



Appeal Decision

Site visit made on 24 August 2015

by Tom Cannon BA DIP TP MRTPI

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

Decision date: 19 November 2015

Appeal Ref: APP/R0660/W/15/3023027

Land east of School Lane, Sandbach, Cheshire CW11 2LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Jean Pierpoint, Paul Ferguson and Grant and Helen Dinsdale against the decision of Cheshire East Council.
 - The application Ref 14/5044C, dated 22 October 2014, was refused by notice dated 29 January 2015.
 - The application sought planning permission for an outline application for up to 13 no. residential dwelling houses, associated infrastructure and ancillary facilities without complying with a condition attached to planning permission Ref 13/4634C, dated 3 July 2014.
 - The condition in dispute is No 17 which states that: "Notwithstanding the details shown on the indicative layout plan, the development shall be served only by a single access point shown with a red arrow on plan number 541-SL-01 Rev A."
 - The reason given for the condition is: "In the interests of highway safety in accordance with Policy GR9 of the adopted Congleton Borough Local Plan First Review 2005."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The absence of a planning obligation securing the provision of affordable housing and public open space did not form part of the reason for the refusal of the application. However, the report to the Council committee which determined the application made it clear that, had the Council been minded to grant permission, it was not recommended to do so without the prior completion of a 'deed of variation' to the original planning obligation. I have therefore considered these matters, along with the appropriateness of applying a 'deed of variation' to the original legal agreement given that, were the appeal to succeed, a completely new, free standing permission would be created, as opposed to 'varying' the existing permission.

Main Issues

3. The Council's reason for refusal and appeal statement indicates that condition No 17 is necessary to ensure that the design and layout of the development contributes positively to the character and quality of the area. This reason is different to that given in the reason for imposing condition No 17, which related to highway safety.

4. With that in mind, I consider the main issues in this case to be (i) whether the proposal makes adequate provision for infrastructure, services or facilities arising from the development; (ii) whether the condition is reasonable and necessary in the interests of the character and appearance of the area; and (iii) whether the condition is reasonable and necessary in the interests of highway safety.

Reasons

Infrastructure/ Services/Facilities

5. Regulation 122 of the *Community Infrastructure Levy (CIL)* states that, "for planning permission to be granted, a planning obligation can only be taken into account if it is 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."

Affordable housing

6. As set out in the original committee report, the *Strategic Housing Market Assessment Update 2013 (SHMA)* identifies a specific need for additional affordable housing in the Sandbach sub-area. To address this under-provision, the *Interim Planning Statement: Affordable Housing 2012 (IPS)* requires that, on sites such as the appeal development of over 0.5 hectares in size, the general minimum proportion of affordable housing will be 30%. Through the provision of four on-site affordable homes, the original scheme and completed planning obligation delivered the required level of provision, in accordance with guidance in the IPS.
7. The Council committee report relating to the appeal application sets out that there has been no material change in circumstances since the original permission, and the above provisions therefore continue to apply. It is also common ground between the main parties that the proposed affordable housing contribution is necessary to make the development acceptable. Therefore, based on the evidence before me, I am satisfied that the affordable housing contribution accords with the tests in Regulation 122 of CIL.

Public open space

8. Saved Policy GR22 of the *Congleton Borough Local Plan First Review 2005 (LPFR)* states that, "where residential planning permission is granted, it will be a requirement that provision be made for public open space of an extent, quality, design and location in accordance with the Borough Council's currently adopted standards and having regard to existing levels of provision."
9. The Council has referred to the *Open Spaces Summary Report: Sandbach 2012 (OSSR)* which identifies gaps in amenity green space provision generally in the Sandbach Heath and Crewe Road area of the town, and a shortfall in children and young persons' provision of 0.4ha per 1000. It also classifies Sandbach Heath play area as 'poor' in both play and amenity green space provision. However, it is unclear from the evidence in the Council's CIL compliance statement, as to the status of this document, or if it represents the Council's 'current adopted standards.'
10. As the proposed development would result in an increase in the local population, including children and young people requiring access to shared

recreational open space and children's play space, a contribution of £23,349.31 is being sought towards public open space and amenity green space. This would be directed towards improvements to the Sandbach Heath/Church Lane play area which, I understand, is within close proximity of the site. The Council has confirmed that there have not been five obligations relating to this project since April 2010. Consequently, a contribution can lawfully be sought under the transitional period referred to in *Regulation 123 (3)* of CIL, where pooled contributions can be used to fund infrastructure.

11. Of this total, £15,992.87 would be spent on the enhancement and subsequent maintenance of children and young person's provision, with the remainder going towards the enhancement and future maintenance of amenity green space at the site. However, despite the submission of extracts from various Council supplementary planning documents relating to the provision of public open space, it is unclear how the above figures have been calculated.
12. Therefore, based on the evidence before me, I am unable to establish if the proposed obligation is either directly related to the development, or fairly and reasonably related in scale and kind to the development. As such, it fails to accord with the statutory tests in CIL Regulation 122.

Planning obligations conclusion

13. Notwithstanding my conclusions in respect of public open space, I have identified that the provision of on-site affordable housing is necessary to make the development acceptable. Although a draft 'supplemental agreement' to the original Section 106 Legal Agreement has been provided by the appellants to secure such provision, it has not been signed or agreed by the Council. There is also no direct reference within the agreement to the planning application the subject of this appeal. Nor does it give details of the original planning permission. Consequently, the 'supplemental agreement' is defective and fails to provide an appropriate mechanism to secure the required contribution.
14. More importantly though, as I set out at the start, were the appeal to succeed, a new, free-standing permission for the development would be created. On reflection, I consider that a separate planning obligation would be required to secure the necessary provision towards affordable housing, as opposed to a deed of variation. In the absence of a completed obligation to this effect, which is required of make the development acceptable in planning terms, the scheme would conflict with CIL Regulation 122.

Character and appearance

15. The appeal site is situated on School Lane, a narrow linear road on the edge of Sandbach. It comprises of a roughly rectangular parcel of land immediately adjacent to a primary school, with existing residential development to the south and west. I observed that these properties each have their own private or shared access onto School Lane.
16. Condition 17 of permission 13/4634C stipulates that the approved housing development shall only be served by a single access point, occupying a central position along the School Lane frontage of the site. The appeal scheme seeks to introduce two additional vehicular access points onto the lane, with one positioned opposite Pear Tree Close towards the southern end of the site, and the other near to the northern boundary adjacent to the school.

17. The outline planning permission determined the principle of the development of the site for housing and access. All other matters, including layout were reserved for future determination. Nevertheless, an illustrative layout plan has been provided. This indicates that the proposed southern access point would serve a single dwelling, with the northern access leading to a parking court, which I understand would relate to the affordable housing element of the scheme.
18. The western side of School Lane consists of an eclectic mix of two storey houses and bungalows which provide a continuous built up frontage along a considerable proportion of its length. With the exception of properties in Pear Tree Close, which are served by a combined access, these houses all benefit from individual vehicular access onto the lane.
19. Although the built form on the eastern side of School Lane is more fragmented, further access points to both residential properties and the primary school are located in this area. Therefore, the proliferation of vehicular accesses along School Lane forms a definitive part of the areas character. The introduction of two modestly proportioned access points would thus reinforce the established design and layout of School Lane. The retention and strengthening of existing planting along the site frontage would also help integrate the development into the surrounding landscape, and takes the opportunities available for improving the character and quality of the area and the way it functions.
20. Consequently, the provision and layout of the additional access points would not provide a poor quality design solution for the site. As such, they would preserve the character and appearance of the area, and accord with Saved Policy GR2 of the LPFR, which seeks to ensure that proposals are sympathetic to the character, appearance and form of the site and surrounding area. These objectives are broadly consistent with the core planning principles of the *National Planning Policy Framework* (the Framework) to always seek to secure high quality design and take account of the different roles and characters of different areas.

Highway safety

21. I understand from the Committee report that the highway authority did not raise any objections to the introduction of two further access points on highway safety grounds. However, I am mindful that the additional accesses could potentially increase the number of turning movements associated with the development on School Lane, particularly if insufficient manoeuvring space is provided on site. This could present a potential hazard to road users, particularly when traffic flows are high such as at the start of, and end of the school day.
22. The indicative plan appears to show sufficient manoeuvring space for vehicles to exit the two additional access points in a forward gear, and would therefore restrict potential conflict with vehicles using School Lane. These details relating to the proposed layout would also form part of any reserved matters application.
23. Whilst the introduction of two supplementary access points would interrupt the new section of footway to be constructed along the site frontage, vehicle movements associated with these accesses are likely to be low, thereby reducing potential vehicle and pedestrian conflict. Moreover, this new footpath

would represent an improvement over the existing situation, where there is no pedestrian crossing on the eastern side of the lane.

24. For the above reasons, the two additional accesses would not harm highway safety. It would therefore accord with Saved Policy GR2 of the LPFR, the provisions of the Framework and guidance in *Manual for Streets* (MfS) which seek to secure safe and suitable access for all.

Other Matters

25. The highway authority suggests that the provision of two additional accesses would fail to provide a coordinated approach to the design of the scheme, and applies design guidance inconsistently. However, no explanation or reference to specific policy guidance has been provided to support this view. In any case, I have found that the proposal would preserve the character and appearance of the area.
26. It has been put to me that the affordable units should be served from the main site access if the social realm of the site is to be maximised. Given their anticipated location along the site frontage, the affordable units would be well integrated into the scheme rather than being located in a discreet or peripheral area of the site. As such, this element of the development would accord with paragraph 50 of the Framework which, amongst other things, seeks to create sustainable, inclusive and mixed communities.
27. Concerns have been raised by local residents and a ward Councillor regarding the design and layout of the development and its ability to maximise passive solar gain. Such matters would be addressed in any subsequent reserved matters application. As the Sandbach Neighbourhood Plan appears to be at a very early stage of preparation, and details of its relevant policies have not been provided, I have therefore been unable to take it into account in my assessment of this appeal.

Overall Conclusion

28. In view of my findings regarding the character and appearance of the area and highway safety, I have no objection in principle to the removal of the disputed condition. However, a new planning permission would be created: in the absence of a completed planning obligation securing the required contribution towards affordable housing, which is necessary to make the development acceptable I conclude, on balance, that the appeal should not succeed.

T Cannon

INSPECTOR