



Appeal Decision

Hearing held on 24 March 2009
Site visit made on 24 March 2009

by **Roland Punshon BSc (Hons) MRTPI**

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

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Decision date:
28 April 2009

Appeal Ref: APP/B0610/A/08/2092082

Former Bath Vale Works, Brookhouse Lane, Congleton, Cheshire CW12 2HD

- 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 against the decision of Congleton Borough Council now replaced by Cheshire East Council.
- The application Ref 08/1317/OUT, dated 25 July 2008, was refused by notice dated 7 November 2008.
- The development proposed is demolition of existing buildings and erection of up to 130 dwellings, provision of public open space, highway improvements and associated works.

Decision

1. I allow the appeal, and grant outline planning permission for demolition of existing buildings and erection of up to 130 dwellings, provision of public open space, highway improvements and associated works at the former Bath Vale Works, Brookhouse Lane, Congleton, Cheshire CW12 2HD in accordance with the terms of the application, Ref 08/1317/OUT, dated 25 July 2008, and the plans submitted with it, subject to the conditions set out in the attached Schedule of Conditions.

Procedural matters

2. The appeal application was for outline planning permission with all details reserved for subsequent approval. I will deal with this appeal on the same basis.
3. Drawings of a proposed 'bat house' were submitted with the appeal drawings. I understand that these were not submitted with the original planning application. Although the Council had no objection to these details, it is unclear whether or not interested parties have had a proper opportunity to make representations. In these circumstances I consider that the 'bat house' details would be better dealt with as part of the reserved matters or through planning conditions.

Main issue

4. I consider that the main issue in this case is whether the proposal to provide 5% affordable housing would be sufficient to satisfy the objectives of national guidance and local policy to secure mixed housing, particularly in terms of tenure and price.



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Reasons

Planning policy and background

5. Policy H13 of the adopted Congleton Borough Local Plan First Review states that the Council will negotiate the provision of an appropriate element of affordable housing on housing sites of more than one hectare (ha) or providing more than 25 dwellings. The appeal site falls above these thresholds. In the policy affordable housing is defined as including low-cost market housing but the Council has made clear that, in applying the policy, it takes account of the up-to-date guidance in Planning Policy Statement (PPS) 3: *Housing* and no longer counts such properties as falling within the definition of 'affordable housing'. My attention has been drawn to the Council's adopted Supplementary Planning Document (SPD) produced in early 2006 entitled '*Affordable Housing and Mixed Communities*'. The SPD reflects national guidance in making clear that the exact level of provision of affordable housing on each eligible site will be determined by a variety of factors including the economics of provision. However, it states that the general minimum proportion of affordable housing for any site will be 30%.
6. In 2007 the appellant submitted a planning application for essentially the same proposal as is proposed in this appeal. The application was supported by a Market Assessment Report which showed that only a residential redevelopment scheme would be viable but that, even then, a proportion of affordable housing lower than the 30% minimum promoted by the Council would be necessary to ensure viability. Independent assessors appointed by the Council concurred and in late 2007 it was agreed that a requirement for 20% affordable housing would be appropriate. Planning permission was granted on this basis in June 2008. I will take account of that extant permission in consideration of this appeal.

Securing mixed housing

7. The appeal application was submitted in July 2008 and was accompanied by an 'Affordable Housing Assessment' document (AHA). This concluded that redevelopment of the site was unviable unless the affordable housing element was reduced from 20% to 5%. The reasons behind this reassessment were increases in interest rates on borrowing, increases in building costs and income reductions arising from a fall in house sales prices. The Council sought an independent assessment on the AHA. Again, this advice concurred with the findings of the AHA and concluded that the scheme would be unviable unless the affordable housing element was reduced to 5%.
8. At the Hearing the Council did not dispute the conclusion of the independent assessment i.e. that, at the time the AHA was prepared, the scheme was unviable. However, it pointed to various trends in the market which could have had an impact in the period since the AHA was prepared. The appellant explained that recent falls in interest rates had not been passed on to borrowers and that the 'real' cost of borrowing remained much the same as it was in July 2008. While the appellant accepted that indicators of building costs showed that the cost of building the scheme was static at present, it was likely to rise as contractors found that they could no longer afford to take on work with no profit margin and as the construction industry began to shrink. With

regard to falling house prices, the AHA was based on a 6% fall. However, figures put forward by the Council indicated an average 15.9% fall. The appellant argued that, because of this, the viability of the scheme was even more marginal than that set out in the AHA.

9. At the Hearing the Council did not dispute that, in the economic circumstances pertaining at that time, a requirement for more than 5% affordable housing would make the proposal financially unviable. However, it pointed out that in their currently volatile and unpredictable state, economic conditions could change quickly. It argued that economic circumstances could change over the life of any planning permission granted which would make a higher affordable housing requirement viable. The Council argued that there is a requirement for affordable housing in the district which needs to be met, irrespective of current economic conditions. If decisions are made to reduce or remove requirements placed on developers to provide affordable housing, the Council's ability to meet the housing needs of the district would be curtailed and the opportunities which sites present would be lost. The Council is currently considering a number of housing sites and fears that, if the affordable housing requirement is reduced in response to financial reassessments based on falling house prices in this case, other developers may put forward similar arguments. The overall effect on affordable housing provision could be substantial. It also argued that it was possible that developers who secured planning permissions with reduced affordable housing requirements at this time could 'bank' sites until economic circumstances improved and thereby avoid providing appropriate levels of affordable housing. The appellants explained that repayments on existing borrowing made such a scenario financially impossible in the appeal case.
10. The Council's arguments in this regard are understandable. However, current economic circumstances are very unpredictable. Whilst it is possible that house prices could begin to rise again and the 'real' cost of borrowing could reduce in the near future, there are few signs that this will happen. Most indicators of the economy tend to suggest that recovery from the current downturn is likely to be slow and protracted. Circumstances are just as likely to become worse as they are to become better and it would, therefore, be unwise to base any decision on predicted changes. In my view there is little alternative to making my decision on current costs and values. National guidance and local policies require that I should take economic viability into account in determining an appropriate level of affordable housing provision on the site. The AHA concludes that a scheme providing more than 5% affordable housing would be unviable and the Council agrees with this assessment. In these circumstances and on the evidence before me I consider that the provision of 5% affordable housing would be acceptable.
11. Information provided at the Hearing and subsequently indicates that efforts are being made at both national and local levels to assist developers who find themselves in difficulties. However, I have seen no clear evidence to show that the measures identified would be sufficient to restore economic viability in this case.
12. I conclude on the main issue, therefore, that the proposal to provide 5% affordable housing would be sufficient to satisfy the objectives of national guidance and local policy to secure mixed housing, particularly in terms of tenure and price. In the circumstances pertaining at the time of the Hearing I

am satisfied that the proposal would comply with Local Plan Policy H13, Policy L5 of the North West of England Plan Regional Spatial Strategy to 2021, advice in PPS3 and the Council's SPD.

Other matters

13. The fact that a proposal would be financially unviable with more than 5% affordable housing provision may not be the sole determining factor in every case. Circumstances could arise where such a scheme would be unviable in the current economic climate but there would be no pressing need to permit early development. However, in the appeal case I consider that there are compelling factors which indicate that redevelopment should not be delayed.
14. At the Hearing the Council conceded that there was a shortfall of about 1.3 years in the provision of deliverable housing sites in the 5 Year Land Supply. Paragraph 71 of PPS3 states that, in these circumstances, planning applications for housing should be favourably considered. Development of the appeal site would reduce the shortfall and make other, possibly less sustainable, sites more easy for the Council to resist.
15. Given the proximity of an estate of largely social rented houses, the Council's affordable housing requirements for the appeal site are limited to shared ownership or discounted ownership housing to enable those who cannot afford to enter the housing market to 'get a foot on the ladder'. In addition the appellants propose to build 25% low cost market homes which, although not falling within the definition of 'affordable', would provide opportunities for first-time buyers. The proposal would, therefore, go at least some way to meeting identified housing needs in the area. Delaying development could enable more affordable homes to be provided in the future but, in the meantime, housing needs would go unmet.
16. The appeal site is located in an attractive wooded valley. However, it is occupied by a range of large industrial buildings and concrete yards in a semi-derelict and ugly condition. Some of the buildings contain deep concrete pits and the ground is contaminated. The whole of the site is being vandalised. Redevelopment of the site would secure substantial environmental benefits. The existing dereliction would be removed, current anti-social behaviour issues would be resolved, the contamination would be removed together with the threat which it poses to adjacent watercourses, existing overgrown woodland which makes up a large part of the site would be managed, wildlife would be encouraged through habitat enhancement and car parking facilities would be provided for the nearby footpath/cycleway. In my opinion, the overall benefits to the environment and in terms of regeneration and use of derelict land which would arise from these works would be substantial. The Council did not dispute the benefits which would arise from the proposal.
17. In this case I consider that the benefits are so substantial that redevelopment should not be unnecessarily hindered. Other proposals may come before the Council which have similar benefits. The Council will need to assess on a case-by-case basis whether the benefits are of such significance that the scheme should be expeditiously progressed on terms which may not be in line with the SPD in respect of affordable housing provision. In these circumstances, I do not

consider that my decision in this case would set a precedent which would make unacceptable schemes difficult to resist.

Unilateral Undertaking

18. I have been provided with a completed Unilateral Undertaking made by the appellant under Section 106 of the Town and Country Planning Act 1990 as amended which has been revised following discussions at the Hearing. This commits the appellant to the phased provision of the affordable housing element of the development, provisions which would ensure that the affordable housing is retained in perpetuity (subject to suitable purchasers being available), the provision of public open space and payment of a contribution towards the provision of a footbridge. The Council has confirmed by letter that it is satisfied with the terms of the revised undertaking. I have examined the undertaking in the light of the advice contained in Circular 05/2005: Planning Obligations. I am satisfied that the undertaking is in line with this advice and should therefore be taken into account.

Conditions

19. I have considered the list of conditions suggested by the local planning authority in the light of the advice contained in Circular 11/95: *The Use of Conditions in Planning Permissions*. I have imposed the standard outline conditions and in the interests of visual amenity I have imposed a condition requiring the use of approved external materials. I have imposed conditions requiring surveys and appropriate protection of archaeological remains and wildlife together with conditions requiring that construction works are undertaken in accordance with a Construction Environmental Management Plan, that major trees and hedgerows are protected and that woodland is managed in order to properly safeguard these assets. In the interests of local amenity I consider that a condition which secures provision of a car park and picnic area should be imposed. As discussed at the Hearing a condition requiring a survey for the presence of Great Crested Newts is unnecessary. In the interests of public health and safety, ground contamination needs to be properly addressed and I have imposed appropriate conditions. In order to avoid any flooding problems I have imposed conditions regarding floor and road levels and storm water run-off regulation. I have also imposed a condition requiring the restoration of the brook course which runs through the site for the same reason. In the interests of sustainability I have imposed a condition regarding 'Eco-Homes' standards. To ensure that the detailed scheme provides housing to meet identified market demands I have imposed a condition requiring that a proportion of houses should be low-cost market properties. However, as discussed at the Hearing a condition which requires the phased delivery of dwellings from the site is unnecessary in circumstances where housing delivery is already falling behind targets. In the interests of clarity I have imposed a condition which requires the reserved matters application should be accompanied by a design statement.
20. I have made some amendments to the wording of the suggested conditions to improve their clarity and enforceability and to bring them in line with the Circular's advice. I have employed the standard conditions recommended by the Circular where possible.

Conclusion

21. For the reasons given above I conclude that the appeal should be allowed.

Roland Punshon

INSPECTOR

Richborough

APPEARANCES

FOR THE APPELLANT:

Mr D Stentiford
Mr P Campbell
Mr D Parkinson

Pegasus Planning Group
Richborough Estates Ltd
Richborough Estates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Fleet

Congleton Borough Council

DOCUMENTS:

Document A List of persons attending the Hearing
Document B Copies of letters informing interested persons of the Hearing arrangements
Document C Housing supply situation 28.2.09 provided by the Council
Document D Monthly Housing Update 28.2.09 Provided by the Council
Document E Letter from Homes and Community Agency provided by the Council
Document F Unilateral Undertaking and letters from the appellant
Document G HMR commitments document provided by the Council
Document H Letter from the appellant dated 31.3.09
Document I Letter from the Council dated 7.4.09

PLANS:

Plans A-F The appeal plans

SCHEDULE OF CONDITIONS:

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development other than demolition, clearance and remediation begins and the development shall be carried out as approved.
- 2) Application for approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than the expiration of two years from the final approval of the reserved matters, or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) Prior to the commencement of any phase of the development hereby permitted other than demolition, clearance and remediation, samples of all external facing and roofing materials to be used within that phase shall be submitted to and approved in writing by the Local Planning Authority. All works shall be undertaken strictly in accordance with the details as approved unless first agreed in writing by the Local Planning Authority.
- 4) No development hereby permitted shall take place until the applicant, or his agent or successors in title, has secured the implementation of a programme of archaeological work, which shall be carried out in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 5) No development hereby permitted shall commence on site until a Construction Environmental Management Plan (CEMP) to include the measures identified in the Construction Ecological Management Plan Scope of Works submitted by WSP on 28th November 2007 has been submitted to and approved in writing by the Local Planning Authority. All operations shall be undertaken strictly in accordance with those details throughout the construction period, unless previously otherwise agreed in writing by the Local Planning Authority.
- 6) Prior to first occupation of any dwelling hereby permitted a Woodland Management Plan (WMP) to include the measures identified in the Woodland Management Plan Scope of Works submitted by WSP on 28th November 2007 shall be submitted to and approved in writing by the Local Planning Authority. All approved measures shall be implemented in full and in accordance with the timescales specified within the approved Woodland Management Plan.
- 7) No development hereby permitted shall commence on site until a Bat Method/ Mitigation Survey has been submitted to and approved in writing by the Local Planning Authority. All approved measures shall be implemented in full and in accordance with any timescales identified.
- 8) No development shall commence on site until a Badger Method/ Mitigation Survey has been submitted to and approved in writing by the Local Planning Authority. All approved measures shall be implemented in full and in accordance with any timescales identified.
- 9) If any works hereby permitted (including demolition, site clearance and remediation) are to be undertaken within the bird breeding season

(March to August), development shall not commence on site until survey work has been undertaken to discover the location of nesting birds within that phase or unit of development. If nesting birds are identified, a method statement detailing the measures to be taken to mitigate any disturbance to nesting birds and the timescales involved in such mitigation should be submitted to and approved in writing by the Local Planning Authority. The approved method statement shall be implemented in full in accordance with the approved timescales.

- 10) No development hereby permitted shall commence until a desk top assessment to identify and evaluate all potential sources and impacts of land and/or groundwater contamination affecting the site has been carried out by a suitably qualified person and submitted to the Local Planning Authority.
- 11) If, following examination of the desk top assessment, the Local Planning Authority is of the opinion that there is the potential for contamination of the site by substances and/or landfill gas, in on or under the land or from sites in close proximity to the site in question, then a full investigation shall be carried out by a suitably qualified person to ascertain the nature and extent of contamination together with a detailed Method Statement which shall specify:
 - the precise form of any remediation works; and
 - arrangements for the supervision and monitoring of the remediation works, which shall require a minimum of 3 days notice to be given to the Council's Scientific Officer prior to the works commencing.The Method Statement shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation works commencing. No other part of the development shall commence until the remediation works have been completed in accordance with the approved scheme and the Local Authority has confirmed the completion in writing.
- 12) The floor levels of the buildings hereby permitted shall be set at a *minimum* of 600mm above the 1 in 100 years (plus climate change) design flood level in Timbers Brook, unless otherwise agreed in writing by the Local Planning Authority.
- 13) Road, pathways and parking areas hereby permitted shall be set a minimum of 300mm above the 1 in 100 years (plus climate change) design flood levels in Timbers Brook.
- 14) No development hereby permitted other than demolition, clearance and remediation shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in full in accordance with the approved plans and timescales unless otherwise agreed in writing by the Local Planning Authority.
- 15) No development hereby permitted shall be commenced until a scheme for the restoration of Timbers Brook has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include detailed design of how the restored channel will be formed including features such as berms and any proposed soft revetment techniques and shall be completed in accordance with the approved plans prior to occupation of any part of the development and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

- 16) As a minimum, the development hereby permitted shall achieve either a post-construction Building Research Establishment Eco-Homes rating of 'very good' or a 2 star Code for Sustainable Homes rating. A post completion certificate confirming such an outcome shall be submitted to and approved in writing by the Local Planning Authority before any of the buildings hereby approved are first occupied, unless otherwise agreed in writing by the Local Planning Authority.
- 17) On or prior to each application for the approval of reserved matters a statement detailing:
- the design principles and design concepts of those aspects of the development to which the application for the approval of the reserved matters relates;
 - how such principles and concepts are reflected in the proposals for the development set out in the reserved matters application; and
 - the relationship of the portion of the development to which the reserved matters relates, to the development site as a whole and to the wider context,
- shall be submitted to the Local Planning Authority.
- 18) No development or other operations hereby permitted shall commence on site until a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a Tree Preservation Order currently in force has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme, which shall be in place prior to the commencement of any works. The approved protection scheme shall be retained intact for the full duration of the development operations hereby permitted and shall not be removed without the prior written permission of the local planning authority.
- 19) No development shall commence (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development shall take place except in complete accordance with the approved Method Statement. Such Method Statement shall include details of the following:
- Implementation, supervision and monitoring of the approved Tree Protection Scheme,
 - Implementation, supervision and monitoring of the approved Treework Specification,
 - Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected, and
 - Timing and phasing of arboricultural works in relation to the approved development.

- 20) The scheme submitted for approval of reserved matters shall include the provision of 25% of the dwellings as low cost market houses.
- 21) Prior to occupation of 75% of the houses hereby permitted a picnicking area and car park shall be provided for users of the Biddulph Valley Way in accordance with details that have previously been approved in writing by the Local Planning Authority.

Richborough