



Appeal Decision

Inquiry opened on 1 October 2013

Site visit made on 17 October 2013

by Alan Boyland BEng(Hons) DipTP CEng MICE MCIHT MRTPI

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

Decision date: 30 December 2013

Appeal Ref: APP/A0665/A/13/2198931

Land off Barnside Way, Moulton, Cheshire, CW9 8PT

- 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 Richborough Estates Ltd against the decision of Cheshire West & Chester Council.
 - The application ref 12/05668/OUT, dated 21 December 2012, was refused by notice dated 14 May 2013.
 - The development proposed is up to 148 residential dwellings, open space and access off Barnside Way (off Summerfield Drive).
 - The Inquiry sat for 4 days on 1-4 October 2013 inclusive, and I made an unaccompanied site visit on 17 October 2013.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 148 residential dwellings, open space and access off Barnside Way (off Summerfield Drive) on land off Barnside Way, Moulton, Cheshire, CW9 8PT in accordance with the terms of the application, ref 12/05668/OUT, dated 21 December 2012, subject to the conditions in the attached Schedule.

Application for costs

2. At the Inquiry an application for costs was made by Richborough Estates against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all matters except access reserved for subsequent consideration.
4. A planning agreement between the owners of the site, the appellant and the Council, pursuant to s.106 of the Act, was submitted at the Inquiry. In summary this provides for financial contributions towards the costs of provision of play space, sports pitches, a traffic calming/management scheme in Main Road, Moulton and primary school education, and improvements to a public footpath. It further provides that 30% of the dwellings to be provided on the site shall be affordable housing. I refer further to the agreement below.
5. Two Statements of Common Ground (SoCGs), agreed between the appellant and the Council, were submitted. The first essentially set out matters agreed and those still in dispute at the beginning of the Inquiry. The second set out

the matters in respect of housing land supply agreed at the end of the proceedings. I refer further to these below.

Main Issues

6. The main issues are:
 - (i) Whether or not there is a demonstrable 5-year supply of housing sites in the Council's area; and
 - (ii) The effect of the proposed development on the character and appearance of Moulton and the surrounding area, including the gap between Moulton and Davenham.

Reasons

Issue (i) : housing land supply

7. The Government's National Planning Policy Framework (the Framework) indicates (para 47) that, to boost the supply of housing, local planning authorities (LPAs) should identify a 5-year supply of specific deliverable sites for housing against their requirements with an additional buffer of 5% to ensure choice and competition. Moreover, where there has been a persistent record of under delivery of housing the buffer should be increased to 20%. The Framework further states (para 49) that relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a 5-year supply.
8. At the time of the Council's decision on the application and of its Statement of Case (SoC) for the Inquiry its position was that there was not a 5-year supply of housing land in the District. The SoC indicated a current supply of around 2.6 years against requirements indicated in the former Regional Strategy (RS) for the North West 2008.
9. Initially at the Inquiry the Council submitted that as from August 2013 the situation had changed and there was an almost 7-year supply of housing land. This was based on the requirements indicated in the draft Cheshire West and Chester Local Plan (LP), a 5% buffer and application of the 'Liverpool method' for apportioning the backlog over the Plan period (in which the backlog is effectively spread over the whole plan period).
10. This was disputed by the appellant company, which put the supply at some 2.4 years based on the RS requirements, a 20% buffer and application of the 'Sedgefield method' for addressing the backlog (in which the backlog is planned to be cleared in the first 5 years of the plan period).
11. By the end of the Inquiry the Council's position had changed again and, as confirmed by the second SoCG, it was agreed that the supply of housing land is 2.54 years (Council's figure) or 2.78 years (appellant's figure). The requirement figures are agreed; the disparity arises from remaining differences in assumptions on which the supply figures are based. These are matters for consideration in the context of the emerging Local Plan. In any event, they are not material to the decision on this appeal since the supply is clearly below the required 5 years plus buffer either way.
12. The second SoCG records agreement that the most appropriate requirement figure is that identified in the former RS (1317 dwellings per annum). I concur with this, for the reasons indicated below.

13. The RS as a policy document has been revoked, and no longer forms part of the development plan. Nevertheless, it has been widely accepted in decisions by the Secretary of State and Inspectors, and upheld by the Courts, that where the factual evidence base from which the housing figures in the RS were derived remains the last that has been independently tested, these should be used as the basis for assessing housing land supply. Indeed, as recently as August 2013 the Secretary of State followed that approach in an appeal decision in this very District¹.
14. At the time of the Inquiry the draft LP was still out for consultation, and thus did not yet reflect representations made upon it, nor had it been subject to public examination prior to formal adoption. The Council did commission consultants to assess the approach taken to housing provision in the emerging Plan but, as the appellant points out, their conclusions were expressly subject to the caveat that the LP will ultimately be tested through consultation and by 'rigorous examination before an independent inspector', and must be read with that in mind. It would not be appropriate for me to anticipate or pre-empt that process, but I share the appellant's view that the figures in the emerging LP have yet to be independently tested. They cannot at this stage be assumed to be correct or to meet the housing requirements in the District, including those arising from the Council's economic objectives. I therefore attach only limited weight to the housing requirement figures in the draft Plan.
15. It does appear that there has been a record of under-provision of housing in the Council's area for some years. It is now agreed between the parties that a 20% buffer is appropriate but, since use of a 5% buffer would only increase the supply to around 3 years, the decision in this case does not turn on this matter.
16. It follows from adoption of the RS figures for the housing requirement that these should also form the basis for the calculation of the backlog. This is agreed between the parties, as is the figure.
17. As to which method should be used to determine how the backlog should be addressed in this instance, it represents dwellings that were needed but not built. The importance placed by the Government on meeting housing needs is clear from the Framework. It seems to follow from this that, in the absence of evidence that the need for the dwellings in question has disappeared, they should be planned for as soon as is practicable rather than over 10 or more years. This points to use of the Sedgefield method, as is now agreed between the parties. I note that there appears to have been almost universal acceptance of the appropriateness of this method in appeal decisions by Inspectors and the Secretary of State in recent years, particularly since publication of the Framework in March 2012.
18. Accordingly I conclude on the first issue that there is not a demonstrable 5-year supply of housing sites in the Council's area. In consequence, I attach little weight to the Council's policies for the supply of housing and shall consider the proposal in the context of the presumption in favour of sustainable development that lies at the heart of the Framework (paras 14 & 49).

¹ Appeal ref. APP/A0665/A/11/2167430 relating to a site at Tarporley

Issue (ii) : character and appearance

19. Moulton has a compact built-up area with development having taken place around the original tiny core in tranches since the mid 19th century. Concerns about incursion of the currently proposed development into the countryside have to be considered in the light of the probability that much of the existing village is on land that was itself previously open countryside.
20. The site comprises gently undulating agricultural land adjacent to the built-up area of the village, plus a track (Beehive Lane) running northwards from Jack Lane. It lies outside the settlement policy boundary, and hence is subject to policy GS5 in the adopted Vale Royal Borough Local Plan (VRLP). This policy relates to open countryside. It indicates that the character and appearance of such areas will be protected and that new buildings will not be allowed there unless provided for by other policies in the Plan. It is undisputed that the proposed development would be contrary to this policy. However, while it is not directly related to the supply of housing, policy GS5 seeks to direct and constrain such development and, in the absence of provision in the plan for the required supply of housing, it does have a bearing on the supply. In the light of the matters addressed under the first issue, I share the view of the appellant that the Framework requires the weight to be accorded to it to be much reduced.
21. In the emerging LP policy STRAT 8 (rural area) Moulton is not identified as a key service centre, but it is noted that smaller centres acting as local service centres that have an appropriate level of services, facilities and access to public transport have the potential to accommodate development to meet local needs. It is indicated that such settlements will be identified in a later Plan, and that it would be for local communities to facilitate appropriate levels of development through neighbourhood plans and other mechanisms. This policy is still in draft and hence carries only limited weight, but as it stands it does not preclude further development at Moulton. That is a matter for the Local Plan process, but I note that the Council accepted this point at the Inquiry
22. VRLP policy BE1 (safeguarding and improving the quality of the environment) includes at (ix) the assessment consideration that development should take full account of the site characteristics, its relationship with its surroundings and where appropriate views, through siting, scales, layout, density and landscape treatment. In this respect it is broadly consistent with the Framework, so I accord it considerable weight though it has to be taken together with other policies and material considerations.
23. Housing on the scale proposed here would be consistent with the past pattern of growth. It may be larger in area than past tranches of development but, due to the relatively low overall density compared with parts of the existing village, it is broadly comparable in terms of the number of dwellings. I have seen no suggestion that development of a higher density would be preferable.
24. It was accepted for the Council that this appears to be a logical place for development and that it is close to the centre of the village. While I do not entirely share the appellant's view that the appeal site represents the 'missing part of the village', it would to some extent round off the built up area. However, it would also extend development further north into the gap between Moulton and Davenham. This is clearly a matter of considerable concern for

- the Council, with erosion of the gap being referred to in the reason for refusal, in its case at the Inquiry, and by local people.
25. The claimed policy basis for concern about the gap is VRLP policy NE12. Under this, Areas of Significant Local Environmental Value (ASLEVs) are designated and it is stated that within them development will only be permitted where there is no unacceptable harm to the value of the area. However, it is clear from the supporting text to the policy that the concern here relates specifically to the very narrow gap between the southern extent of Davenham and the village of Moulton, where the two almost meet at a single point along Jack Lane. Earlier supplementary planning guidance on ASLEVs had referred to coalescence at that point, but the Council has confirmed that this guidance is no longer 'in force'.
 26. Moreover, it is noted in the VRLP that national planning guidance advised that such local designations should be maintained only where criteria-based policies cannot provide the necessary protection. The Framework similarly gives significant weight only to national landscape designations and only refers to protection of gaps between settlements in the context of Green Belts. Contrary to the apparent belief of some who appeared at the Inquiry, the gap between the two villages here is not designated as Green Belt and it is therefore not subject to the strict controls that apply in such areas.
 27. The ASLEV designation was expressly retained in policy NE12 pending a Landscape Character Assessment Supplementary Planning Document (SPD). This subsequently set out a number of guidelines for landscape management and built development in this area, which is categorised as '4E: East Winsford undulating enclosed farmland'. Significantly, the SPD does not refer to the gap between Moulton and Davenham or to the need for a specific local designation here. Thus policy NE12, and in particular the ASLEV designation here, is inconsistent with the Framework and I attach little weight to it. In the absence of a substantial specific policy basis for protection of the gap here, it falls to be considered in general terms of landscape and visual impacts.
 28. For the avoidance of doubt, I consider that gaps should be considered in terms of the physical and visual separation of built-up areas. I clarify this because the Council's policy witness and some others insisted at the Inquiry that the boundaries of the villages and the civil parishes here are synonymous. As they say, the boundary between Moulton and Davenham parishes runs alongside Beehive Lane and hence alongside the proposed development. They therefore claim that the development would immediately abut Davenham and the gap would be destroyed. However, the logical corollary of this approach is that if the existing village of Davenham begins at the parish boundary, then so does Moulton on its side and the two villages already abut each other along the common boundary and there is no gap between them. That is patently not the case.
 29. It was pointed out at the Inquiry that the Dairy Farm on the east side of Beehive Lane has a Davenham address while 'Tall Trees' nearby on the west side of the lane has a Moulton address. In my experience postal addresses rural properties usually relate to the nearest settlement, rather than determining whether or not they are within it. Whatever social and other affinities the occupants of these and other such individual dwellings might have

with the nearby villages, in physical terms the dwellings concerned lie in the open countryside outside the built-up areas of the villages.

30. It is undisputed that the gaps between Moulton and Davenham would be reduced, and to that extent 'eroded', by the proposed development. Having assessed the gaps on plan and on site I accept the distances given by the appellant, though the figures themselves are of limited significance. The gap north-eastwards from the proposed development to the built-up area of Davenham would be around 440m (2 fields). From the northern edge of the development to the part of Davenham to the north-west along the line of a public footpath linking the two villages the gap would be some 670m (3 fields). I address below the visual impact of the proposed development, but the remaining gaps, while each reduced by about a third from the existing situation, would still be significant in scale. Most importantly, the narrow gap between the villages at Jack Lane, which is the most sensitive in policy terms as indicated above though no longer specifically protected, would not be affected.
31. Any further development proposals in the remaining gaps between the villages would fall to be considered on their own merits. The extent to which they would lead to coalescence would be a factor in such consideration, but I conclude that the appeal scheme would not cause unacceptable harm in this respect.
32. The area between the two villages is largely flat, though there are some slight but significant undulations that limit views. Over almost all of it buildings in one or both of the villages are visible, so the presence of the settlements is felt already. I saw from the footpath extending northwards from Beehive Lane that the western parts of Moulton are particularly prominent, and the rears of houses in Summerfield Drive and those at the end of Barnside Way come into view as one approaches the village. Where the houses are seen they form a hard edge to the built-up area. However, strong hedgerows and trees at least partially screen views of the site from many public viewpoints, mainly along public footpaths, depending on the season.
33. Details of the layout of the proposed development and landscaping are not for determination at this stage; they would be controlled through the approval of reserved matters and planning conditions. However, it necessary for the avoidance of doubt and in the interests of proper planning to require by condition that the development shall be carried out in accordance with the approved plans otherwise than as set out in the decision and conditions. One of the plans in question is the parameters plan submitted with the application. This shows development in 'cells' with substantial landscaping between and around them. It also indicates building heights reducing from 2 storeys over much of the site to 1½ storeys (max ridge height 7m) to the west and north and to single-storey at the northern extremity of the site.
34. This approach, including the potential for significant screening, would mitigate and soften the visual impact of the development in views from the countryside. There would be views at close quarters from the adjacent playing fields and existing properties abutting the site. However, users of playing fields do not normally go there to enjoy views of the surrounding area. Moreover, while it is understandable that adjoining residents would regret the loss of views they

currently enjoy, there is no right to such 'borrowed' views. This is essentially a private interest that it is not the role of the planning system to protect.

35. I conclude on this issue that, while the proposed development would affect the character and appearance of Moulton and the surrounding area, including the gap between Moulton and Davenham, it would not cause unacceptable harm in these respects. It would thus accord with VRLP policy BE1(ix). It would be contrary to policy GS5 but, for the reasons indicated above, I attach little weight to this. Similarly policy NE12 carries little weight in constraining development on the appeal site so there would be no significant conflict with it.

Other matters

Affordable housing

36. The first SoCG records that the development would a policy compliant level of affordable housing, subject to conditions and an agreed obligation. The s.106 agreement includes detailed obligations to this end, and further details of a scheme for the provision of affordable housing could be controlled and secured through a planning condition, which I agree would be necessary.

Sustainability

37. While the village has, like many others, lost some local facilities in recent years due to changing shopping and social habits, it retains a basic range commensurate with a village of its size as listed in the first SoCG. There are higher level facilities, employment opportunities and transport links in nearby towns including Northwich, Winsford and Crewe. These are all served by bus services from Moulton. It was accepted by the Council at the Inquiry that Moulton is a sustainable location for some development, and I concur with this.
38. The further development proposed would not detract from the services and facilities available here. Indeed it would if anything increase the demand for them, helping to sustain any whose viability may be in the balance, and might even lead to additional or enhanced facilities.

Education

39. It is undisputed that the proposed development would generate around 27 additional primary school pupils. It is important to bear in mind that these would not all arrive at once; initially they would be phased as the new dwellings were built and occupied. Subsequently they would do so as younger children reached school age.
40. It is also agreed that the primary school in Moulton is nearly at capacity, but that currently 41 of the 205 pupils on roll live outside the catchment and there is spare capacity at least one other school in the area. While it is unreasonable to expect pupils already at the school to transfer to others, it is reasonable to assume that if planning permission for the proposed development were granted the school would then apply, and if necessary modify, its admissions criteria to give greater preference to children living in Moulton including the new houses. Then as the pupils from outside the preference area moved on to secondary schools they would release spaces to accommodate pupils moving into the village. There might be some overlap, but this would be temporary.

41. I recognise that, as the Head of the school pointed out, the numbers of children in each school year group might not fit neatly into standard class size groups. In my experience this is an issue commonly faced by schools. In some cases it necessitates use of temporary classrooms or mixed-age classes. Neither of these is ideal, and I recognise the reluctance of parents, staff and governors to adopt either measure, but both are successfully used in many schools. Evidence from the local education authority indicates that Moulton would, for example, be far from being the only one in the area with mixed-age classes.
42. The school site is already very constrained, and I understand that the governors of the school rejected an offer by the appellant to fund the cost of an annexe to the school to the tune of £1 million. However, the Head indicated their openness to other suggestions. The s.106 agreement provides for payment by the developer of an education contribution towards the costs of primary school education serving the proposed development, according to a formula proposed by the Council. The manner in which such provision would be made is not specified or agreed, but it seems to me that this is a matter on which the education authority and governors can reasonably be expected to act in accordance with their respective responsibilities.
43. It seems to me that there would be provision for primary education for children of that age in the proposed development.

Highways and traffic

44. The appellant's predictions for traffic generation by the proposed development are not disputed by the Council or the highway authority, and seem to have been derived from a standard methodology. With this in mind, together with the fact that the development would add around 15% to the number of dwellings in the village, I cannot accept the view of some local people that there would be a 'massive' increase in traffic.
45. There would of course, be a significant percentage change in the traffic in Barnside Way, which is currently a small cul-de-sac, but in absolute terms it would be within the capacity of the road. The width of the road is limited, and the alignment is not ideal, but these factors would tend to keep traffic speeds down with safety and amenity benefits. While there would be a slight shortfall against local standards in the 'Cheshire Design Aid', the relevant criteria in the more recent national guidance in Manual for Streets would be met. In the absence of technical evidence to the contrary I share the view of the Council that the proposed access via Barnside Way would operate acceptably and safely.
46. The concerns of residents in Barnside Way about increased traffic, the change in the character of the close and constraints on the freedom they currently enjoy to park on the road are understandable, but the dwellings all have off-street parking and they would be in no worse position than people living in many residential streets.
47. Moulton is unusual in being effectively a cul-de-sac with road access only from Jack Lane to the East and no through routes. With Summerfield Drive being towards the Jack Lane end, traffic to and from the appeal site would not go into the centre of the village, with its narrow streets and tight junctions, unless there was a specific reason to do so such as to visit facilities there. The need to make such trips by car would be reduced by the accessibility of the school,

shops and other facilities in the centre on foot via public footpaths and along Summerfield Drive, and a Travel Plan would encourage use of modes other than the car where appropriate.

48. To the extent that existing problems in and around Main Road would be made worse, the impact could be mitigated by traffic calming/management measures there. The s.106 agreement would require the developer to make a financial contribution towards the costs of such a scheme.
49. It is proposed to use Beehive Lane for construction traffic, which I agree is preferable to use of Barnside Way for this purpose. The lane is a public right of way, but this does not preclude use also for private purposes as some have suggested. Indeed it already provides access to several existing dwellings. Measures including provision of passing bays are proposed, and some lopping of low branches of overhanging trees might be required, but I consider that there is sufficient width to accommodate the construction traffic without significant harm to trees and hedges alongside the lane.
50. There are statutory provisions relating to public rights of way, but it seems to me that it would be necessary to ensure that safe and convenient use by the general public and access to the properties served by the lane would be maintained at all times throughout the construction phase. This could be controlled through a construction management plan, which could in turn be secured by planning condition.
51. It seems to me that conditions would also be necessary to secure the restoration of the lane after completion of the development and to preclude its use for vehicular access to completed dwellings on the site (except by emergency vehicles) in order to maintain its character and use as a rural right of way. This would not preclude access by pedestrians and cyclists.
52. In the absence of any objection by the highway authority I am satisfied that there would be no unacceptable harm in respect of highways and traffic.

Drainage

53. The Environment Agency assesses the site as lying within flood zone 1 (low risk) and the Flood Risk Assessment, which has not been challenged, confirms that generally the risk is low here. At the Inquiry evidence of flooding of parts of the site was submitted, but this does not negate the overall assessment. The proposed houses could be protected from any such flooding by setting appropriate minimum floor levels. A drainage scheme restricting run-off from the site to the 'greenfield' or existing rate would avoid any worsening of the existing situation on adjacent land, including the playing field.
54. A local resident questions the adequacy and safety of swales here. However, there is wide experience of successful and safe use of sustainable drainage measures, including but not confined to swales, in similar circumstances. I have seen nothing to counter the expert assessment that such measures would be practicable here. Conditions to secure appropriate and safe drainage and protective measures would be necessary, but it would be unreasonable to require the developer also to address existing off-site issues.
55. The relevant statutory consultees, the Environment Agency and United Utilities, have no objections to the proposed development in respect of surface water drainage, and the latter has confirmed that connection of the development to

the main sewerage system is practicable and acceptable. The Council confirms that the development would safeguard an existing outfall from a septic tank serving the cottages on Beehive Lane. Moreover, it might provide the opportunity for them to be connected to the main sewer.

56. Subject to such conditions, the development would accord in this respect with policy BE1.

Ecology and archaeology

57. The site is not subject to any ecological designation, but statutory provisions and VRLP policies NE4 and NE5 seek to safeguard certain species together with nesting birds and habitats generally. Measures to safeguard and mitigate any impacts on protected species such as badgers, bats and great crested newts, on habitats and on breeding birds could be secured through conditions.
58. Similarly, the site is not covered by any statutory heritage designation but it is of some archaeological interest. A programme of archaeological investigation and mitigation could be secured through a condition, in accordance with VRLP policies BE1 and BE14 and the national Framework.

Playing fields and public footpaths

59. The proposed development would include open space in excess of the minimum required by the Council's Supplementary Planning Document on the subject (SPD3). This could be secured through the approval of the reserved matters. No formal play provision is proposed on-site, but the s.106 agreement provides for a contribution to play provision off-site. This might take the form of improvements to the adjacent play area and playing field owned and managed by the Moulton Playing Field Trust or, failing that, of provision elsewhere in the vicinity.
60. A further requirement of the SPD for a development of this size is provision of a playing pitch. Again there would be none within the site but the s.106 agreement provides for a contribution to provision off-site. Again this could be used to improve the adjacent pitch provided by the Trust, perhaps by enabling measures to address current drainage issues, or for provision elsewhere.
61. However, the Trust points out that it is a registered charity, with the playing field being subject to a covenant restricting use of the field and equipment to children. Therefore it cannot provide for the recreational needs of adults. If that remains the case then it would be necessary to find another location for a playing pitch. Bearing in mind that proximity to the housing would be less important for adults than for children, I have seen nothing to suggest that there would be insurmountable difficulties in doing so.
62. An original proposal to establish a new footpath across the playing field has been dropped by the appellant, as indicated on the revised parameters plan. No existing footpaths would be closed or diverted, though FP Moulton 2 would run through the development, following areas of green space including the 'village green'. The s.106 agreement provides for a contribution towards much needed improvement of FP Moulton 8, which runs along the northern boundary of the site. Improvement of public rights of way is sought by the Framework.

Localism

63. The Council and a number of local residents and groups referred to the Government's 'localism agenda'. They appear to interpret this as conferring a 'right to say no' to development that they do not welcome, and expressed concern that local communities often feel 'done to' by appeal decisions. However, the Secretary of State has made it clear² that 'the changes to the planning system that give communities more say over the scale, location and timing of developments in their areas carry with them the responsibility to ensure that local plans are prepared expeditiously to make provision for the future needs of their areas'.
64. This reflects one of the core planning principles set out in the Framework (para 17). Amongst these is that 'planning should be genuinely plan-led, empowering local people to shape their surroundings'. Further, it stresses that neighbourhoods should develop plans that 'support the strategic development needs ... including housing and employment development' and that they should plan positively to support local development (para 16).
65. Thus the local community can influence decisions here most particularly through the emerging Local Plan and the neighbourhood plan. These will have to address all three elements of sustainable development and make robust provision in an integrated way rather than considering them individually. The Moulton Village Design Statement and the earlier Moulton Parish Plan may well be valuable inputs to the neighbourhood plan, but they essentially address only the environmental role and in the latter case, 'internal' economic and social issues, without regard to how Moulton might play its part in meeting wider economic and social needs.
66. Only when the Local Plan and neighbourhood plan have been subject to all the processes through to adoption will they carry their full weight in the decision-making process. Here the adopted Local Plan is out-of-date for the reasons I have already indicated, the emerging Local Plan is only in draft and there is as yet no neighbourhood plan.

Conditions and planning obligation

67. I have considered what conditions would need to be attached to a planning permission in addition to those statutorily required for an outline permission and those discussed above. Some of the suggested conditions would require modification to accord with Circular 11/95: *The use of conditions in planning permissions*, including removal of phrases purporting to provide an informal procedure to waive or modify their effect. Section 73 of the Act provides a formal mechanism for such variations.
68. I concur with the Council's concession that a condition to secure a phasing scheme for a development of this size is not necessary. However, this would not preclude phasing of the development, and where appropriate conditions would need to be framed to accommodate phasing if required.
69. Details of vehicular, cycle and pedestrian access, beyond those already submitted, and of parking provision for the proposed dwellings would need to

² Para 32 of Secretary of State's decision on appeals APP/G1630/A/11/2146206 & 2148625 (Bishop's Cleeve, Glos.)

- be secured through conditions in the interests of highway safety and in accordance with AVLP policy T1.
70. To ensure that the external appearance of the development is appropriate to its surroundings in accordance with policy BE1, it would be necessary to control the external materials to be used in construction of the dwellings.
71. In addition to the control of landscaping through approval of the reserved matters and a condition, a condition to secure appropriate protection of existing trees to be retained would be required in interest of visual amenity, in accordance with VRLP policy NE7.
72. Control over external lighting would be necessary to minimise the impacts upon visual and residential amenities and pollution of the night sky, in accordance with policies NE7 and BE1.
73. In the interests of sustainable development and as required by policy BE21, it would be necessary to require that a proportion of the energy consumed by the development would come from renewable sources or alternative measures are employed to reduce energy consumption.
74. In order to protect nearby residents from disturbance, in accordance with policies BE1, T1 and P3, it would be necessary to secure control of aspects of construction methodology.
75. In the interests of privacy and visual amenity, in accordance with policy BE1, it would be necessary to control the details of the means of enclosure and boundary treatments on the site.
76. To safeguard the openness and visual amenity of the open countryside, protect human health and to ensure that the residential amenities that occupiers would reasonably expect to enjoy would be adequately protected in accordance with policies GS3, NE7 and BE1, it would be necessary to control details of substations and other utility structures on the site.
77. I have addressed above the principal provisions of the s.106 agreement, and am satisfied that they meet all the tests set out in para 204 of the Framework and in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore given full weight to the agreement as a planning obligation.

Conclusions

78. Having regard to the planning obligation and conditions that could be attached to a planning permission to mitigate and control aspects of the scheme, and to the reduced weight that can as indicated be attached to certain policies in the absence of a 5-year supply of housing land in the District, I have found that the proposed development would cause only limited harm and policy conflict. This would be outweighed by the contribution that the development would make towards meeting the need for housing, including affordable housing, in the area arising from national policy and the Council's social and economic objectives.
79. For the reasons given above I conclude that the appeal should be allowed.

Alan Boyland

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter	Of Counsel, instructed by David Dickinson, Legal Manager, Environmental Team, Cheshire West & Chester Council
<i>He called</i>	
Cllr Helen Weltman	Member of the Council (Davenham & Moulton Ward) and Chairman of the Council's Chester Planning Committee
Duncan McCorquodale BSc(Hons) MA MRTPI	Local Plan Manager, Spatial Planning Team

FOR THE APPELLANT:

Christopher Young	Of Counsel, instructed by Patrick Downes of Harris Lamb Chartered Surveyors
<i>He called</i>	
Philip Jones CEng MICE MIGHT MITE(US)	Principal of Phil Jones Associates
Andrew Williams BA(Hons) DipLA DipUD CMLI	Partner in Define
James Donagh BA(Hons) MCD MIED	Associate at Barton Willmore
Mike Jones BA(Hons) MRTPI	Strategic Land Director, Richborough Estates
Simon Hawley BA(Hons) MA MRTPI	Associate in Harris Lamb Planning Consultancy
Patrick Downes BSc(Hons) MRICS	Director at Harris Lamb Chartered Surveyors

INTERESTED PERSONS:

Cllr Elton Watson	Member of the Council (Davenham & Moulton Ward)
Cllr Tony Rigby	Chairman of Moulton Parish Council
Cllr A Aston	Vice Chairman of Moulton Children's Playing Field Trust
Jane Birch	Head of Moulton School
Cllr Arthur Wood	For Davenham Parish Council
Margaret Newton	Local resident
Brian Scarisbrick	For the Moulton Action Group (Moulton Matters)
Peter Collins	Local resident

DOCUMENTS submitted at the Inquiry

Common documents

- 1 1st Statement of Common Ground between appellant & Council (general)
- 1A Suggested conditions (addendum to doc 1)
- 2 2nd Statement of Common Ground between appellant & Council (housing land supply)
- 3 Planning agreement between owners of land, appellant and Council

Submitted by the local planning authority

- 4 Schedule of housing land requirement and 5-year housing land supply
- 5 Sites in dispute (Moulton appeal) – comparisons of supply
- 6 Draft Local Plan (July 2013) [*Note: the subsequent publication draft Local Plan (Sept 2013) was submitted prior to the Inquiry as CD/A.16*]
- 7 2013 Strategic Housing Market Assessment (July 2013)
- 8 Study of economic viability of affordable housing requirements (July 2013)

Submitted by the appellant

- 9 Transcription of meeting of Council's Strategic Planning Committee, 18 April 2013
- 10 Ditto, 9 May 2013
- 11 Extract from Guidelines for Landscape and Visual Assessment (3rd Ed)
- 12 Extract from Inspector's report on Vale Royal Local Plan First Alteration

Submitted by Interested persons/bodies

- 13 Statement & photos by Moulton Action Group (Moulton Matters)
- 14 Statement & Census data by Cllr Elton Watson
- 15 Statement by Cllr A Aston
- 16 Statement by Cllr Arthur Wood for Moulton Parish Council
- 17 Statement & photos by Margaret Newton

SCHEDULE

Conditions 1-28 attached to outline planning permission for up to 148 residential dwellings, open space and access off Barnside Way (off Summerfield Drive) on land off Barnside Way, Moulton, Cheshire, CW9 8PT in accordance with the terms of the application, ref 12/05668/OUT, dated 21 December 2012:

General

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission and thereafter the development shall only be carried out in accordance with the details as approved.
3. Details of the, appearance, landscaping, layout, and scale, (herein called 'the reserved matters') for each phase of the development shall be submitted to and approved in writing by the local planning authority before any development in that phase is commenced. Thereafter the development in each phase shall be carried out in accordance with the approved details for that phase of development.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan – Plan no. DR-5-04
 - Parameters Plan – Plan no. DR-5-01 rev. A
 - Final Indicative Masterplan – Plan no. DR-5-02 rev I (Illustrative)
 - Highway Access – Transport Assessment fig. 6.1

Affordable housing

5. 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 in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - a) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
 - b) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - c) 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;
 - d) the arrangements to ensure that such provision is affordable both for first and for subsequent occupiers of the housing concerned; and

- e) 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.

Materials

6. Prior to the commencement of each phase of the development, samples of the external materials to be used in the construction of the dwellings hereby permitted in each relevant phase shall be submitted to and approved in writing by the local planning authority. Development within each phase shall be carried out in complete accordance with the approved materials for that relevant phase of development.

Access & parking

7. Notwithstanding the submitted details, no development shall commence until details of vehicular/pedestrian access and pedestrian and cycle links to be provided on site have been submitted to and approved in writing by the local planning authority. The approved access(es) and links shall be completed in accordance with the approved scheme and made available for use prior to the first occupation of any of the dwelling units and shall thereafter be retained in the approved form.
8. No development shall commence until details of measures to preclude vehicular access via Beehive Lane, except by emergency vehicles, to any of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The approved measures shall be put into effect prior to the first occupation of any of the dwelling units and shall thereafter be retained.
9. Prior to the commencement of each phase of the development details of parking for cars and cycles for that relevant phase of development shall be submitted to and approved in writing by the local planning authority. The details shall include the number, type and design of each parking facility for that relevant phase. The agreed parking facilities for each phase of development shall be completed and available for use prior to the occupation of each dwelling unit, and shall thereafter be retained and kept available for parking at all times.

Drainage and flooding

10. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (BWB Consulting, Ref; BWB/2090/FRA/REV A, December 2012) and the following mitigation measures detailed therein:
 - a) Finished ground floor levels shall be raised to a minimum level of 150mm above existing ground levels;
 - b) Surface water discharge rates from the total site shall be limited to the current undeveloped equivalent of 42.6 litres/second (QBAR - mean annual flood);
 - c) Use of attenuated storage for the 100-year design standard (including adjustment for climate change); and
 - d) Use of swales and ponds.

The mitigation measures shall be fully implemented prior to occupation of the dwellings hereby permitted.

11. The development hereby permitted shall not commence until a sustainable urban drainage scheme (SUDs), including a surface water regulation scheme and a scheme for the management of overland flow to prevent surcharging of the site's surface water drainage system, has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be fully implemented and subsequently retained, in accordance with the timing or phasing arrangements embodied within the scheme. The scheme shall include:
 - a completed copy of the hydraulic calculations used to design the surface water drainage system;
 - all relevant plans and details of the drainage design; and
 - a summary document to link the strategy used in the drainage design to the previously approved Flood Risk Assessment (to clarify run-off rates, storage volumes etc.).
12. The development hereby permitted shall not commence until full details of existing levels and proposed finished floor slab and site (garden) levels of each proposed dwelling have been submitted to and approved in writing by the local planning authority. All submitted levels details must relate to the levels of adjoining land. The development shall be carried out in accordance with the approved details and completed prior to the occupation of each dwelling hereby permitted.
13. The development hereby approved shall not commence until a foul drainage scheme for the site has been submitted to and agreed in writing by the local planning authority. No part of the development shall be brought into use until the approved drainage systems have been constructed and completed in accordance with the approved plans.

Archaeology

14. No development shall take place on the site until a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

Trees and landscaping

15. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and appropriate working methods (the arboricultural method statement) in accordance with the British Standard BS5837:2012 - Trees in relation to design, demolition and construction – covering the application site and Beehive Lane has been submitted to and approved in writing by the local planning authority. These measures shall be carried out in accordance with the approved schemes before any other site clearance, preparatory work or development takes place.
16. Prior to the commencement of each phase of the development full details of the soft landscaping works and details of any hard surfaces, including new pedestrian footpath links, for that phase of development shall be submitted to and approved in writing by the local planning authority pursuant to condition 3 above. The details shall include areas to be landscaped including the

numbers, size, locations and species of trees and shrubs to be planted. The approved details for that phase shall be implemented wholly in accordance with the approved phasing plan. Any failures in the first five years after planting shall be replaced in accordance with the approved scheme.

Means of enclosure

17. Details of all means of enclosure including fencing, walls, railings and boundary treatments, shall be submitted to and approved in writing by the local planning authority before development commences. Such enclosure as approved shall be erected in accordance with the approved details prior to any dwelling being occupied. Thereafter, the approved fencing/walls shall be retained.

Habitats, ecology and species protection

18. A habitat management and enhancement plan shall be submitted to and approved by the local planning authority prior to the commencement of the development. The plan shall include:
 - a) Description and evaluation of the features to be managed;
 - b) Ecological trends and constraints on site that may influence management;
 - c) Aims and objectives of habitat management and enhancement ;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including a project register, an annual work plan and the means by which the plan will be rolled forward annually);
 - g) Personnel responsible for implementation of the plan;
 - h) Monitoring and remedial / contingencies measures triggered by monitoring.

The plan shall be carried out as approved, unless otherwise approved in writing by the local planning authority.

19. Prior to the commencement of each phase of the development a scheme and timetable for the provision of bat and bird boxes for that phase of development, including the numbers and locations, shall be submitted to and approved in writing by the local planning authority. The bat and bird boxes shall be installed in accordance with the approved scheme. Thereafter the bat and bird boxes shall be retained.
20. Prior to the commencement of development an up to date badger survey shall be undertaken and method statement detailing any mitigation to avoid harmful impacts to badgers, including a timetable for any mitigation measures required, shall be submitted and approved in writing by the local planning authority. Any measures indicated in the method statement shall be carried as approved.
21. Prior to the commencement of development a great crested newt method statement shall be submitted to the local planning authority of its written approval. The details shall include a timetable for the provision of newt mitigation areas, details of soft landscaping and details of on going maintenance of the areas. The newt mitigation areas shall be implemented

and maintained in accordance with the approved details

22. No vegetation removal shall be undertaken during the bird breeding season (1st March to 31st August inclusive).

External lighting

23. Prior to the commencement of each phase of the development, details of external lighting (including any floodlighting) for that phase of development shall be submitted to and approved in writing by the local planning authority. Such details shall include:
- a) the equipment and supporting structures;
 - b) isolux drawings to demonstrate the levels of illumination within the site and the amount of any overspill of lighting beyond the site boundaries; and
 - c) the hours at which such lighting is to be operated.

External lighting for each phase shall be brought into use in accordance with the approved details no external lighting shall be operated

Utility structures

24. Prior to the commencement of each phase of the development, full details of any proposed substations or other utility structures for that phase of development shall be submitted to and agreed in writing by the local planning authority. The structures shall be implemented in accordance with the approved details for that phase of development.

Renewable energy/energy efficiency

25. No development shall commence until a scheme to demonstrate that not less than 10% of the total energy consumption of the development will be provided by means of renewable energy or that alternative measures will achieve at least 10% less energy consumption than similar development constructed in accordance with the current Building Regulations. The development shall be completed wholly in accordance with the approved details.

Construction methodology

26. Prior to the commencement of the development, a detailed construction methodology statement in accordance with BS:5528 shall be submitted to and approved in writing by the local planning authority. The statement shall include full details of the following:
- a) Proposed construction access arrangements, including provisions to ensure safe and convenient access at all times by users of public rights of way and use of Beehive Lane for access to existing properties served by it, and provisions and a programme for the reinstatement of the Lane following the completion of construction;
 - b) Construction vehicle routes and the impact on the existing residential highway networks;
 - c) Wheel washing facilities or other measures to prevent the depositing of mud on the public highway;

- d) Site compound and site offices, and the parking of vehicles of site operatives and visitors;
- e) Appropriate mitigation techniques to prevent unnecessary disturbance to neighbouring properties especially from noise, dust, vibration, light and odour; and
- f) Details of the management/operation for the construction of the dwellings.

No development shall take place except in complete accordance with the approved statement.

- 27. There shall be no piling in carrying out site excavation or any other part of the development.
- 28. No construction or other operations shall be undertaken on the site outside the hours of 0800 to 1800 hours Mondays to Fridays and 0800 to 1300 hours on Saturdays. No works shall be undertaken on the site on Sundays or Bank Holidays, unless emergency works are required.

END

Richborough Estates