



Appeal Decision

Site visits made on 4 and 5 January 2023

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2023

Appeal Ref: APP/A0665/W/22/3299613

Land south of Chester Road, immediately west of 613 Chester Road to the north of Kennel Wood, Sandiway

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tabley Homes Ltd and Renew Land Sandiway Ltd against the decision of Cheshire West and Chester Council.
 - The application Ref 21/02180/FUL, dated 21 June 2021, was refused by notice dated 26 November 2021.
 - The development proposed is the development of 14 no. residential units, including 4 no. affordable dwellings, with associated infrastructure and landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I conducted two site visits. The visit on 5 January included access to the site itself, whilst the earlier one involved only publicly accessible areas in its surroundings.
3. The appellants submitted a plan with a revised layout for the scheme with their appeal statement, which appears to be the subject of a different planning application. This plan involves considerable material change to the layout, depicts a reduced number of dwellings, and differs substantially in these respects from the plans and the description of development that were before the Council when it made its decision on the application that led to this appeal. For these reasons, a consideration of the merits of that revised layout is outside the scope of this appeal. In reaching this view, I have taken into account the clear advice of the Planning Inspectorate's 'Procedural guide: Planning appeals – England' (the Procedural Guide) (at M.2.1), that if "an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought".
4. The appellants introduced new evidence relating to biodiversity matters at the final comments stage of the appeal. I sought comments on this material from the Council, and gave the appellants the opportunity to make final comments on that specific matter. Consequently, whilst the biodiversity material was received outside of the timetable for new evidence outlined in the Procedural Guide, I consider that parties' interests would not be prejudiced as a result of me taking it into account.

5. A duly executed unilateral undertaking pursuant to s106 of the Town and Country Planning Act 1990(as amended) was submitted to the Planning Inspectorate on 9 February 2022. The undertaking would secure the provision of affordable housing, and contributions towards biodiversity net gain, educational provision, open space, sports and recreation and the Council's legal and monitoring fees. I will take the planning obligation into account in my determination of the appeal.

Main Issues

6. From the material presented and my observations onsite, I consider there to be six main issues in this appeal, which are:
- whether the appeal site would be a suitable location for housing for the purposes of the development plan;
 - the effects of the proposed development on the character and appearance of the area;
 - whether the proposed development would make acceptable provision of affordable housing in the context of the development plan;
 - the effects of the proposal on biodiversity with reference to protected species and protected sites;
 - the effect of the proposed development on the living conditions of the occupants of 613 Chester Road particularly in terms of privacy and access to natural light; and
 - whether safe and suitable access to the site would be achieved, with particular reference to pedestrians and other users of the footway.

Reasons

Site, surroundings and proposed development

7. Situated adjacent to Chester Road, the appeal site is a largely level, mostly open area with a line of mature trees along its boundary with the highway. There is an existing access to the site from Chester Road, with hard-standing and a small cluster of single-storey shed-like structures adjacent to this, which according to the appellants have been used in association with the retailing of animal feed and logs. A ribbon of relatively large dwellings in generous plots is located to one side of the appeal site, which culminates in 613 Chester Road immediately adjacent to the appeal site's boundary.
8. To the other side, three dwellings are set perpendicularly to, and deeply set-back from, Chester Road. Beyond those there are largely open fields which separate Chester Road from the development around Blakemere Village. Kennel Wood (also referred to as Sandiway and Nook Wood in appeal representations, and hereafter referred to as "the Wood") forms a densely wooded backdrop to the rear of the appeal site. The Wood can be accessed from Chester Road by a right of way within the appeal site adjacent to its boundary with No 613. Taken together these aspects of the south side of Chester Road, on which the appeal site is situated, impart a marked difference in character to the more consolidated residential development pattern to the north.

9. The appeal proposal would see the development of the site as described above, with ten detached houses of varying types running parallel with Chester Road, but set considerably back from it behind an access road, and the existing line of trees, and some associated landscaping. Four semi-detached dwellings would be located to the western side of the appeal site orientated in a perpendicular manner to Chester Road, and, like the detached dwellings, separated from it by landscaping and existing trees.

Location

10. The appeal site is outside of the settlement boundary for Cuddington and Sandiway, as established by the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (adopted July 2019) (the Detailed Policies). The Cheshire West and Chester Local Plan (Part One) Strategic Policies (adopted January 2015) (the Strategic Policies) establishes (at paragraph 5.73) that land outside settlement boundaries is to be considered as countryside for the purposes of the development plan.
11. Taken together Policies STRAT1, STRAT2, STRAT8 and STRAT9 of the Strategic Policies Plan, Policy DM19 of the Detailed Policies Plan, and Policy 14 of the Cuddington Parish Neighbourhood Plan (made February 2019) (the Neighbourhood Plan), establish that residential development is to be focussed in identified settlements, and development within areas outside their boundaries would be restricted to that which requires a countryside location, and cannot be accommodated within identified settlements. Policy STRAT9 of the Strategic Policies and Policy DM19 of the Detailed Policies set out the types of development that would, in principle, be acceptable in countryside locations – including, amongst other things several forms of residential development. I acknowledge that paragraph 5.22 of the Strategic Policies refers to locating most new development within *or on the edge* of the Borough's main urban areas. However, it is clear that the Strategic Policies Plan (at paragraph 5.73) anticipates that any such "edge" sites are to be identified in the Detailed Policies Plan.
12. The Council can demonstrate a 5-year supply of housing land, and the housing requirement for Cuddington and Sandiway as set out in the Strategic Policies has already been achieved, with some 7 years of the plan period still to run – positions that are not disputed by the appellants. In these terms, it has not been demonstrated that the appeal scheme would be required to meet minimum levels of development for new housing. Furthermore, the appeal site is not included on the Council's Brownfield Land Register and has not been identified for development in the Neighbourhood Plan. Neither would the appeal site's development constitute a rural exception site per Policy DM24 of the Detailed Policies. It has not been suggested either that the appeal proposal would be necessary to meet any needs for essential rural workers' dwellings. Consequently, the appeal scheme would not meet the relevant exceptions relating to the provision of housing outside of defined settlement boundaries as set out in the development plan.
13. Consequently, whilst I readily accept that the proposed development would not result in the development of "isolated homes" for the purposes of the National Planning Policy Framework (the Framework), taking the above considerations together leads me to the conclusion on this main issue that the proposed development would not be a suitable location for housing for the purposes of

the development plan. In these terms the appeal scheme would conflict with Policies STRAT1, STRAT2, STRAT8 and STRAT9 of the Strategic Policies Plan, Policy DM19 of the Detailed Policies Plan, and Policy 14 of the Neighbourhood Plan, insofar as, taken together and amongst other things, they seek to direct development to identified settlements and minimise the loss of greenfield land.

Character and appearance

14. As touched on above, the sporadic nature of development along the south of Chester Road, broken up by open fields, is in marked contrast to the more consolidated development to the north and imparts clearly a more rural character to the side of the highway on which the appeal site is situated. The largely open character of the appeal site, taken together with the views through it to the Wood behind are an integral part of this character, and contribute to the pleasant contrast between the two sides of the road. Moreover, the appeal site at present contributes to views from the adjacent right of way, which is used to access the Wood, views which further underline the distinct characters of either side of the road.
15. The appeal scheme would see the introduction of a considerable amount of buildings and other development, including the houses (some of two and a half storeys), garages, boundary treatments and access roads which would serve substantially to erode the open nature of the site. These aspects of the proposal, taken together with the considerable extension of the existing ribbon of development that it would bring about would diminish the clear and pleasing contrast between the two sides of Chester Road to the detriment of the area's character. The extent of the proposed development would be visible from the adjacent right of way associated with the Wood, where the fundamentally changed appearance of the site, and its concomitant dilution of the character of the south side of the road would be clearly discerned.
16. In arriving at this view, I have taken into account the appellants' Landscape and Visual Appraisal (dated May 2021) which finds that any landscape and visual harms would be "minor moderate" should proposed landscaping enhancements be carried out as part of the scheme. Nevertheless, it also notes the moderate major significance of the effects relating to the view from the adjacent right of way through the site. Moreover, the indicative landscape plan relating to the proposal is not abundantly clear in terms of how and what planting would be deployed adjacent to the public right of way. Consequently, in these latter terms, I am not persuaded that proposed planting, whilst having the potential to "soften"¹ the effects of the built form, would fully mitigate the impacts on the views from the right of way, which would run directly adjacent to the proposed residential boundaries.
17. Consequently, whilst I acknowledge both the presence of development to three sides of the proposal, and the intention of the appeal scheme's design to reflect the plotting of other houses along the south side of the road, the reasons set out above lead me to the view that the proposed development would nevertheless fail to recognise the intrinsic character and beauty of the countryside. Whilst the appellants pray in aid of an appeal decision² in a neighbouring authority involving a site considered as open countryside, the extent of the development on the three sides of that site appears from the

¹ Per the appellants' Landscape and Visual Appraisal

² APP/R0660/W/20/3251104

decision to be more substantial than in the current case, and it is also clear that views from rights of way and accessible open spaces would not be similarly affected in that other case. In any event, it is well established that every appeal needs to be determined on its own merits.

18. Although for the reasons set out above, the proposed development's effects in these terms would be specific and localised, they nevertheless lead me to the conclusion on this main issue that material harm would be caused to the character and appearance of the area. As a consequence, the appeal scheme would in these terms conflict with Policies ENV2 and ENV6 of the Strategic Policies; Policy DM3 of the Detailed Policies; Policies 1, 5 and 15 of the Neighbourhood Plan; and the National Planning Policy Framework (the Framework). Taken together, and amongst other things, these policies seek to ensure that developments: respect and are sympathetic to local character and take full account of the site, its relationship with its surroundings and where appropriate views into, over and out of the site; and reinforce the area's character and identity; and respect and wherever possible enhance the landscape setting of the Parish.

Affordable housing

19. Taken together Policy SOC1 of the Strategic Policies, and Policy DM23 of the Detailed Policies require the size and design of affordable housing to meet the specific identified need for the area, and to be dispersed throughout the site unless there are specific circumstances or benefits that warrant otherwise. Policy SOC3 seeks a mix of housing types, tenures and sizes for both market and affordable housing.
20. The appellant has supplied a planning obligation that would secure four units on the site, two for affordable rent and two for discounted market sale. In terms of the overall proportion of affordable housing provided, and the mix of units sought, this would meet the requirements of Policies SOC1 and SOC3.
21. However, the affordable houses would be provided in the form of the semi-detached dwellings in the rear corner of the site close to its access, and would not therefore be dispersed throughout the site. Whilst the appellants consider that the arrangement would result in a development pattern in keeping with the character and appearance of the area, I disagree on this point for the reasons set out above, and consequently consider that the failure to disperse the affordable dwellings through the site does not amount to the specific circumstances that would warrant a different pattern of affordable housing provision for the purposes of Policy SOC1 of the Strategic Policies Plan.
22. Consequently, I conclude on this main issue that whilst the proportion and mix of affordable housing provided by the appeal scheme would accord with the requirements of the development plan, the proposed development would nevertheless fail to make acceptable provision of affordable housing for the purposes of Policy SOC1 insofar as it requires such dwellings to be dispersed through sites.

Biodiversity

23. I acknowledge that the submitted unilateral planning obligation would include contributions toward providing biodiversity net gain. In these terms, the proposed development would accord with Policy DM44 of the Detailed Policies

and the Framework (at paragraph 174(d)) insofar as they require planning decisions to provide net gains for biodiversity, wherever possible within the Borough. Nevertheless, the appeal site adjoins the Kennel Wood Sandiway Local Wildlife Site (LWS). The desirability of a 5m buffer or standoff zone within the appeal site at its border with the Wood to the south is recognised in the appellants' Bat Transect Survey (dated June 2022) (at paragraphs 4.4 to 4.5) to protect the woodland edge from direct impact and lighting. Such a buffer would also facilitate the ecological network and mitigate adverse impacts arising in terms of light, noise and invasive species to the adjacent LWS. However, the appellants' Biodiversity Impact Assessment (dated November 2022) (the BIA) relates to the alternative proposal for the site, which at the time of writing appears to be the subject of a live planning application, one with a materially different layout to the proposal before me in this appeal, and one which for the reasons given above is not subject to my consideration of the merits of the proposal.

24. Consequently, the illustration contained in the BIA (at appendix A) showing how such a buffer could be facilitated (annotated on the plan as 'Bat Standoff') is in relation to that different layout. I have been supplied with no similar illustrative material in relation to the proposed development subject to this appeal. Whilst the appellant considers that an appropriate buffer could be required by way of a planning condition in this case, it is not clear to me how this could be achieved in practice due to the close proximity of the dwelling and parking at Plot 4 of the proposed development to the boundary with the Wood. I do not therefore share the appellants' confidence that an appropriate buffer could be facilitated "without impacting the layout submitted".
25. For these reasons, I conclude on this main issue that it has not been successfully demonstrated that the proposed development would avoid harm to biodiversity in terms of protected species (bats), the adjacent LWS and the wider ecological network. In these respects, the proposed development would therefore conflict with Policies ENV4 of the Strategic Policies, DM44 of the Detailed Policies and the Framework. Amongst other matters, these policies seek to ensure that impacts on biodiversity are minimised including by establishing coherent ecological networks; that proposals are designed in line with the mitigation hierarchy; and that sites are protected from loss or damage taking account of impacts to protected and priority species.
26. I return below to issues relating to European protected sites.

Living conditions

27. The appeal scheme would introduce, on its Plot 14, a two-and-a-half storey house close to the boundary with No 613, and adjacent to the existing right of way access to the Wood. The proposed house on this plot would have no windows on the flank elevation that would face towards No 613. Although it would include windows on its rear elevation, these would afford only limited and oblique views of the lower part of the garden of No 613. However, there would be a degree of inter-visibility between the proposed garden of Plot 14, and the upper rear windows and balcony of No 613. However, as the balcony and upper windows of No 613 are clearly visible from the adjacent right of way I consider that the proposed development would not lead to a material reduction in privacy available to the occupants of the existing dwelling.

28. Whilst the proposed development could throw shadows on limited parts of No 613's amenity spaces at some times of the day, I consider that this would not lead to a material reduction in the amount of daylight or sunlight available to the occupants of that existing dwelling.
29. Accordingly, for these reasons, I conclude on this main issue that the proposed development would not cause material harm to the living conditions of the occupants of 613 Chester Road. It follows that the appeal scheme would not therefore conflict with policies SOC 5 of the Strategic Policies and Policy DM2 of the Detailed Policies, which, taken together and amongst other matters seek to ensure that developments do not give rise to significant adverse impacts on the residential amenity of the occupiers of existing properties.

Access

30. There is an existing uncontrolled pedestrian crossing point adjacent to the right of way at the eastern edge of the site, and a route through the proposed development would link to that. At this point of the highway the speed limit is 40mph. During my two site visits, I used the crossing several times and also observed traffic volumes at different times of the day, albeit admittedly these were only snapshots.
31. My general observations of the use of the road, and the arrangement of the crossing accord with those of my colleague in the previous appeal³ relating to the site, mainly that those using the crossing could see sufficient distances down either side of the road, but that such distances do not automatically mean that sufficient time would be available to cross the road, particularly in one movement. For these reasons, crossings may well entail waiting on the refuge in the middle of the road.
32. Whilst the proposed development may lead to an increase in the number of people using the crossing, including families with children and potentially people with restricted mobility, given the overall quantity of development proposed this would be unlikely to result in a material increase in the existing usage as observed in the Appellants' submitted Pedestrian Crossing Assessment (the Assessment). Moreover, that Assessment highlights that no collision incidents were recorded by the CrashMap database in the five years prior to the date of its production, a matter that is not disputed by the Council. Taking these considerations together, with the good visibility available from the kerb, and the buffer around the central refuge created by the chevrons and right turn pocket adjacent to it, I consider that the existing crossing would be adequate to serve the access needs of the proposed development.
33. In arriving at this view, I note the findings of the Inspector in the previous appeal relating to the site, insofar as their conclusions that a controlled pedestrian crossing or similar would be necessary to facilitate safe access to the site. However, that previous appeal related to proposals for a 66-bed care home, which would have resulted in materially different patterns of comings and goings, including a potentially larger proportion of vulnerable road users. Accordingly, the previous Inspector's findings on this matter do not weigh against the current proposal in highway safety terms.

³ APP/A0665/W/19/3243475

34. Consequently, these considerations lead me to the conclusion on this main issue, that the proposed development would provide a safe and suitable access, insofar as pedestrians and other users of the footway are concerned. For these reasons the proposed development would accord with Policy STRAT10 of the Strategic Policies and Policy T5 of the detailed Policies insofar as, amongst other matters, they require developments to take into account the safety of all road users, and to make safe provision for access to and from the site.

Other Matters

Planning Obligations

35. The appellants' unilateral undertaking is formally completed, and the contributions it secures would ensure that the proposed development met with the requirements of the development plan as expressed in Policies STRAT11, SOC1, SOC6 and ENV4 of the Strategic Policies; and Policies DM23 and DM44 of the detailed policies insofar as they relate to the provision of affordable housing, public open space, sports facilities and school places. No representations have been submitted which call into question whether the obligations contained in the submitted unilateral undertaking are necessary to make the proposed development acceptable in planning terms; directly related to the proposed development; and fairly and reasonably related in scale and kind to it. Against this background I consider that the obligations meet the relevant legislative⁴ and policy tests⁵, and are thus material considerations in my assessment of the planning merits of the appeal.

Housing provision

36. As set out above, the Council can demonstrate a healthy housing land position at the Boroughwide level, with in excess of seven years' supply according to the Officer Report, and the minimum housing requirement for Cuddington and Sandiway has already been met and exceeded by one dwelling. Whilst the appellants do not dispute this position, I note that the development plan's housing requirements are not to be construed as a cap on development, and indeed that Policy STRAT8 of the Strategic Policies indicates that the Key Service Centres it identifies, which include Cuddington and Sandiway, should provide "at least" the amount of residential development set out in their requirements.
37. In these respects, the appellants draw comparisons with the housing supply position of the Borough's other Key Service Centres, in particular that they have exceeded their requirements to a greater degree than Cuddington and Sandiway. I am mindful also of the constraints pointed out by the appellants, in terms of Green Belt to the north, east and west of Cuddington and Sandiway. In contrast the appeal site is not within the Green Belt. The appellants also point out the lack of constraints at the appeal site insofar as drainage, flood risk and designated heritage assets are concerned. I have also been referred to the Inspector's decision on the previous appeal related to the site, wherein he observed, as I have, the contrast between the two sides of Chester Road in character and appearance terms, and the denser and more consolidated development pattern to the north.

⁴ Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended)

⁵ Per paragraph 57 of the Framework

38. Nevertheless, whilst these general observations are indicative that development opportunities may be limited within or adjacent to Cuddington and Sandiway's settlement boundary they do not, however, provide a comprehensive picture of what land may be available over the plan period, which still has some seven years to run, and may yet yield further opportunities for the provision of market and affordable housing.
39. None of these considerations demonstrates, therefore, that the relatively slim margin of oversupply within Cuddington and Sandiway, when compared to other Key Service Centres in the District, is a shortcoming of the development plan's approach, or that further land is required to provide a figure in excess of the settlement's housing requirement. Taken together with the overall housing land supply position set out above, these matters do not therefore weigh materially in favour of the appeal scheme in general housing supply terms.
40. Nevertheless, the provision of housing in a location proximate to the Key Service Centre, and benefiting from reasonable access to public transport, and public rights of way would be a benefit, and in arriving at this view I have taken into account the findings of my colleague regarding the locational advantages of a site some 400m away from the one subject to the current appeal⁶. However, the appeal scheme would only boost the supply of homes to a modest degree, and furthermore would do so in a locale within which monitoring indicates that further housing land is not needed. Consequently, whilst the proposal would attract support from the Framework (in particular paragraph 60) in these terms, its overall contribution would weigh only moderately in its favour.
41. I have taken into account the findings of the appeal decisions⁷ cited by the appellants, however, all of those other cases involved larger amounts of housing than the current case. Those other decisions are clearly materially different to the current case not only in these regards, but also in terms of the differing weightings that have been accorded to housing supply aspects. In any event, all appeals are considered on their own individual merits.
42. Although I have found conflict with the development plan in terms of the lack of dispersal of affordable dwellings throughout the proposed layout, the appeal scheme's provision of this type of housing, both in terms of quantity and tenure mix would be a clear benefit. Accordingly, I consider that the appeal scheme's provision of affordable housing is a matter which attracts considerable weight in its favour.

Other contributions

43. I now turn to the other contributions which would be secured by means of the submitted unilateral undertaking. In terms of biodiversity net gain, this would be a benefit of the scheme and attracts moderate weight. The contributions toward provision of open space and sports and recreation facilities, given the wider public benefits that would arise also carry moderate weight. Contributions toward educational provision would be more tightly related to the development and are to cater for the number of anticipated school places that a development of this type and scale could give rise to – they therefore carry only modest weight in favour. Contributions toward legal and monitoring fees

⁶ In the appeal decision reference APP/A0665/A/11/2159006

⁷ Appeal references: APP/R0660/A/13/2197532; APP/R0660/A/13/2197529; APP/R0660/W/20/3251104

are matters relating to the administration of the planning obligation and have a neutral effect on the planning balance.

Economic matters

44. Like any housing development of this scale the proposal would entail some economic benefits both during its construction phase and potentially in terms of the use of local services by its occupants during the lifetime of the development. Due to the scale of the proposed development, the benefits flowing from its construction phase would be relatively short-lived, and its effects on the sustainability of local services are likely to be modest. Accordingly, these aspects carry only limited weight in favour of the appeal scheme.

Arboricultural matters

45. Subject to appropriately worded conditions, it is clear that the proposed development could avoid harm in arboricultural terms. However, this is demonstrative of an absence of harm in these terms rather than a positive benefit of the proposed development and thus has only a neutral effect on the overall planning balance.

Planning Balance and Conclusion

46. I have found that the appeal scheme would conflict with the development plan in several key respects. The Framework reminds us of the statutory status of the development plan as the starting point for decision-making (at paragraph 12); and that the planning system should be genuinely plan-led (at paragraph 15). I therefore attach substantial weight to the proposed development's conflict with the spatial strategy of the development plan insofar as it relates to the location of residential development. I accord significant weight to the conflict with the development plan in terms of the biodiversity issues referenced above. Due to the specific and localised implications of its character and appearance impacts, I consider the conflict in these regards attracts moderate weight. Given that the number and mix of affordable dwellings would otherwise accord with the development plan, I accord only limited weight to the appeal scheme's conflict with Policy SOC1 insofar as the dispersal of affordable housing throughout sites is concerned. Whilst I have found no conflict with the development plan in terms of the safety and suitability of its pedestrian access arrangements, and in terms of the living conditions of the occupants of No 613, the absence of harm in these regards does not weigh positively in favour of the proposal, and instead has a neutral effect on the overall planning balance. Accordingly, I consider that the weight attracted by the benefits of the appeal scheme, individually or cumulatively, does not tip the planning balance in favour of the proposal when set against the above-cited conflicts with the development plan.
47. Consequently, none of the material considerations advanced in support of the appeal scheme, either alone or taken together, indicates that a decision should be taken other than in accordance with the development plan, with which, in terms of the above-cited policies, the appeal scheme would clearly conflict.
48. The Council has raised concerns relating to the possible impacts of the proposed development on the Abbots Moss Special Area of Conservation, RAMSAR and Site of Special Scientific Interest. However, as I am dismissing

the appeal for other reasons, there is no requirement for me to conduct an appropriate assessment of the project for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended).

49. I therefore conclude, for the reasons given above, and taking fully into account all other matters raised, that the appeal should be dismissed.

G J Fort

INSPECTOR

Richborough Estates