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## Appeal Decision

Inquiry held on 14-15 July and 11-13 November 2015

Site visit made on 10 November 2015

**by Brendan Lyons BArch MA MRTPI IHBC**

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

**Decision date: 18 January 2016**

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### **Appeal Ref: APP/R0660/A/14/2228488** **Land off Crewe Road, Alsager ST7 2JN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Hollins Strategic Land LLP against Cheshire East Council.
  - The application, Ref 14/3054C, is dated 20 June 2014.
  - The development proposed is the erection of up to 70No. dwellings.
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### **Decision**

1. The appeal is dismissed and outline planning permission is refused for the erection of up to 70No. dwellings at Land off Crewe Road, Alsager ST7 2JN.

### **Preliminary matters**

2. The application that has given rise to this appeal was submitted in outline form, with only the principle and amount of development and the means of access to the site for full approval at this stage. Other matters, including the layout and landscaping of the site and the scale and appearance of development were 'reserved' for later approval by the Council. However, the application was supported by an illustrative plan that showed how development might be laid out on the site and by plans showing the location and design of the two proposed site access points.
3. The appeal was submitted in November 2014 against the Council's failure to issue a decision within the prescribed period. The application has since been considered by the Council's Strategic Planning Board which resolved that it would have refused planning permission. The three suggested reasons for refusal, based on feared unacceptable environmental, social and economic impacts, are reflected in the framing of the main issue in the appeal set out below.
4. Following submission of the appeal, the application was re-submitted in identical form<sup>1</sup>. During the course of negotiation on this application the plans were amended. The appellants ask that these amended plans<sup>2</sup> should be used in the determination of the appeal, and have given interested parties the opportunity to comment on the plans. The Council agrees, and the resolution of

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<sup>1</sup> Application Ref 14/5912C

<sup>2</sup> Indicative Masterplan Version D; Proposed Site Access Arrangements Plan No. A086060-SK001 Rev E

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the Council's Planning Board in respect of its objections to the appeal has had regard to these plans and other later material, as has the evidence to the Inquiry from both main parties.

5. In preparing for the Inquiry, the appellants also discovered that three small areas of land were in unknown ownership. A revised location plan<sup>3</sup> was submitted, with these areas excluded from the red line-defined site. Having assessed the relatively minor implications of the amendments and addressed the matter at the opening of the Inquiry, I have concluded that no party's interests would be prejudiced by acceptance of the amended plans and have considered the appeal on that basis.
6. At the opening of the Inquiry, the appellants submitted a planning agreement between the Council, the landowners and the appellants as an executed deed of planning obligation under S106 of the Town and Country Planning Act 1990, as amended. The agreement, which was discussed at the Inquiry, contains covenants in respect of the provision and management of affordable housing and open space on the site, the implementation of ecological works and habitat management, and the payment of contributions towards highway improvements, education provision, and barn owl habitat enhancement. The merits of the obligation are considered later in this decision.
7. The appeal was accompanied by a Statement of Common Ground ('SoCG') which sets out a description of the site and its surroundings, and the policy context for consideration of the appeal proposal, including the adopted and emerging development plan, and the Government policy guidance of the National Planning Policy Framework ('NPPF'). Matters not in dispute between the appellants and the Council are identified.
8. The Inquiry was adjourned on its second day to allow the parties to achieve a common understanding of the basis for the evidence on highways and ecology, including a joint survey of woodland habitat. During the adjournment, the previously submitted SoCGs on Highways and Ecology were updated, and specialist evidence on these matters from both main parties was supplemented. The appellants' planning evidence was revised and an Addendum was provided to the main SoCG, covering the above matters and the implications of other decisions issued since the first submission of evidence.
9. The Inquiry sat for three further days and was finally adjourned on 13 November 2015 to allow closing submissions by both parties to be submitted in writing and the Council to respond to the appellants' application for costs. The Inquiry was then closed in writing on 23 November 2015. The costs application is the subject of a separate Decision.

## **Proposal**

10. The appeal site lies to the south of the B5077 Crewe Road, which is the main approach to Alsager from the west, and whose north side is lined by mature suburban housing. The site comprises some 3.95ha of land, divided into two separate parcels by a gated farm access road. The site is bounded to the east by a private road that gives access to a public house and farm shop, which are separated from the site by a tree-lined brook that forms the southern boundary. Beyond that road a new development of 65 houses is under

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<sup>3</sup> Location Plan Ref (0-)A001 Rev.B

construction, linking with earlier development at the edge of the town. To the west, the site is bounded by the Plough Inn public house and its car park, beyond which are open fields. The northern part of the site, in both parcels adjoining Crewe Road, is made up of woodland. Part of this, on the eastern parcel, and several individual trees, are protected by a Tree Preservation Order ('TPO').

11. The application seeks permission to erect up to 70 dwellings, of which 21 (30%) would be reserved for affordable occupation. The Design and Access Statement ('DAS') that accompanied the application envisages development with a mix of predominantly two-storey detached and semi-detached houses, with scope for some apartments. The indicative plan suggests that the great majority of the development would be on the western parcel, with only 5 detached houses to the east. The remainder of the eastern parcel would be made up of retained woodland and ecological enhancement areas. A play area and woodland trail would be included in the western parcel, close to the brook. Access would be taken by a priority junction mid-way along the Crewe Road frontage of each parcel, giving onto estate roads within the site. A footpath link would run along the brook, linking to existing public footpaths and a new path to be added by the housing development to the east.

### **Main Issue**

12. In the light of the Council's resolved objections to the proposal and those of interested parties, it was agreed at the Inquiry that the main issue in the appeal is whether the proposal would amount to a sustainable form of development in accordance with national and local policy, having particular regard to:

- its location outside the designated settlement boundary on land defined as open countryside;
- the use of best and most versatile agricultural land;
- the effect on ecology and nature conservation;
- the effect on the safe and efficient operation of the local highway network.

### **Reasons**

#### ***Policy context***

13. The development plan for the purposes of this appeal comprises the saved policies of the Congleton Borough Local Plan First Review ('LP'), adopted in 2005.
14. Statutory duty requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise<sup>4</sup>. Should the proposed development for housing be contrary to the LP it should be refused unless material considerations are found to outweigh the conflict with the adopted plan.
15. Among the material considerations are the policies of the emerging Cheshire East Local Plan Strategy ('CELPS'). The intended reasons for refusal of the

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<sup>4</sup> Planning and Compulsory Purchase Act 2004 s38(6)

application also refer to a number of CELPS policies. Examination of the CELPS was suspended following the Inspector's interim conclusions on the soundness of the plan, but resumed during the adjournment of the appeal Inquiry. The SoCG Addendum records areas of agreement in relation to evidence documents submitted by the Council during the suspension. The suggested revisions to the CELPS include a proposed increase in the requirement for new homes from 27000 to 36000 (1800 per year), of which Alsager's share would increase from 1600 to 2000.

16. However, it appears that even if the Council's supplementary submissions are endorsed by the CELPS Inspector as a suitable basis for proceeding with the examination, the proposed revisions to the plan would still require a further round of public consultation before any final decisions could be made on soundness. It also appears that additional sites to be considered would lie outside existing defined settlement boundaries. Therefore despite the Council's view that weight can be attached in the appeal to the emerging policies such as PG5 Open Countryside, I consider it reasonable to continue to afford only limited weight at this stage to the emerging plan.
17. National policy as set out in the NPPF, which is centred on the achievement of sustainable development, is an important material consideration. Paragraph 14 of the NPPF states a presumption in favour of sustainable development, which means approving development proposals that comply with the development plan, or, where the 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 of the NPPF taken as a whole.

### ***Countryside location***

18. The appeal site lies outside the settlement boundary of Alsager defined by the LP, and is therefore classed as open countryside. Under saved LP Policy PS8 only specified classes of development, not including general housing, are to be permitted in the open countryside. This is confirmed by saved Policy H6, which defines the limited types of housing considered acceptable in the countryside. The appeal proposal would not comply with these policies.
19. The Council accepts that it cannot currently demonstrate a five-year supply of deliverable housing land, as required by NPPF policy. In such circumstances, the NPPF advises that the housing supply policies of the development plan cannot be regarded as up-to-date, and the proposal must be assessed in accordance with the presumption in favour of sustainable development set out in NPPF paragraph 14. The Council acknowledges that the limitation on the location of development imposed by LP Policies PS8 and H6 has the effect of restricting the supply of housing, and that the policies are therefore out-of-date in this respect.
20. The policies' underlying objective of countryside protection remains relevant to the decision, and is broadly consistent with the NPPF's core principle of recognition of the intrinsic character and beauty of the countryside. However, the core principle is prefaced by the need to 'take account of the different roles and characters of different areas'. The policies of the NPPF do not offer blanket protection for all parts of the countryside, regardless of their quality, but rely on an assessment of harm and benefit. Protection is primarily directed to 'valued landscapes', particularly those with formal designation.

21. In this instance, the site lies at the edge of the settlement. The SoCG records agreement that the appeal site 'has the character of a greenfield site in the urban area', but the Council appeared to shift its ground somewhat from this position in the SoCG Addendum. I accept that some sites at the urban edge can have the characteristics of open countryside but in this instance I find the SoCG assessment to be reasonable. The character of Crewe Road has clearly for many years been strongly defined by the suburban housing on its north side. The recent addition of new housing on the opposite side of the road, to the east of the appeal site, has reinforced that character. To the west, the site is contained by the public house and car park, which form a marker of urban development on that side of Crewe Road. Even further south, the character is strongly influenced by adjoining telecommunications masts and electricity pylons.
22. The site has not been in active agricultural use for many years, and its western field has been used for public events such as bonfires in association with the public house. The woodland shows some evidence of minor tipping and abuse, symptomatic of the urban edge. The Council makes no claim that the site is of any landscape value, and it is common ground that any potential landscape and visual impacts could be successfully mitigated by detailed design proposals.
23. The Council accepts that meeting current and future housing requirements will involve the release of greenfield land, often at the edge of settlements. Reference was made in evidence to the Inquiry to other schemes for which permission had already been granted, where the settlement boundary had been allowed to 'flex'. The Council's reasons for reaching a different judgement in this instance appear to be based more on the other matters objected to rather than the effect on the countryside in its own right.
24. The site was assessed during the scrutiny of the draft LP, where it formed part of a larger proposed allocation that was only deleted because sufficient other land was available. But part of the allocation, as the most suitable greenfield site under consideration, was recommended to be placed on a reserve list of future housing sites. The site has again been considered under the CELPS examination process. The SoCG Addendum records that the recent studies prior to the resumption of the examination hearings identify the site as suitable for further consideration for inclusion in the later Site Allocations Document.
25. For the above reasons, I find that the Council's concern about impact on the countryside is not fully borne out by the particular circumstances of the site, which has been independently assessed on two separate occasions as having development potential, or by national policy. There are material considerations that would adequately mitigate any conflict with adopted LP policy.

### ***Agricultural land***

26. The issue of loss of best and most versatile ('BMV') agricultural land is related to the use of open countryside. It is agreed that almost 3ha (75%) of the total site area of 3.95ha can be ranked as Grade 3a land, which is the lowest category of BMV land, with the remainder of the site outside agricultural classification.
27. LP policy on BMV land has not been saved, and limited weight can be given to CELPS Policy SE2 referred to in the third suggested reason for refusal. The

NPPF seeks to protect valued soils and advises that the economic and other benefits of BMV land should be taken into account. In this case, the appellants' specialist advisers, who assessed the grade of the land, point out that the economic benefit of the appeal site is reduced by its constrained surroundings and poor access, its lack of recent agricultural use and its use for informal leisure events. It appears that the loss of this relatively small area of BMV land would represent a very modest economic and environmental disbenefit.

28. The Council acknowledges that virtually all land outside settlement boundaries in this part of Cheshire falls into the BMV category. Therefore, if there is a case for development outside these boundaries, use of some BMV land becomes virtually inevitable. I accept the Council's view that, in the light of the emerging need for additional housing in the borough, the disbenefit should be seen as a factor to add limited weight in the balance rather than a determinative issue.

### ***Ecology and nature conservation***

29. The planning application was accompanied by an Extended Phase 1 Habitat Survey, with additional surveys and assessment of potential impacts on grassland, hedgerows, bats, badgers and great crested newts. The original indicative layout was later amended to reduce some impacts on biodiversity, and revised mitigation proposals were set out in an Addendum to Ecological Survey Reports.

#### *Woodland habitat*

30. The Council's intended reason for refusal is based on the impact on the woodland on the site. It is agreed that 0.57ha (59%) of the existing total 0.97ha would be lost, but that 0.62ha would be planted with trees as compensation. The particular concern relates to the area of woodland that adjoins the northern boundary of the site. This area makes up a significant part of the eastern parcel of land and a rather smaller share of the western parcel, but still occupies approximately half of the western road frontage. The indicative layout suggests that all of the western portion would be replaced by new development and much of the eastern portion, where a new access road would serve five detached houses. The dispute between the main parties now centres on the merits of this loss and replacement.
31. The area is identified on the national Magic Map database as Lowland Mixed Deciduous Woodland, and therefore as a UK Biodiversity Action Plan ('BAP') Priority Habitat, now renamed since 2012 simply as a UK Priority Habitat. A further area partly within the south-eastern corner of the site would be retained and reinforced as part of the proposal. The appellants dispute the correctness of the classification of the northern area.
32. Their first query relates to the 'low confidence' attached to the Magic Map entry, which appears to hinge on the absence of a physical site survey. However, there is no evidence that Natural England, as managers of the dataset, regard the classification as being compromised, and no intention to review or amend the entry has been reported since the appellants' approach to them.
33. Other mapping and aerial photography evidence reveals a history of change since some woodland was first recorded in the eighteenth century. But even very significant clearance during World War II appears not necessarily fatal to

the continued ecological value of the site, which can survive in the form of seed banks and invertebrate populations. I give weight to the Council's analysis that subsequent regeneration of the site has been beneficial in allowing a diverse woodland structure of trees of different age and form, scrub and open areas. Some portions of the current woodland are now up to 70 years old and others over 40 years old, with part of the eastern parcel, comprising mainly closely set silver birch, established within the past 10 years.

34. It is notable that the Ecology SoCG, even as updated, describes the area as woodland, without qualification. The appellants' Extended Phase 1 Habitat Survey also identifies the northern area as broadleaved woodland and acknowledges the Magic Map designation. However, the appellants' second ground of dispute is that the area does not actually constitute woodland within the Priority Habitat definition, but in fact mainly comprises scrub with occasional trees.
35. This claim is mainly founded on the results of the National Vegetation Classification ('NVC') survey of plant communities jointly carried out during the adjournment of the Inquiry. Conflicting views on the analysis of these results are set out in the updated Ecology SoCG and took up much of the specialist evidence to the Inquiry.
36. The results of the analysis, using the Tablefit software, are not straightforward, being influenced by a number of factors in order to produce an indication of 'goodness of fit'. There is little strongly conclusive evidence from the initial scoring of the six locations surveyed, but it appears that the results do not confirm the presence of plant communities anticipated in the Council's original evidence as indicators of Lowland Deciduous Woodland. However, one of the NVC plant communities associated with a Wet Woodland habitat was present at three locations.
37. The re-analysis set out in supplementary evidence for the Council of the combined results for the four locations in the western parcel, with an adjustment for the type of willow present, gives some confidence of a reasonable fit with broadleaved woodland habitat, while the combined results of the two eastern locations can be explained. I accept the Council's view that an indication of underscrub alone for the eastern parcel would not accurately reflect the habitat, much of which is dominated by birch trees. The appellants acknowledge that different locations in the eastern parcel could have produced a stronger indication of a deciduous woodland plant community, which would be consistent with their original evidence.
38. In assessing the evidence, I give greater weight to the specialist expertise in woodland ecology of the Council's witness, having regard also to the original assessment of the Extended Phase 1 Habitat Survey. I accept the analysis that, based on current guidance, the presence of scrub should be taken as an integral component of woodland habitat, and that the appellants' appraisal of the site as scrub with a few trees would not be an accurate description of the habitat. I endorse the conclusion that in Priority Habitat terms the western parcel can best be described as a mosaic of regenerating Lowland Mixed Deciduous Woodland and Wet Woodland, while the eastern parcel has an atypical and disturbed character, but reflects the characteristics of Wet Woodland. But in either case, the habitat would fall within the Broad Habitat definition of Woodland and would be classed as UK Priority Habitat.

*Impact and mitigation*

39. The Extended Phase 1 Habitat Survey made no great criticism of the overall quality of the woodland habitat, but noted that the areas proposed for removal were of lesser value than the intended replacement planting. The appellants now argue that even if the site is accepted as Priority Habitat, it should be regarded as of marginal quality. But having accepted that the criteria for Priority Habitat are met, I have no reason to doubt the Council's evidence that the woodland as a whole, despite some variation in quality, would be likely to qualify for designation as a Local Wildlife Site. The fact that it has not yet been formally designated does not discredit the judgement. The degree of loss proposed would be high, resulting in an impact of major significance.
40. The primary source of mitigation would be the proposed planting of 0.62 ha of young trees. It is common ground that this would have the potential to mature into Priority Habitat, if correctly managed, but only after a very long period of time: 20-30 years by the appellants' estimate but according to the Council even longer than that before natural regeneration would begin to take over. The appellants acknowledge the difficulty of achieving a diverse stand in the new planting, even if young trees of different ages and size were to be specified.
41. Taking account also of the absence of richness of the habitat derived from other flora, seeds, fungi and invertebrates as well as the trees themselves, I accept that there would be a significant reduction in ecological value, compared to the existing, for some considerable time, and that there would be no guarantee that equivalent value would eventually be achieved.
42. The Council accepts that in principle replacement planting can be seen as effective compensation. In this case, the proposed area of new planting would be only slightly larger than the area to be lost. Conflicting evidence was submitted on the adequacy of this level of provision. Both expert witnesses sought to apply a DEFRA approved 'metric' in an effort to demonstrate a net loss or gain of biodiversity value. Again, on this matter I give greater weight to the Council's approach, which focuses solely on the affected areas of woodland. The outputs of the metric suggest that there would be a significant loss of biodiversity value and that a considerably larger area of new planting would be required to compensate for the loss of the existing habitat.
43. Even if a more comprehensive application of the metric is required, as tabled by the appellants, the Council has shown that grassland habitat created as mitigation for other harm should not be included and that when the assessment is adjusted by a more accurate assessment of the condition of the existing woodland as 'moderate' or 'good', the claimed gain in biodiversity value is converted to a net loss.
44. I acknowledge the appellants' concern that the area of replacement planting was reduced in negotiation with Council officers to optimise mitigation for great crested newts. I also note that there appears to be no dispute that the reinforcement of the other woodland fringes of the site, to the south-eastern and southern boundaries, would be beneficial, particularly through the eradication of Himalayan balsam. But taken together, I consider that the evidence points clearly to a significant harmful impact on ecological value through the loss of Priority Habitat that would not be adequately mitigated.



*Other habitats and species*

45. The appellants draw attention to the proposal's claimed benefits in respect of impacts on other habitats and species, and argue that these would outweigh harm from impact on the woodland habitat.
46. The site has a medium-sized population of great crested newts which is agreed to be under potential threat due to lack of management of the existing pond. It is common ground that the mitigation measures proposed for this species, including the creation of two new ponds, would be beneficial, and should be enough to maintain the species' favourable conservation status and to secure the likely grant of a derogation licence by Natural England.
47. However, I acknowledge the Council's view that aspects of mitigation, such as the provision of resting places, would be essential requirements for licensing and cannot be considered as an ecological gain. Also that the existing woodland has considerable value as great crested newt habitat, and that its retention would be significantly more beneficial to efforts to sustain this species on the site than to seek to recreate habitat elsewhere with uncertain prospects of success.
48. Similarly, in respect of impacts on bats and breeding birds, I accept the Council's submission that claimed benefits would be outweighed by the overall loss of semi-natural habitat on the site, and particularly in key areas such as the woodland fringe.
49. It is common ground that the loss of existing hedgerow to allow access to the site would be compensated by the restoration of remaining hedgerow and the planting of considerably greater lengths of new hedgerow within the site. But, notwithstanding the assessment of the appellants' metric<sup>5</sup>, there is little reason to conclude that this would be a critical factor in achieving overall net benefit.
50. Therefore, despite the acknowledged benefit to the threatened great crested newt population, I consider that harm from the loss of the woodland habitat would not be outweighed by the proposal's other ecological provisions.

*Conclusion on ecology and nature conservation*

51. I conclude that the proposal would be contrary to NPPF policy, which is based on a core principle of conservation and enhancement of the natural environment and seeks to minimise impacts on biodiversity. The failure to avoid or adequately mitigate or compensate for the adverse impact on biodiversity value would be contrary to the guidance of NPPF paragraph 118, which advises that permission should be refused in such circumstances.
52. The adverse impact on the woodland Priority Habitat would be contrary to LP Policy NR4, which seeks to prevent avoidable harm to sites of nature conservation value, including BAP Priority Habitats, and to Policy NR3, which seeks to prevent loss of woodland without overriding justification and without suitable mitigation or recreation.

**Highway network**

53. The planning application was accompanied by a Transport Assessment ('TA'). In response to queries by the Council's highways advisers during consideration

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<sup>5</sup> The metric appears to be miscalibrated by expressing the length of hedgerow measured in m rather than in km.

of the application, the TA was supplemented by Technical Note 1 ('TN 1'), which set out revised junction capacity assessments including a broader range of committed development. In support of the duplicate application, TN 2 and 3 were later submitted, which provide sensitivity tests for junction capacity and cumulative assessments of junction performance with further committed development added. These documents inform the appellants' case in the appeal, but the TN3 assessments have been updated.

54. The Council's case is founded on the results of the Alsager Traffic Study ('ATS'), which was commissioned from consultants to examine the differing cumulative effect on the town's highway network up to the year 2030 of three different scenarios: base flows with already committed development; base with commitments and emerging CELPS allocations; base with committed, emerging and 'speculative' development combined. The ATS was produced in March 2015 and updated in April 2015 to reflect further planning permissions granted. The appeal site is one of the 'speculative' developments included in the study.
55. The first adjournment of the Inquiry was primarily to allow the model and assumptions on which the ATS was based to be understood by the appellants. As a result of the appellants' analysis, the Council agreed that some traffic flows associated with the appeal site should be amended to reflect the figures used in TN 1, and a number of other errors were corrected, leading to a revised assessment of junction performance set out in supplementary evidence. The appellants' supplementary evidence includes their own application of the model to the agreed key junctions.

#### *Congestion*

56. The Council's second notional reason for refusal of the application was that there would be an unacceptable social, economic and environmental impact arising from increased congestion at the major junctions in the town which would already be operating above capacity as a result of other committed development.
57. However, the case presented at the Inquiry relied on the potential adverse cumulative effect of traffic generated by the appeal proposal in conjunction with committed development and emerging CELPS sites. It was confirmed in oral evidence that the Council would not find an unacceptable impact if only committed sites were taken into account.
58. The TA and TNs were prepared to consider impacts of the proposed development in the context of traffic growth and other committed development up to 2019. The national Planning Practice Guidance ('PPG') on use of transport assessments in decision making advises that appropriate consideration should be given to 'the cumulative impacts arising from other committed developments (i.e. development that is consented or allocated where there is a reasonable degree of certainty will proceed within the next three years)<sup>6</sup>. The Council acknowledges that the need to consider emerging or future allocations is not advised by the PPG or by other recognised guidance on TA preparation. A DfT document<sup>7</sup> tabled at the Inquiry appears to relate to the planning of capital transport projects and to advise only that future planned development would provide an element of the assessment of local uncertainty.

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<sup>6</sup> PPG ID 42-014-20140306

<sup>7</sup> DfT TAG Unit M4: Forecasting and Uncertainty November 2014

59. The Council places some weight on a recent appeal decision for a large residential and retail development at Bromsgrove<sup>8</sup>, where the effect on the emerging District Plan ('DP') strategy was taken into account in the dismissal of the appeal. However, the site in that case was an allocated strategic site, and the examination of the DP was considerably further advanced than the CELPS is now. I do not regard this decision as providing clear justification for the need to examine emerging allocations with uncertain prospects of delivery.
60. Although it was conceded in cross-examination that there could in principle be circumstances where an emerging allocation, well advanced in the plan adoption process, could be taken into account in assessing future impacts, the appellants maintain the stance that this is not justified or relevant.
61. The primary purpose of the ATS is as part of the evidence base for the CELPS. The appellants also conceded that there should be no objection in principle to the use of a document that forms part of the evidence base for an emerging LP being taken into account in the assessment of a development proposal, but only if a 15 year assessment had been carried out.
62. In the present case, the number of emerging allocations to be added would be low, and several offer some confidence of early development. Of the four sites, one (the MMU campus) has been previously allocated and hence eligible for inclusion in any event. The site is subject to a long-standing supported application for mixed development, with a revised proposal said to be imminent. Another site (Cardway) has recently had a resolution to permit 110 dwellings. However, considerable uncertainty still attaches to the Radway Green Extension site, whose inclusion would be premature owing to outstanding objection at the CELPS examination, and which would not in any event be expected to deliver fully within the assessed period. Therefore, while it is tempting to afford some weight to individual sites, I consider it important to apply a consistent approach in accordance with recognised guidance.
63. The TA's five year time horizon was selected in accordance with the recommendation of the Institute of Highways and Transportation and of former DCLG guidance. The updates since the TA was prepared now more closely relate to the shorter period of three years stated by the PPG.
64. It was common ground at the Inquiry that once a site is accepted as likely to proceed within that time span, its full traffic and transport implications should be taken into account, rather than seeking to include only development likely to be delivered within the time period. I agree that, other than where a phased or programmed development is clearly planned, particularly on a larger site such as at Radway Green Extension, this represents a reasonable approach.
65. For that reason, I give greater weight to the revised 2019 junction capacity assessments set out in the appellants' supplementary evidence than to those in the original evidence, which were based on limited predicted delivery, as identified in the main SoCG. The revised assessments show that when the appeal site traffic is added to the base and agreed commitments, there would be no junction capacity issues at 4 of the 5 agreed junctions along the Crewe Road spine<sup>9</sup>. With one slight exception, queue lengths at these junctions would

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<sup>8</sup> Appeal Ref APP/P1805/A/14/2225584

<sup>9</sup> ATS Junctions B, C, D, E and F

- be no greater than 2 vehicles in both morning and evening peak hours, and would not be increased by the addition of the appeal site traffic.
66. At the main Crewe Road/Sandbach Road/Lawton Road town centre junction, the assessment shows that capacity would be exceeded in the evening peak as a result of existing commitments, and that the addition of the appeal site traffic would increase queue lengths and delays on Lawton Road. However, it is predicted that a minor change to the signal staging, using existing equipment, would bring the junction back within capacity and have a significant beneficial effect on queue lengths, with a maximum delay (on the Sandbach Road North arm) of 109 seconds.
67. In the absence of any contrary position by the Council, it is clear that when assessed in accordance with PPG guidance, and taking full account of other committed development, the appeal proposal would not result in adverse cumulative congestion impacts.
68. Notwithstanding their view that an assessment under 2030 conditions is not required, the appellants have gone on to produce junction capacity assessments as a 'without prejudice' sensitivity comparison with the ATS outputs that have informed the Council's case.
69. These include scenarios where all committed sites and all four identified emerging sites are included to their maximum known potential<sup>10</sup>, and therefore most closely resembling the Council's assessments. The results indicate that there would be some issues at four junctions in their existing configuration, with several operating close to or just above their theoretical capacity for at least part of the peak periods, and queues of up to 23 vehicles at the junction of Crewe Road and Hassall Road. The addition of the appeal site traffic would cause slightly increased delays.
70. At the main town centre junction, based on the existing layout, there would be significant capacity issues, which would be increased at both the morning and evening peak by the addition of the appeal site traffic, with queue lengths of up to 63 vehicles and delays of over 11 minutes on Sandbach Road South. However, the implementation of junction alterations already identified by the Council would bring all arms of the junction back below maximum capacity and greatly reduce delays, down to 30 seconds on Lawton Road. A further change to signal staging is predicted to produce improved outcomes, with maximum delay on any arm reduced to below 1.5 minutes.
71. Although these results are said to have been derived by applying the ATS model and inputs, there are some significant differences from the Council's assessments of the same junctions under the same conditions, as updated during the course of the Inquiry. The only explanation for this is said to be the use by the appellants of more up-to-date software. In that case, I consider that greater weight should be given to the outputs of the more recent software, rather than to the most harmful impacts, as suggested by the Council. In any event the Council submits that there is a reasonable degree of correlation between the two sets of results, but draws particular attention to three instances where its own calculations show different outcomes.

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<sup>10</sup> A Khan Supplementary PoE Appendix E: Scenarios 7 and 8, Tables E17-E23

72. On examination, two of these do not give serious cause for concern. At the junction of Crewe Road with Church Road and Station Road, the Council's prediction of queues on both arms of Crewe Road in the morning peak, of up to 39 vehicles, appears to arise directly from the proposed alterations to the junction. The figures for the 'do minimum' scenario, with the existing layout, show very modest queues on all arms, and must call into question the justification for the suggested works. At the junction of Crewe Road with Hassall Road, the Council actually finds lower degrees of saturation and queue lengths than the appellants.
73. At the main town centre junction, with the proposed alterations in place, the Council forecasts higher degree of saturation than the appellants on some phases of operation, and longer queues on Lawton Road in the morning peak and Crewe Road in the afternoon peak. But, as with the existing junction layout, the increases attributable to the appeal site traffic would be very minor.
74. Here, and in relation to the other junctions, concern was raised about the potential for long queues to block minor junctions where delays have not been modelled, and also leading to frustration and risk taking by drivers seeking to join the main route. However, the Council acknowledged at the Inquiry that safety was not its primary concern, but rather the costs and delays imposed by excessive congestion. I agree that there is limited reason to conclude that serious safety issues would arise.
75. From the above, I consider that in the notional 2030 scenario there would be markedly increased congestion but that the overwhelming majority of this would be due to implementation of existing commitments and emerging CELPS allocations, should they be confirmed. The appellants' evidence, to which I give greater weight where there are different forecast outcomes, has shown that at the critical town centre junction the additional effect of the appeal proposal could be accommodated by existing planned junction alterations without serious capacity concerns or delays.
76. I acknowledge the Council's concern that Alsager is not a large town and that levels of congestion seen as acceptable in a major urban centre would not necessarily be appropriate. However, I note the anecdotal evidence of the local councillor who spoke at the Inquiry that congestion is already seen as a fact of life in the town. There is also clearly local commitment to the CELPS process. All parties are aware that significant growth is planned on top of that already approved. In that context, the addition of the appeal site would have very little effect.
77. The Council raises concern about the danger of incremental growth by approval of development such as the appeal proposal. This would have greater weight if the Council could substantiate the fear that allowing the appeal proposal would prejudice the delivery of sites currently being taken forward through the development plan process. However, I could find no clear evidence that this would be a significant risk. The Bromsgrove appeal does not lend support to this concern as the circumstances in that case were significantly different. There the development of the appeal site clearly had a very important role in the achievement of the emerging DP strategy, and the transport mitigation proposed was a departure from the DP approach.
78. In any event, the need to satisfy a 2030 scenario goes well beyond current guidance, which reflects the priority given by national policy to secure

sustainable development without delay and to boost the supply of housing. The appeal proposal has been assessed in accordance with the guidance, and has been shown not to result in unacceptable adverse congestion.

#### *Safety*

79. Other than the potential safety issues associated with side roads being blocked by queues, as outlined above, the Council raises no concern about the safe operation of the site and its two access points. The introduction of a footway along the south side of the road would represent a modest safety improvement, that might also encourage more access on foot to the play facilities at the Plough public house.
80. Some local residents have also raised a concern about highway safety on Crewe Road, citing excessive traffic speed and growth of traffic volume in recent years, particularly of HGVs. I fully accept that long-standing residents might well have perceived a change in the effects of traffic over time, but I have no objective evidence that current or planned conditions amount to a safety hazard. Should the appeal proposal proceed to implementation, the change to a more residential character on the south side of Crewe Road could well trigger a re-appraisal of speed limits in the vicinity, and other potential improvements, such as the introduction of signals at the Close Lane junction could also have a beneficial effect on speed control and driver behaviour.

#### *Conclusion on highways*

81. The NPPF advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. For the reasons set out above, I consider that the appeal proposal would not result in such impacts, on either congestion or safety grounds, and would comply with NPPF policy in this respect. The proposal would also comply with the traffic and transport objectives of LP Policies GR1 and GR18.

#### ***Sustainability of proposed development***

82. The NPPF outlines the three dimensions to sustainable development: economic, social and environmental.

#### *Economic*

83. The Council accepts that the proposal would result in economic benefits through the provision of jobs and supply chain investment during the construction phase. There would also be increased demand for local goods and services over the long-term occupation of the dwellings. The appellants now accept that weight should not be given to any short-term local financial benefit from the payment of the New Homes Bonus, as it would not be directly applicable to the proposed development or necessary to make it acceptable in planning terms.
84. There would be some very slight economic disbenefits through the hidden costs of increased traffic congestion. Notwithstanding the lack of agricultural use and the effect of public access to the site, the loss of a small area of BMV land must also count as a limited disbenefit. However, on balance, the economic dimension of sustainable development would be achieved.

*Social*

85. The NPPF seeks to boost significantly the supply of housing. There is no dispute that the Council's five-year supply is lacking. It is common ground that the proposal's contribution to meeting outstanding need for market and affordable housing would represent a substantial benefit. This attracts substantial weight in assessing the social dimension of sustainable development.
86. Evidence on the objective assessment of housing need leading to and arising from the suspension of the CELPS examination suggests that the future housing requirement is likely to be considerably greater than previous estimates. It appears that sites currently identified could almost meet the revised need for Alsager. However, as outlined above, it is too early to give full weight to the achievement of CELPS draft allocations. Under present circumstances, the appeal proposal's contribution to meeting the current shortfall in supply lends significant weight in support of the proposal.
87. Further social benefits would be gained by the scope for integration of new residents into the local community. Thus there would be some social benefit from the potential for wider public access to the proposed open space and equipped play area, even though the primary purpose would be to meet policy requirements. However, the proposed contribution to education provision would serve only to address the appeal proposal's own impacts and does not add significant weight in favour of the development.
88. As a whole, the proposal would fulfil the social dimension of sustainable development.

*Environmental*

89. It is common ground that the site is in a sustainable location, with good access to all the community and commercial facilities of the town and larger centres by environmentally sustainable modes. Local access would be enhanced by the proposed link to the new route to the south of the adjoining development and by the proposed new footway on the south side of Crewe Road. There would be no highway safety concerns, but there would be a slight environmental cost due to the marginal increase in congestion from the site's traffic generation.
90. As outlined above, only limited weight can be attached to the proposal's impact on the character of the countryside. The appeal site has no formal landscape designation, even at county level, and there is no evidence that it is particularly valued by the local community. It is common ground that matters of design and landscape would be capable of successful resolution at the reserved matters stage.
91. The loss of the woodland would have some adverse landscape effects but, as outlined above, the overriding concern remains the harm to the site's ecological value, which would not be satisfactorily avoided or mitigated. This is a matter of substantial weight.
92. Taking the proposal as a whole, there would be a significant failure to meet the environmental dimension of sustainable development.

*Balance of considerations*

93. The Council argues that the judgement of sustainable development is to be made by a balancing of the three dimensions, with the objective of securing joint and simultaneous benefits, as outlined by paragraph 8 of the NPPF. Judicial authority<sup>11</sup> is cited in support of the proposition that there should be a free-standing assessment of sustainability in order to determine whether the presumption in favour of sustainable development stated by paragraph 14 of the NPPF should apply.
94. As it is common ground that the housing supply policies of the LP are not up-to date, the appellants submit that the presumption in favour of sustainable development is automatically engaged and that the balance prescribed by the second bullet point of paragraph 14 is sufficient in its own right to enable the necessary judgement. They refer to other appeal decisions, including a nearby recent decision of mine<sup>12</sup>, where that proposition was accepted. However, they also acknowledge in closing submissions that the paragraph 14 presumption could be displaced if the proposal were judged to be unsustainable, and suggest that there may be little practical difference in the manner of judgement, so long as a balancing exercise is carried out.
95. On a simple balancing, I consider that the significant failure to meet the environmental dimension means that the proposal could not be regarded as sustainable development. But even if the more weighted balance set out in paragraph 14 is taken as the key test there are good grounds to conclude that the proposal would also fail, as the adverse impact of allowing development would significantly and demonstrably outweigh the benefits.
96. Whilst there can be instances where environmental harm can be outweighed by other benefits, such as a contribution to boosting the housing supply, that would not be the case here. The proposal's net adverse effect on biodiversity would be of a higher order to the benefit of the addition of the proposed dwellings to the supply.
97. The NPPF advises that its guidance does not alter the statutory primacy of the development plan, but is a material consideration in the determination of planning proposals. In this case, the appeal proposal would be contrary to development plan policy, which is not out of date. This conflict would not be outweighed by other material considerations, including the presumption in favour of sustainable development.

**Agreement and conditions**

98. The covenants set out in the planning obligation are intended to give effect to the mitigation of the adverse impacts of the appeal proposal and to ensure delivery of its benefits. They would not alter the conclusion that the balance lies against allowing the proposal. Therefore, it is not necessary to consider the covenants in any greater detail.
99. A schedule of conditions agreed by the main parties was discussed at the Inquiry. Subject to some amendment and amalgamation, I am satisfied that

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<sup>11</sup> Principally: *William Davis Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin); *Mark Wenman v Secretary of State for Communities and Local Government and Waverley Borough Council* [2015] EWHC 925 (Admin)

<sup>12</sup>Appeal Ref APP/R0660/A/14/2225591 Kents Green Farm, Kents Green Lane, Haslington, Crewe CW1 5TP –now subject to legal challenge by the Council



the agreed conditions would be reasonable and necessary and would comply with the requirements of the NPPF and the advice of the PPG. However, the conditions would not succeed, either alone or in combination, in overcoming the matters that stand against allowing the appeal.

**Conclusion**

100. For the reasons set out above, and having taken careful account of the submissions made both in writing and at the Inquiry, including the completed planning agreement, I conclude that the appeal should be dismissed.

*Brendan Lyons*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

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### INTERESTED PERSONS:

Anthony Barrow  
David Nixon  
Nigel Burne  
Derek Hough

Local resident  
Local resident  
Local resident  
Member, Cheshire East Council  
Member, Alsager Town Council

## DOCUMENTS

Submitted at the opening session of the Inquiry:

1. Signed S106 Planning Agreement
2. List of submitted plans and documents
3. Inspector's comments on latest (May 2015) update on progress of work during the suspension of the Cheshire East Local Plan Examination
4. Tables of comparison between dwelling numbers in evidence of highway witnesses
5. Biodiversity Impact Assessment, July 2015
6. Extract from Inspector's Report on Congleton Local Plan p207 -omitted from Mr Symons Appendix MS10
7. Development Context Plan

Submitted during first adjournment of the Inquiry:

8. Statement of Common Ground Addendum
9. Addendum to Ecology Statement of Common Ground
10. Updated Highways Statement of Common Ground
11. Supplementary Proof of Evidence by Mr Crook, and Appendices
12. Supplementary Proof of Evidence by Mr Hibbert, and Appendices
13. Supplementary Proof of Evidence by Mr Khan, and Appendices
14. Addendum Proof of Evidence by Dr Madden, and Appendices
15. Substitute Proof of Evidence by Mr Symons, and Appendices

Submitted following resumption of the Inquiry:

16. Council's Claim Form and Statement of Facts and Grounds for challenge to appeal decision Ref APP/R0660/A/14/2225591
17. Decision Notice: Planning permission Ref 13/4132N Land at White Moss Quarry
18. E-mail dated 10 November 2015 from Renew Land Developments Ltd to Council re White Moss Quarry
19. Draft minutes Southern Planning Committee Meeting 28 October 2015 re Cardway Business Park
20. Schedule of CELPS Strategic Sites
21. Appeal Decision Ref APP/N2345/A/12/2169598 (Core Document ('CD') 41)
22. Appeal Decisions Ref APP/A0665/A/14/22179490, 2179374 (CD 42)
23. Appeal Decision Ref APP/M2325/A/14/2217060 (CD 43)
24. Tablefit Version 2.0 guidance notes (2015) (CD 44)
25. Hall JE and Kirby KJ: The relationship between Biodiversity Action Plan Priority and Broad Habitat Types, and other woodland classifications (JNCC Report No.288, 1998) (CD 45)
26. Jackson DL: guidance on the interpretation of the Biodiversity Broad Habitat Classification (terrestrial and freshwater types): Definitions and the relationship with other classifications (JNCC Report 307, 2000) (CD 46)
27. Mortimer SR et al: The nature conservation value of scrub in Britain (JNCC Report 308, 2000) (CD 47)
28. Appellants' interpretation of Mr Hibbert's Supplementary Proof of Evidence Tables
29. Councillor Hough's Statement
30. Extended Phase 1 Habitat Survey, December 2014
31. Mr Hibbert's Traffic flow diagrams
32. CIL Compliance Statement
33. Mr Hibbert's Appendix 2: Local Plan + Site 18 Traffic flow diagram (revised)
34. Mr Hibbert's Appendix 9 updated
35. TAG Unit M4: Forecasting and Uncertainty (DfT 2014)
36. Traffic signal staging comparison for Junction F: Sandbach Road/Lawton Road/Crewe Road
37. Amended draft planning conditions
38. Appellants' Costs Application

Submitted during second adjournment of the Inquiry:

39. Closing Notes on behalf of the Appellants
40. Revised Closing Notes on behalf of the Appellants
41. Closing Submissions on behalf of Cheshire East Council
42. Response to Appellants' Costs Application on behalf of Cheshire East Council