
  - The development proposed is the demolition of Mersey View Club and storage building and erection of 12 dwellings (4 affordable), provision of revised car parking layout to existing hotel, revised access, provision of new access and open space.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of Mersey View Club and storage building and erection of 12 dwellings (4 affordable), provision of revised car parking layout to existing hotel, revised access, provision of new access and open space on land at The Mersey View Club, Forest Hill, Mersey View, Overton Hill, Frodsham, Cheshire WA6 6HH, in accordance with the outline application Ref. 14/03835/OUT, dated 25 July 2014, and subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. The application which led to this appeal was made in outline form with approval sought only for access. Other matters (appearance, landscaping, layout and scale) were reserved for future consideration. To the extent that the plans submitted touch upon any of these reserved matters I shall treat the details as being illustrative only.
3. An executed unilateral undertaking (The Undertaking) made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted to secure a commuted sum for the provision of a formal playing pitch at Salt Works Farm. The payments are in accordance with Cheshire West and Chester Local Plan (Part One) (LP) strategic policy SOC6 and saved policy RT3 of the Vale Royal Borough Local Plan (VRLP).
4. I agree that the payment is reasonably related to the development and is necessary to make it acceptable. As such it satisfies the tests set out in the National Planning Policy Framework and regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL regulations). I

also requested information from the parties regarding pooled contributions towards the provision of off-site playing pitches and I am satisfied that there have been no other such contributions since the relevant date and therefore the commuted sum payment does not fall foul of regulation 123 of the CIL regulations. As such I shall take the Undertaking into account in my determination of this appeal.

### **Preliminary Matter**

5. The appeal site is located just outside Frodsham village but within the Green Belt. It comprises part of an existing complex containing a nightclub, hotel and car parking, together with a maintenance building and outside storage areas. The appeal site relates to that part of the site containing the nightclub, which is no longer in use, the car park, the hard standing and the maintenance building. The proposal involves the demolition of the nightclub and maintenance building and a development of 12 houses.
6. Whilst the site is within the Green Belt the Council is satisfied that the proposal would not constitute inappropriate development having regard to policy STRAT 9 of the LP and to the advice within the National Planning Policy Framework (the Framework). However some objectors have expressed concerns that the development would have a greater impact on openness and that it is not on previously developed land, and implicitly, that it would therefore constitute inappropriate development. I shall examine this as a preliminary issue.
7. Recently adopted LP policy STRAT 9 is in line with national policy and states that inappropriate development in the Green Belt is harmful by definition and will not be allowed except in very special circumstances. Both LP and national policy provide that, as a starting point, the construction of new buildings in the Green Belt will be inappropriate. However exceptions allow for the partial or complete redevelopment of previously developed sites which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it.
8. The indicative layout drawing illustrates how the dwellings could be arranged in the south-eastern corner of the site, on that part of the land which currently includes a large area of hard standing, outside storage and maintenance building. The illustrative plan depicts the area of open space on the northern boundary being enlarged to take in part of the footprint of the demolished nightclub. The car parking area is shown in the same place but reconfigured.
9. Whilst the Council acknowledges that some elements of the hard standing do not have a planning history, it confirms that they have been in place for many years. It would appear that the Council accepts that even if these elements have not been authorised, they are immune from enforcement action. I have no reason to believe otherwise. I therefore have no other substantive evidence to suggest that the appeal site should not be regarded as previously developed land in terms of the definition set out in annex 2 to the Framework.
10. Openness is essentially the absence of built development and the proposal would result in the demolition of a nightclub and the maintenance building. On the appellants' uncontested figures the buildings to be demolished have a footprint of around 2,200 square metres and a volume of 9,600 cubic metres. Given the loss of these buildings, I am satisfied that 12 buildings could be

designed at reserved matters stage such that the quantum of development would not exceed that which is to be demolished. As such the proposal, in principle, would not have any greater impact on openness.

11. The illustrative plan shows the new dwellings sited on the existing area of hard standing. Housing in this location would not result in any additional sprawl or encroachment into the countryside. I am therefore satisfied that a scheme could be designed which would not harm the purposes of including land within the Green Belt. It follows that, in principle, I accept that a scheme could be designed which would not constitute inappropriate development. I shall proceed on this basis.
12. Access is one of the matters for approval. The entry point from the main road into the site would remain the same, albeit the internal road would be slightly re-aligned. Given its existing use as a hotel and the previous use of the nightclub, I conclude that the access would not result in any material increase in the use of the access over and above its authorised use. I am also satisfied that visibility in both directions is adequate and that the proposal would not compromise highway safety objectives. The access is therefore satisfactory.

### **Main Issue**

13. Having regard to all of the above, I consider that the remaining main issue is whether or not the housing would be in an acceptable location having regard to local and national policies.

### **Reasons**

14. LP policy STRAT 1 sets out a presumption in favour of sustainable development and confirms that new housing should, wherever possible, be located within 1.6 kilometres of existing or proposed local shops, community facilities and schools and should be well connected to public transport. This policy also seeks to encourage and prioritise the redevelopment of brownfield land. LP policy STRAT 8 supports development in rural areas which serves local needs in the most accessible and sustainable areas. It identifies Frodsham as a key service centre. Policy STRAT 9 seeks to restrict development in the Green Belt and countryside. Saved policy GS5 of the VRLP contains similar objectives.
15. The Framework seeks to promote sustainable development in rural areas and confirms that housing should be located where it will enhance or maintain the vitality of local communities. It cautions against isolated new homes in the countryside.
16. The appeal site is located on the fringes of a residential area, within one kilometre of the nearest convenience store and post office, primary school and church. Frodsham town centre is located some 2 kilometres from the site and it contains a rail station, more shopping opportunities, other facilities and employment sites. The nearest bus stop is on Manley Road around 1 kilometre away. The housing would therefore conform to the requirements of policy STRAT 1 in terms of its distance from facilities.
17. The principal route between the site and these services would be along Bellemonte Road which does not have a footway along 400 metres of its length closest to the site and which contains steep inclines. Whilst I accept that many occupants would choose not to walk or cycle, additional use of the motor car would involve only short journeys to access the local shop and school. In

addition residents would live some 2 kilometres away from a rail station which would provide further opportunities for public transport to more distant locations and again the rail station is location a relatively short distance to the appeal site.

18. Taking into account all of the above I conclude that the site is broadly acceptable in terms of its location to services and is reasonably positioned with regard to public transport opportunities. I conclude that, in terms of its location, the site is acceptable having regard to the local and national policy objectives referred to above.

### **Other Matters**

19. The presumption in favour of sustainable development: The Framework sets out a presumption in favour of sustainable development and confirms that development proposals which accord with the development plan should be approved without delay. It confirms that there are three dimensions to sustainable development: economic, social and environmental.
20. The Council has a 5 year supply of housing land. Sustainable development includes a range of factors and the development of the site would bring with it certain benefits which would contribute to a social and economic role. The proposal would result in the provision of additional housing in a rural area, as well as 4 units of affordable housing, which would be a positive contribution. It would also result in the redevelopment of a previously developed site, part of which is currently unused. In terms of the economic role, it would provide construction work and it would bring new inhabitants to the village, which would support the local facilities.
21. In terms of an environmental role; some biodiversity and landscaping enhancements could also be secured in the form of additional hedgerow planting and a net gain in natural assets if the northern green space were to be expanded.
22. The appeal site is located on the side of Overton Hill, with the Sandstone Trail running along the ridge of the hill to the north of the site. A war memorial is located within parkland to the east of the site. The eastern boundary of the site contiguous with the public open space is comprised of mature planting which would partially obscure views of any housing in the south-eastern quadrant of the site. In any event housing in this location would replace unsightly outside storage and maintenance building.
23. In addition the demolition of the nightclub building and the expansion of green space in close proximity to the public footpath would be a positive benefit. If the site were to be developed as depicted in the illustrative layout there would be a visual improvement in the part of the site which lies at the top of the hill. All things considered, I conclude that a scheme for 12 houses could be designed on the site such that would not materially harm the character and appearance of the area.
24. Some local residents have expressed concern about any loss of the attractive war memorial railings which run along Bellemonte Road. However this is a matter which would be considered at reserved matters stage. Whilst some objectors have commented that part of the appeal site does not appear to be within the appellants' ownership, this is a private matter. The site is not within

an area at risk of flooding and drainage conditions would ensure that any surface water run-off is adequately dealt with.

25. The location of the affordable housing units and the layout of the site, including parking, would be decided at reserved matters stage. They are not matters before me for consideration. Finally I have already concluded that the access would be satisfactory given that the entry point would remain unchanged and that the proposed use is likely to result in the generation of fewer trips than the authorised nightclub use.
26. When I have regard to all of the above factors and the three dimensions to sustainable development, I am satisfied that the proposal, in its totality, would amount to sustainable development. As such, the presumption in paragraph 14 of the Framework applies.
27. Both the appellants and objectors have referred to other sites which have been granted or refused planning permission. However on the basis of the information provided it appears that none of the other examples are directly comparable with the current proposal. In particular objectors have referred me to an appeal decision<sup>1</sup> at Mersey View Farm on Bellemonte Road for a two level semi-submerged dwelling. However in that case different policy considerations were at play given that the Inspector concluded that the proposal represented inappropriate development in the Green Belt.

### **Overall Conclusions**

28. Taking all of the above matters into account I conclude that the development would be in an acceptable location having regard to development plan and national policies. The proposal would also result in the redevelopment of a brownfield site and the provision of additional housing. There are no other material considerations which outweigh these matters and therefore the appeal shall be allowed.

### **Conditions**

29. The Council has submitted a set of suggested conditions in the event that the appeal is allowed. I have considered all of the conditions in light of the advice within the National Planning Policy Guidance. Using the same numeration adopted by the Council I make the following comments.
30. In the interests of good planning it is necessary to impose conditions setting out time limits for development (1, 2 & 3). Whilst the Council's suggested conditions do not refer to layout as a reserved matter it is clear from the application forms and the committee report that it was treated as a reserved matter and that the layout plan was illustrative only. I have dealt with the appeal on this basis and have therefore amended the conditions to include layout as a reserved matter.
31. In the interests of good planning it is necessary to ensure that the location plan is referred to (4). I have also amended the conditions to require that the layout details submitted broadly accord with the illustrative layout plan and to secure details of the amenity areas and play space to ensure adequate provision (5). Condition (6) required details of the external appearance of buildings which is a reserved matter so this condition is unnecessary.

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<sup>1</sup> Appeal reference APP/A0665/A/12/2183517.

32. I have amended suggested condition (7) in relation to affordable housing in the interests of precision and enforceability. This condition is necessary to ensure that the scheme is delivered. To protect the character and appearance of the surrounding area and the scheme itself it is necessary to impose conditions protecting existing trees (8) and I have incorporated suggested condition (18) within this condition.
33. A construction management plan is necessary to ensure highway safety is not compromised and to protect hotel users and nearby residents (9). I have added in a requirement to produce details of any temporary hoarding or boundary treatments throughout the construction and demolition phase to ensure the safety of hotel users and amalgamated it with suggested condition (20). It is also necessary to ensure that the parking and cycle storage associated with each dwelling is available prior to occupation (10 & 11). A condition is also necessary to ensure the specification and timing of internal access roads (12).
34. A scheme securing disposal of foul sewage and/or surface water is also required (13). I agree that it is necessary to require details of a landscape plan and tree and hedgerow planting for the development (14 and 15). I also agree that the recommendations contained within the ecological report should also be secured by condition and that clearance works should be outside the bird nesting season (16 & 17) in order to safeguard existing habitats. I have also imposed a condition restricting the hours of demolition and construction to protect hotel users and nearby occupiers (19). Finally it is necessary to impose a condition controlling any piling works (21).

*Karen L Ridge*

INSPECTOR

## SCHEDULE OF CONDITIONS ATTACHED TO PLANNING PERMISSION

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than whichever is the later of the following dates:
  - (a) the expiration of three years from the date of this permission; or
  - (b) the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted relates to site location plan reference 01 Revision C.
- 5) Details of the layout shall broadly accord with those shown on illustrative plan M2245.02A. The layout shall also include a minimum of 150 square metres of land comprising landscaped amenity areas/open space and a minimum of 240 square metres of formal play space. Prior to commencement of development full details of the landscaped amenity areas/open space and the formal play space (including equipment) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) The development shall not begin until a scheme for the provision of affordable housing as 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 within the National Planning Policy Framework or any future guidance which replaces it. The scheme shall include:
  - (i) the tenure of the affordable housing provision to be made, which shall consist of not less than 4 housing units or 35% of the bed spaces;
  - (ii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no registered social landlord is involved);
  - (iii) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - (iv) 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.
- 7) No site clearance, preparatory work or development shall take place until a tree survey (including an arboricultural statement, tree protection plan and arboricultural method statement) (in accordance with British Standard BS5837:2012: Trees in Relation to Construction –

Recommendations) has been submitted to and approved in writing by the local planning authority. The method statement shall include full details of the construction and installation of services beneath tree canopies as well as provision for the long-term retention of trees. Development shall take place in accordance with the approved details.

- 8) Prior to the commencement of any development or works of demolition, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be adhered to throughout the demolition and construction periods.

Such a plan shall include details of the following:-

- (i) a Traffic Management Plan, including full details of the phasing of demolition and construction traffic for the development including temporary highway vehicle and pedestrian routings; timings of large vehicle movements;
  - (ii) location of the site office, construction compound, delivery area;
  - (iii) construction vehicle parking and workers parking;
  - (iv) suitable vehicle cleaning facilities (including wheel washing);
  - (v) details of dust control schemes;
  - (vi) hours of demolition, construction and deliveries;
  - (vii) details of temporary boundary treatments/hoardings to be erected on all boundaries and retained throughout the construction period of each particular phase of development.
- 9) No dwelling shall be first occupied unless and until its associated vehicle parking (for cars and other powered two wheeler vehicles) has been constructed, drained, surfaced and is available for use in accordance with details which shall be first submitted to and approved in writing by the Local Planning Authority. The parking spaces associated with each dwelling shall thereafter be retained for the purposes of car parking at all times in the future.
- 10) No dwelling shall be first occupied unless and until its associated cycle storage has been constructed and is available for use in accordance with details which shall be first submitted to and approved in writing by the Local Planning Authority. The storage cycle facilities associated with each dwelling shall thereafter be retained at all times in the future.
- 11) Prior to any development being commenced, details of the design, construction, specification, lighting and drainage of all access roads to adoptable highway standards within the development site shall be submitted to and first approved in writing by the Local Planning Authority. No dwelling shall be occupied until that part of the highway, footway, cycleway network which provides access to it has been constructed in accordance with the approved details up to binder-course level. The surface course level shall be completed in accordance with the approved details in accordance with an agreed phasing plan.
- 12) No development shall be commenced until a scheme for the disposal of foul sewage and/or surface water shall be submitted for the site. The scheme shall be based upon sustainable drainage principles and an assessment of the hydrological and hydrogeological conditions of the site and include timescales for the scheme's implementation and completion



and it shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented in full and completed prior to any dwelling first being occupied. The completed approved drainage scheme shall thereafter be retained at all times in the future.

- 13) Prior to the commencement of development or the carrying out of any ground works (with the exception of demolition), full details of both soft and hard landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
  - (i) Means of enclosure;
  - (ii) Car parking layouts;
  - (iii) Other vehicle and pedestrian access and circulation areas;
  - (iv) Hard surfacing materials;
  - (v) A planting plan (including the use of native trees, shrub and wildflowers of local provenance and planting programme).
- 14) Prior to the commencement of development or the carrying out of ground works (with the exception of demolition works) details of the proposed tree and hedgerow planting shall be submitted to, and approved in writing by, the local planning authority. The specification shall include the quantity, size, species, positions and density of planting of all trees and hedgerows, how they will be protected and the timing of planting.
- 15) All planting, seeding or turfing comprised in the approved details of landscaping required by conditions (13) and (14) above shall be carried in the first planting and seeding seasons following the first occupation of any of the dwellings 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
- 16) The development shall not be carried out other than in complete accordance with all the recommendations contained within the Leigh Ecology Extended Phase One Habitat Report, dated July 2014, unless any variation to this is otherwise first agreed in writing by the Local Planning Authority. The mitigation measures shall be implemented and maintained in accordance with these details.
- 17) No site clearance works or development shall be carried out during the bird-nesting season (1<sup>st</sup> March to 31<sup>st</sup> August inclusive) unless the site has first been surveyed for nesting birds and a scheme to protect nesting birds is submitted to, and approved in writing by, the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
- 18) No demolition or construction works and no deliveries to the site shall take place outside the following hours: 0800 to 1800 hours Monday to Fridays and 0800 to 1300 hours on Saturdays. There shall be no demolition or construction works or site deliveries on Sundays or Public or Bank Holidays.

- 19) No operations requiring piling or sub-surface vibration ground improvement techniques shall be carried out on the site unless details of the work, monitoring and environmental controls have first been submitted to and approved in writing by the local planning authority. All such works shall be carried out in accordance with the approved details.

END OF CONDITIONS

Richborough Estates