

Strategic Planning Board

Agenda

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| Date: | Wednesday, 9th March, 2011 |
| Time: | 1.00 pm |
| Venue: | The Capesthorpe Room - Town Hall, Macclesfield SK10 1DX |

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

Please note that members of the public are requested to check the Council's website the week the Planning/Board meeting is due to take place as Officers produce updates for some or all of the applications prior to the commencement of the meeting and after the agenda has been published.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

To receive any apologies for absence.

2. **Declarations of Interest/Pre-Determination**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests and for Members to declare if they have made a pre-determination in respect of any item on the agenda.

3. **Minutes of the Previous Meeting** (Pages 1 - 10)

To approve the minutes as a correct record.

4. **Public Speaking**

For any apologies or requests for further information, or to arrange to speak at the meeting

Contact: Sarah Baxter
Tel: 01270 686462
E-Mail: Sarah.Baxter@cheshireeast.gov.uk

A total period of 5 minutes is allocated for the planning application for Ward Councillors who are not members of the Strategic Planning Board.

A total period of 3 minutes is allocated for the planning application for the following individuals/groups:

- Members who are not members of the Strategic Planning Board and are not the Ward Member
- The relevant Town/Parish Council
- Local Representative Group/Civic Society
- Objectors
- Supporters
- Applicants

5. **10/4154M-Two Replacement Dwellings, 5-7 Prestbury Road, Wilmslow for Ms Alison Malone** (Pages 11 - 20)

To consider the above application.

6. **09/0842M-Replacement Dwelling with new Entrance Gates, Brick Piers and Boundary Wall, Broad Heath House, Slade Lane, Over Alderley for Mr and Mrs Wren** (Pages 21 - 56)

To consider the above application.

7. **11/0037M-Brick Garage to Replace Carport, Broad Heath House, Slade Lane, Over Alderley for Mr Chris Wren** (Pages 57 - 66)

To consider the above application.

8. **10/1292M-Replacement Dwellinghouse - amendment to approval 09/4124M, Baguley Farm Hocker Lane Over Alderley for Mr & Mrs N Skinner** (Pages 67 - 82)

To consider the above application.

9. **09/3400C-New build development of 107 extra care apartments and associated extra care facilities and car parking, Council Depot, Newall Avenue, Sandbach for Nuala Keegan, Cheshire East Council** (Pages 83 - 100)

To consider the above application.

10. **10/4977C-Extension to existing gypsy caravan site including laying of hardstanding, stationing of 9 caravans for residential purposes and, erection of 6 utility buildings, Horseshoe Farm, Warmingham Lane, Moston, Middlewich, Cheshire for Mr Oliver Boswell** (Pages 101 - 112)

To consider the above application.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Strategic Planning Board**
held on Wednesday, 16th February, 2011 at Sandbach Cricket Club, Hind
Heath Road

PRESENT

Councillor H Davenport (Chairman)
Councillor J Hammond (Vice-Chairman)

Councillors A Arnold, Rachel Bailey, D Brown, M Hollins, D Hough,
W Livesley, G M Walton, S Wilkinson and J Wray

OFFICERS IN ATTENDANCE

Ms S Dillon (Senior Solicitor), Mrs R Ellison (Principal Planning Officer), Mr D
Evans (Principal Planning Officer), Mr A Fisher (Head of Planning and
Housing), Mr B Haywood (Principal Planning Officer), Mr S Irvine (Planning
and Development Manager) and Mr N Jones (Principal Development Officer)

106 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors W J Macrae and C
Thorley.

107 **DECLARATIONS OF INTEREST/PRE-DETERMINATION**

Councillor J Hammond declared a personal interest in application
10/4610N-Siting of 20 Timber Clad Twin Unit Caravans for Holiday
Accommodation & Erection of Administration Building, Wrenbury Fishery,
Hollyhurst, Marbury, Cheshire for Mr Spencer, Marcus Brook Ltd by virtue
of the fact that he was a member of the Cheshire Wildlife Trust who had
been consulted on the application and in accordance with the Code of
Conduct he remained in the meeting during consideration of the
application.

108 **MINUTES OF THE PREVIOUS MEETING**

RESOLVED

That the minutes be approved as a correct record and signed by the
Chairman subject to the following amendment to resolution No.2 under
Minute No.99-10/3506M - Woodside Poultry Farm, Stocks Lane, Over
Peover, Knutsford, WA16 8TN: Conversion of Barn into Offices (Use Class
B1) Together with Associated Parking for Dean Johnson Farms Limited:-

'The position of the proposed development relative to the dwellings
approved under planning application reference 10/0346M would result in
an unacceptable level of residential amenity for the occupiers of those

dwellings in terms of an unacceptable sense of enclosure and by virtue of the proposed office building being overbearing when viewed from a number of the approved dwellings. The proposed development is thereby contrary to Local Plan policies DC3 and DC38'.

109 **PUBLIC SPEAKING**

RESOLVED

That the public speaking procedure be noted.

110 **10/4660C-REDEVELOPMENT OF THE FORMER FODEN TRUCK FACTORY FOR RESIDENTIAL (248 UNITS), B1C LIGHT INDUSTRIAL, (3,620SQ.M) AND A1 RETAIL (360SQ.M), FORMER FODEN FACTORY SITE, MOSS LANE, SANDBACH FOR HURSTWOOD LANDBANK AND BELLWAY HOMES**

Consideration was given to the above application.

(Councillor Mrs G Merry, the Ward Councillor, Councillor B Moran, the Ward Councillor, Mr F Noton, an objector and Mr Dumbrell, the agent for the applicant attended the meeting and spoke in respect of the application).

RESOLVED

That the application be approved subject to the completion of a S106 Agreement comprising of the following Heads of Terms:-

- A provision of 30% affordable housing (74 units) split 50:50 between social rented and intermediate tenure
- A contribution towards local education provision
- The provision of a LEAP and maintenance costs
- The provision of Public Open Space and a scheme of management of this public open space
- A commuted payment towards canal side improvements of £30,000
- An Interim Residential travel plan in accordance with DfT guidance document
- A framework Travel Plan for any commercial use-classes in the development to be agreed with the Cheshire East Council Travel Plan co-ordinator
- The Travel Plan proposed in the Transport Assessment (submitted with the application) shall be submitted and agreed by the Local Planning Authority prior to the first use commencing.
- A commuted sum for the necessary Traffic Regulation Orders and local traffic management orders

And subject to the following conditions:-

1. Standard time – 3 years
2. Prior to the completion and occupation of 100 of the dwellings the retail unit shall be constructed and internal road layout for the employment units shall be laid out
3. Materials to be submitted to the LPA and approved in writing
4. The B1 units shall be restricted to B1 use only
5. Submission of a landscaping scheme to be approved in writing by the LPA
6. Implementation of the approved landscaping scheme
7. No trees to be removed without the prior written consent of the LPA
8. Boundary treatment details to be submitted to the LPA and approved in writing
9. Remove PD Rights for extensions and alterations to the approved dwellings
10. If protected species are discovered during construction works, works shall stop and an ecologist shall be contacted
11. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey is required to check for nesting birds.
12. Prior to the commencement of development the applicant to submit detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds.
13. The proposed development to proceed in accordance with the recommendation made by the submitted Badger survey report and method statement dated January 2011.
14. The development hereby permitted shall not be commenced until such time as; a scheme to limit the surface water run-off generated by the proposed development, has been submitted to and approved in writing by, the Local Planning Authority.
15. The development hereby permitted shall not be commenced until such time as; a scheme to manage the risk of flooding from overland flow of surface water, has been submitted to, and approved in writing by, the Local Planning Authority.
16. The development hereby permitted shall not be commenced until such time as a scheme to discharge surface water has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved.
17. The acoustic mitigation measures as outlined in Acoustic Report 20860.01.v1 dated November 2010 submitted with the application shall be implemented.
18. The Bund and Concrete Fence to the Eastern Boundary of the site shall be retained, and maintained throughout the life of the development.
19. The operational hours, and servicing hours shall be agreed with the Local Planning Authority prior to bringing the B1c and A1 uses into operation.
20. Prior to positioning any fixed plant or equipment on the Northern or Western aspects of the B1c or A1 uses, a scheme of acoustic attenuation shall be submitted to, and approved by the Local Planning

Authority addressing the acoustic impact of such units on the nearby residential uses.

21. Prior to the development commencing, an Environmental Management Plan shall be submitted and agreed by the planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the demolition and construction phase. In particular the plan shall show mitigation measures in respect of;
 - a) Noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - b) Dust generation caused by construction activities and proposed mitigation methodology.
22. All demolition / construction works likely to be audible beyond the site boundary, and deliveries to and collections from the site shall be restricted to the following hours:

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| Monday – Friday | 07:30 – 18:30hrs |
| Saturday | 08:00 – 14:00 |

And at no time on Sundays or public holidays.
23. There shall be no burning of waste on the site during the demolition and construction of the development.
24. Prior to the commencement of development the developer shall provide justification of the values detailed in Appendix E of the Detailed Remedial Strategy any alterations to the Remediation Strategy shall be agreed in writing with the LPA.
25. Once the remedial targets have been agreed by the Local Authority and remediation of the site has been completed a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
26. Method statement for the control of any Japanese Knotweed on the site
27. No building within 3 metres of the public sewer which crosses the site
28. Completion of the proposed off-site highway works
29. Details and location of the contractors compound together with details of management of the site to be submitted to the LPA and approved in writing.
30. Measures to show how mud, clay or other material is not deposited on the highway.
31. Development to be carried out in accordance with the Waste Management Strategy.
32. Details of how the development will secure at least 10% of their predicted energy requirements from decentralised and renewable or low-carbon sources
33. Details of external lighting to be approved in writing by the LPA.
34. Prior to the commencement of development – details of existing and proposed land levels to be submitted to the LPA and approved in writing

35. Arboricultural method statement & implementation to be submitted to the LPA and approved in writing (to include tree protection, program of tree works, specification for remediation works in proximity to trees, site supervision etc).

(Prior to consideration of the following application Councillor D Brown arrived to the meeting, in addition he declared a personal and prejudicial interest in the application by virtue of the fact that as a former Member of Congleton Borough Council he had advocated the approval of the scheme and therefore in accordance with the Code of Conduct he left the meeting prior to consideration of the application).

111 **10/4626C-VARIATION OF CONDITION 2 OF PLANNING PERMISSION 09/2058C - AMENDMENT TO APPROVED DRAWINGS, LAND OFF HIND HEATH ROAD, SANDBACH FOR CHESHIRE EAST COUNCIL**

Consideration was given to the above application.

RESOLVED

That the application be approved subject to the following conditions:-

1. Development to commence within 3 years.
2. Development to be in accordance with approved drawings.
3. Samples and detail of materials on external elevations to be submitted prior to development.
4. Supplementary tree planting scheme to be submitted providing details for fruit trees.
5. Implementation and maintenance of landscaping.
6. Review of lighting when operational.
7. Floodlighting to be restricted to 14:00 to 22:30 hours Monday to Saturday and 14:00 to 20:30 Sundays.
8. Prior to commencement of development, the applicant will submit a Construction management plan with a method statement, to demonstrate appropriate safe management of construction traffic taking access to and from the site.
9. Hours of construction to be restricted to 08:00 to 18:00 hours on Monday to Friday, 08:00 to 13:00 hours on Saturday, with no work at any other time including Sundays and Public Holidays.
10. Details of pile driving method, timing and operation to be provided before work commences.
11. Wheel washing facilities to be provided.
12. Measures to control dust during construction to be submitted and approved prior to development.
13. Sustainable urban drainage scheme (SUDS) to be submitted to and approved by the LPA.
14. Drainage works to be implemented in accordance with submitted details.

15. Prior to first use, a formal Travel Plan based on the Travel Plan Framework to be submitted for the approval of the LPA.
16. Prior to the commencement of development, the developer to submit plans of construction specification and geometry for the proposed junction with the B5079 Hind Heath Road. Details to include for the provision of a pedestrian link between the proposed access and the cricket club.
17. Prior to commencement of development, the proposed junction with the B5079 Hind Heath Road, will be substantially constructed, to exclude carriageway wearing course only.
18. Prior to first use the proposed junction with the B5079 Hind Heath Road will be constructed to completion.
19. Car parking to be constructed and marked out prior to first use.
20. Details of covered and secure cycle parking to be submitted and implemented.
21. Development to be in accordance with submitted Travel Plan.
22. Prior to first use, all proposed improvements to sustainable links, specifically for safe access to and lighting for the Wheelock Rail Trail, will be completed to the satisfaction of the LPA.
23. Provision of litter bins.

(The meeting adjourned at 11.50am and reconvened at 11.55am).

112 **09/2083C-OUTLINE APPLICATION FOR COMPREHENSIVE REDEVELOPMENT COMPRISING OF UP TO 375 RESIDENTIAL UNITS (CLASS 3); 12,000 SQM OF OFFICE FLOORSPACE (CLASS B1); 3810 SQM OF GENERAL INDUSTRIAL (CLASS B2), WAREHOUSING (CLASS B8), CAR DEALERSHIPS AND PETROL STATIONS (SUI GENERIS) AND FAST FOOD RESTAURANT (CLASS A5) USES; 2600 SQM OF COMMERCIAL LEISURE USES INCORPORATING HOTEL (CLASS C1), RESTAURANT/PUB USES (CLASS A3/A4) AND HEALTH CLUB (CLASS D2); RETENTION AND CHANGE OF USE OF YEW TREE FARM COMPLEX**

Consideration was given to the above application.

(Town Councillor K Bagnall, Middlewich Town Council, Miss Joyce, an objector and Roberta Cameron, the agent for the applicant attended the meeting and spoke in respect of the application).

RESOLVED

That the application be deferred in order for further discussions to take place in respect of the % of affordable housing being offered by the developer, to allow further information to be submitted in respect of the contamination of the land and to consider the possibility of relocating the housing element to the Greenfield part of the site and the commercial use to the brownfield part of the site.

(The meeting adjourned for lunch at 1.25pm and reconvened at 2.00pm).

(Prior to consideration of the following application, Councillor Mrs R Bailey arrived to the meeting. In addition Councillor W J A Arnold left the meeting and did not return).

113 **10/3955N-RESERVED MATTERS APPLICATION FOR
ERECTION OF REPLACEMENT FOODSTORE (A1 RETAIL) WITH
ANCILLARY CAFÉ, ASSOCIATED PARKING, HIGHWAY WORK AND
LANDSCAPING, TESCO, VERNON WAY, CREWE FOR TESCO
STORES LTD**

Consideration was given to the above application.

(Mr York, the architect for the applicant attended the meeting and spoke in respect of the application).

RESOLVED

That the application be approved subject to the following conditions:-

1. Plans
2. Scheme of tree protection
3. Implementation of tree protection
4. Scheme of landscaping
5. Implementation of landscaping
6. Elevational details of substation to be submitted and approved

114 **10/4610N-SITING OF 20 TIMBER CLAD TWIN UNIT CARAVANS
FOR HOLIDAY ACCOMMODATION & ERECTION OF
ADMINISTRATION BUILDING, WRENBURY FISHERY, HOLLYHURST,
MARBURY, CHESHIRE FOR MR SPENCER, MARCUS BROOK LTD**

Consideration was given to the above application.

(Councillor S Davies, the Ward Councillor, Mr Stephens, an objector and Mr Goodwin, the agent for the applicant attended the meeting and spoke in respect of the application).

RESOLVED

That the application be refused for the following reasons:-

1. The proposed use of the land for the siting of 20 twin caravan units to provide a chalet development with

associated roads, hardstandings, lighting, cycle parking and an office building will result in the erosion of the character of this rural location, creating visual intrusion, away from any established settlement. To allow the development would be detrimental to the rural tranquillity of this area of open countryside and would erode the physical character of the location, detrimentally impacting on the appearance of the area, contrary to policies NE.2 (Open Countryside) and RT.6 (Recreation Uses in the Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.

2. The proposed site for 20 timber clad twin caravan units would be located away from the village of Wrenbury, shops and services. Roads from the site to Wrenbury, the railway station and the local public houses are unlit and do not have footways. Whilst the station can also be accessed across fields the development site is not well related to the existing settlement, is not on any bus route and is located in a position which would not promote sustainable transport or encourage visitors to walk to these facilities. To allow the development would be contrary to policy EC7: Planning for Tourism in Rural Areas of PPS4: Planning for Sustainable Economic Growth which seeks to promote sustainable tourism and leisure developments as well as policy W6 (Tourism and the Visitor Economy) and policy W7 (Principles for Tourism Development) of the North West of England Plan Regional Spatial Strategy to 2021.

(This decision was contrary to the Officers recommendation of approval).

115 **UPDATE REPORT ON APPLICATION 09/4331N APPLICATION SITE: NEW START PARK, WETTENHAL ROAD, REASEHEATH, NANTWICH, CHESHIRE, CW5 6EL**

Consideration was given to the update report.

RESOLVED

That the update report be noted.

116 **APPEAL SUMMARIES**

Consideration was given to the Appeal Summaries.

RESOLVED

That the Appeal Summaries be noted.

The meeting commenced at 10.30 am and concluded at 3.30 pm

Councillor H Davenport (Chairman)

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| Planning Reference No: | 10/4154M |
| Application Address: | 5-7 PRESTBURY ROAD, WILMSLOW |
| Proposal: | TWO REPLACEMENT DWELLINGS |
| Applicant: | MS ALISON MALONE |
| Application Type: | FULL |
| Grid Reference: | 385963 380501 |
| Ward: | WILMSLOW SOUTH |
| Earliest Determination Date: | 2 FEBRUARY 2011 |
| Expiry Date: | 12 JANUARY 2011 |
| Date of Officer's Site Visit: | 13 JANUARY 2011 |
| Date Report prepared: | 24 FEBRUARY 2011 |
| Constraints: | GREEN BELT TPO PROTECTED TREES |

SUMMARY RECOMMENDATION

Refuse - The application comprises inappropriate development in the Green Belt and the scale bulk and design of the replacement dwellings would be excessive and have a detrimental impact on the character and appearance of Prestbury Road.

MAIN ISSUES

Whether the proposed development comprises inappropriate development in the Green Belt and whether very special circumstances have been advanced that outweigh the harm. Impact on neighbouring amenity, the character and appearance of the surrounding area, nature conservation, the existing trees and highway safety

Date Report Prepared: 24th February 2011

REASON FOR REPORT

The application was called-in to committee by Cllr Menlove. Whilst recognising that the development may be contrary to Green Belt policy, the specifics in this particular case allied to the characteristics of the area, may warrant reviewing as very special circumstances. As such it would benefit from consideration by Members within the context of the Planning Committee

DESCRIPTION OF SITE AND CONTEXT

The application site comprises a pair of semi-detached 2½-storey dwellinghouses. The building originally comprised of one detached dwellinghouse, but was subdivided into 2no. residential properties in the 1960s.

The dwellinghouses are located within the North Cheshire Green Belt and are sited within a ribbon of houses that comprise large detached dwellings set within substantial plots. Each of the houses in the ribbon are distinctly different from one-another and comprise a range of ages with some having been replaced in recent years.

DETAILS OF PROPOSAL

Full planning permission is sought to erect 2no. replacement dwellinghouses.

RELEVANT HISTORY

Proposed conversion of house into two separate dwellings

Approved with conditions on 5th December 1961

POLICIES

Regional Spatial Strategy

| | |
|--------|--|
| DP1 | Spatial Principles |
| DP4 | Making the Best Use of Existing Resources and Infrastructure |
| DP7 | Promote Environmental Quality |
| EM1(B) | Integrated Enhancement and Protection of the Region's Environmental Assets: Natural Environment |
| EM1(D) | Integrated Enhancement and Protection of the Region's Environmental Assets: Trees, Woodlands and Forests |

Local Plan Policy

| | |
|------|---|
| NE11 | Nature Conservation |
| BE1 | Design Guidance |
| GC1 | New Buildings |
| DC1 | New Build |
| DC3 | Amenity |
| DC6 | Circulation and Access |
| DC8 | Landscaping |
| DC9 | Tree Protection |
| DC38 | Space, Light and Privacy |
| DC41 | Infill Housing Development or Redevelopment |
| H1 | Phasing Policy |
| H2 | Environmental Quality in Housing Developments |

Other Material Considerations

| | |
|------|------------------------------------|
| PPS1 | Delivering Sustainable Development |
| PPG2 | Green Belts |
| PPS3 | Housing |

CONSIDERATIONS (External to Planning)

Highways: No objection

Environmental Health: No objection subject to a condition

APPLICANT'S SUPPORTING INFORMATION

A Design & Access Statement, a Bat Report and a Tree Protection Report & Survey were submitted with the planning application.

OFFICER APPRAISAL

Green Belt Policy

Replacement dwellings may be an exception to the categories of inappropriate development in the Green Belt as outlined in policy GC1 of the Local Plan, so long as the replacement dwelling is not materially larger than

the dwelling it replaces. The Local Plan does not contain a saved policy that defines “materially larger” or expands further on the advice within PPG2. Case law has established the factors that should be considered when assessing what is “materially larger”. It includes a comparative assessment of the scale of the proposed dwelling against the existing dwelling on the site. This includes matters of floorspace, footprint, height, massing, volume, design and position on the plot. Any, or a combination of such factors, could contribute towards a dwelling being materially larger than the existing dwelling. Floorspace will normally be a key factor in this assessment. The general intention is that the new building should be similar in scale to that which it replaces.

If a replacement dwelling is considered to be materially larger than the dwelling it replaces then it must be considered as inappropriate development for which there is a presumption against. Inappropriate development should not be permitted, except in very special circumstances. Very special circumstances will only exist if the harm by reason of inappropriateness and any additional harm is clearly outweighed by other considerations.

The correct approach to assessing a replacement dwelling in the Green Belt is:

1. Assessment of whether it is materially larger.
If it is materially larger then:
 2. Assessment of any harm in addition to that of inappropriateness.
 3. Assessment of considerations put forward in favour of the development.
 4. Do those considerations clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm?
 5. If yes, do they amount to very special circumstances to justify granting of planning permission?

Are the dwellings materially larger than the dwellings they replace?

The applicant has stated in their Design & Access Statement that the replacement dwellings would result in an 11% increase in footprint and a 27.9% increase in floorspace. They go on to state that these increases are lower than what has been allowed at other properties along Prestbury Road and add that the percentage increases are within the parameters set on many sites in the Green Belt, as well as the 30% policy figure for extensions. They therefore conclude that the replacement dwellinghouses are appropriate development in the Green Belt.

The Case Officer has undertaken her own assessment of the existing dwellings versus the proposed dwellings and does not concur with the calculations put forward by the applicant. The Case Officer’s findings are:

| | Existing Dwellings | Replacement Dwellings (% increase) |
|------------------------------|--------------------|------------------------------------|
| Floorspace (m ²) | 571.95 | 895 (56.5%) |
| Footprint (m ²) | 294.64 | 351.21 (19.2%) |

| | | |
|--------------------------------|------------------------|------------------------|
| Eaves Height (m) | 5.9 | 5 |
| Ridge Height (m) | 10.8 | 9.5 |
| Space to Side Boundaries (m) | 19.4 (west), 15 (east) | 9.4 (west), 6.4 (east) |
| Total Width of Both Houses (m) | 20.2 | 35.8 |
| Total Depth of Both Houses (m) | 28.4 | 16.3 |

Whilst the height of the proposed dwellings would be marginally lower than the existing dwellinghouses and the depth would decrease, the replacement dwellings would have a significantly larger floorspace and footprint and the spread of development on the site would significantly increase. Taking into account all of these factors, the proposed dwellings are materially larger than the dwellings they replace. The proposed replacement dwelling is therefore inappropriate development in the Green Belt.

Assessment of any additional harm

PPG2 states that the most important attribute of Green Belts is their openness and therefore any building has an effect on openness. The footprint and floorspace of the replacement dwellings would be greater than the dwellings they would replace and the change from what is currently a pair of semi-detached properties to 2no. detached dwellings would result in the spread of development significantly increasing on the site. All of these factors would result in a greater scale and bulk which would reduce openness, to the detriment of the Green Belt.

Assessment of considerations in favour of the development

PPG2 Green Belts states at paragraph 3.2 that *'it is for the applicant to show why permission should be granted'*. The applicant maintains that the proposed dwellinghouse does not comprise inappropriate development and, as such, has not advanced any very special circumstances.

The proposed development comprises inappropriate development in the Green Belt and is therefore considered to be contrary to policy GC1 of the Local Plan and national planning policy in respect of Green Belts.

Design

The existing dwellinghouses comprise a pair of semi-detached 2½-storey brick built properties that are located centrally on the plot. Whilst the property has been subdivided into two units, the building still gives the impression of one large, double-fronted detached dwellinghouse when viewed from Prestbury Road. The original driveway is positioned to the eastern part of the site, whilst an additional access was formed under the 1961 planning permission to the west. No. 5 Prestbury Road has both an attached garage and a detached garage and No. 7 Prestbury Road has an attached garage; all of which are located to the rear of the site. Each property's curtilage is demarcated by a centrally planted boundary hedge/shrubs. The plot size of both dwellings is commensurate to a plot that would contain one large detached property along Prestbury Road.

The replacement dwellinghouses would comprise 2no. detached 2½-storey dwellinghouses and would be handed. They would be positioned marginally further from Prestbury Road than the existing semi-detached houses, but would have a greater spread across the frontage of the site with a large proportion of the replacement dwellings occupying the existing side gardens. The spacing to the sides of the plot would be significantly reduced and the properties would be set three metres from one-another. A boundary wall would be erected between the two properties. Each dwellinghouse would be rendered with a tiled roof. They would have a steeply hipped roof with two gables to the front elevation and small dormer windows within the front and rear roof slopes. Revised plans were received that deleted the proposed detached garages from the scheme and therefore no garaging is now proposed.

No building line is present along this part of Prestbury Road and therefore the siting of the replacement dwellings in relation to Prestbury Road is considered acceptable. However the scale and bulk of the dwellinghouses would significantly increase due to their siting within the plot, the reduced spacing to the sides and the inclusion of dormer windows and gables within the front elevation. Whilst the depth of the built form has reduced, this is currently occupied by single storey garaging/outbuildings. A number of trees and shrubs are positioned along the front boundary and are shown to be retained on the submitted drawings. Whilst they provide some screening, the existing dwellinghouse is still visible from Prestbury Road and the trees are deciduous. Given that the proposed dwellinghouses would occupy more of the site's width and would have a similar eaves and ridge height to the existing semi-detached dwellinghouses, it is considered that they would be highly visible from Prestbury Road.

The surrounding dwellinghouses comprise large detached dwellinghouses of individual designs constructed of a variety of materials, with no two dwellings being the same. Whilst the design of the replacement dwellings when considered individually are not considered out-of-character with the surrounding area, concern is raised regarding a pair of dwellings with the same design being introduced into the street scene.

The surrounding dwellings all occupy substantial plots. Whilst there is some variety in the size and shape of the plots, the plot size of the application site is commensurate with the size of plot that would be occupied by one detached dwellinghouse. By erecting two distinctly separate detached dwellings in replace of the existing subdivided dwellinghouse that still maintains the appearance of one large detached dwelling would have a detrimental effect on the character and appearance of the street scene and surrounding area.

For the reasons outlined above it is considered that the 2no. detached replacement dwellings would not reflect local character or be sympathetic to the character of the local environment or street scene, contrary to policies BE1 and DC1 of the Local Plan.

Amenity

The application site is located in a ribbon of dwellings located in the North Cheshire Green Belt. Detached dwellings are sited to the east and west of the application site. The replacement dwellings would be sited closer to the properties on either side than the existing dwellinghouses. However, only secondary windows would be positioned in the side elevations. Where these windows would directly face the neighbouring property they would exceed the separation distances outlined in policy DC38 of the Local Plan. Each dwelling would be sited between approximately 7 and 9 metres from the side boundaries and existing trees and shrubs form the boundary treatment. The proposed dwellings would be sited further from Prestbury Road than the existing dwellings and would exceed the separation distances in respect of the properties on the opposite side of the road. For these reasons, it is not considered that the proposed dwellings would have a detrimental effect on the amenity of the adjacent dwellings and are considered to comply with policies DC3 and DC38 of the Local Plan.

The proposed dwellings would be sited three metres from one-another with a boundary wall between, in compliance with the separation distances outlined in policy DC38. The properties would be a mirror image and therefore the proposed windows within the facing side elevations would directly face each other. Whilst the view from the ground floor windows would be obscured by the proposed boundary wall, the first floor windows would have a direct view into the neighbouring property's rooms. It is therefore recommended that a condition be attached requiring these windows to be obscure glazed and fixed in order to protect the occupiers' amenity. Providing such a condition is attached, it is considered that the proposed dwellings would have an acceptable relationship to each other and would comply with policies DC3 and DC38 of the Local Plan.

The Environmental Health Division has assessed the application and has recommended that construction and demolition times be conditioned in order to protect neighbouring amenity given the scale of the development and the proximity to neighbouring dwellings.

Highways

The proposed dwellinghouse would utilise the existing accesses onto Prestbury Road. A detached double garage was proposed for each dwelling but they have been subsequently deleted from the proposed scheme at the request of the Agent. The Strategic Highways Manager has assessed the proposed development and does not consider there to be any highway issues. He therefore raises no objection. The proposed development is therefore considered to comply with policy DC6 of the Local Plan.

Ecology

The application is supported by an acceptable ecological survey undertaken by a suitably qualified and experienced consultant. No evidence of bats was recorded and consequently the proposed development is unlikely to have an adverse impact upon this species group. The Nature Conservation Officer recommends that conditions be attached in respect of nesting birds and for

features to be incorporated for breeding birds and roosting bats. Subject to these conditions, the proposed development is considered to comply with policy NE11 of the Local Plan.

Trees

The application site contains a number of TPO protected and unprotected trees. The Forestry Officer assessed the submitted Tree Report & Survey and noted a number of omissions. Additional information has therefore been requested and is currently awaited.

Landscape

The Landscape Officer has assessed the application and raises no objection to the proposed development subject to conditions in respect of the submission and implementation of a landscaping scheme and details of the proposed boundary treatment. For these reasons it is considered that the replacement dwellings would comply with policy DC8 of the Local Plan.

CONCLUSIONS AND REASON(S) FOR THE DECISION

The replacement dwellinghouses are considered to comprise inappropriate development in the Green Belt and would cause additional harm to its openness. No very special circumstances have been put forward by the applicant. In addition, the design, siting and scale of the replacement dwellings are not considered to reflect the local character of the surrounding area or street scene. The replacement dwellinghouses are therefore considered to be contrary to policies BE1, DC1 and GC1 of the Local Plan and national planning policy in respect of Green Belts.

SUBJECT TO

Additional information being received in respect of the existing trees on the site and the comments of the Forestry Officer.

RECOMMENDATION

The application is therefore recommended for refusal for the following reasons:

1. The proposal is an inappropriate form of development within the Green Belt, as defined by the Development Plan. There are no exceptional circumstances that would warrant an exception to adherence. The development is therefore contrary to policy GC1 of the Macclesfield Borough Local Plan and would cause harm to the objectives of those policies. The development is similarly contrary to national policy guidance relating to development within the Green Belt.
2. The proposed development fails to achieve an adequate quality of design to justify approval of planning permission. The replacement dwellings are excessive in scale and bulk, they would be highly visible from Prestbury Road and they occupy a large proportion of the site's width which would have a detrimental impact on the street scene/character of the area. It is therefore concluded that the proposal would detract from the character and appearance of the area, within

which the site is located and be contrary to policies BE1 and DC1 of the Macclesfield Borough Local Plan and national planning policies which seek to promote high quality and inclusive design.

Location Plan: Cheshire East Council Licence No. 100049045



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| | |
|---|--|
| Planning Reference No: | 09/0842M |
| Application Address: | BROAD HEATH HOUSE, SLADE LANE, OVER ALDERLEY |
| Proposal: | REPLACEMENT DWELLING WITH NEW ENTRANCE GATES, BRICK PIERS AND BOUNDARY WALL |
| Applicant: | MR & MRS CHRISTOPHER WREN |
| Application Type: | FULL |
| Grid Reference: | 386699 376409 |
| Ward: | ALDERLEY |
| Earliest Determination Date: | 3 MARCH 2011 |
| Expiry Date: | 1 JUNE 2009, RE-DETERMINATION 2011 |
| Date of Officer's Site Visit: | 10 FEBRUARY 2011 (NEW OFFICER) |
| Date Report prepared: | 25 FEBRUARY 2011 |
| Constraints: | GREEN BELT AREA OF SPECIAL COUNTY VALUE |

SUMMARY RECOMMENDATION

The application is recommended for refusal, as the proposed development represents inappropriate development, and no Very Special Circumstances have been advanced to clearly outweigh the harm.

MAIN ISSUES

- Whether the replacement dwelling is materially larger than the dwelling it replaces, and therefore represents inappropriate development within the Green Belt
- Whether the development creates additional harm
- If the replacement dwelling is materially larger, whether any very special circumstances have been advanced, which clearly outweigh the harm caused by inappropriateness, and any other harm
- Alterations to ground levels, the scale and design of the dwelling, and whether it is in keeping with the character of the area, having regard to its location within an Area of Special County Value
- Whether the proposal affects any protected species
- Residential Amenity issues
- Highway Safety

REASON FOR REPORT

This application is brought before Members by the discretion of the Head of Planning and Housing, as the original decision to grant planning permission in 2009 has been quashed by the High Court in 2010.

DESCRIPTION OF SITE AND CONTEXT

The application site comprises a large detached dwelling, part two storey, part single storey, with attached garage and open sided carport, set within a generous plot.

The application site is situated within an Area of Special County Value, within the Green Belt, as defined by the Macclesfield Borough Local Plan (2004). The property sits in an isolated position on Slade Lane, and is surrounded by open fields. The property is well screened by mature vegetation along the front and side boundaries. There is one gated access point to the property, off Slade Lane.

DETAILS OF PROPOSAL

Following the decision by the High Court to quash the granting of planning permission for a replacement dwelling, the Council is required to re-determine the application. A report to Members has been approved by the Strategic Planning Board and the Northern and Southern Planning Committees in December 2010. A copy of the Judgement and the report to Members are attached at Appendix 1 & 2 of this report.

The proposed development comprises a two and a half storey Georgian style dwelling with roof lantern, situated directly to the rear of the existing dwelling. Below ground a basement is proposed, comprising two games rooms, a pool lobby, utility room and laundry. In addition to this, a large subterranean extension is proposed towards the rear of the dwelling, which would provide a large swimming pool, gym, pool changing room, steam room, sauna, cinema room games rooms, and 2 toilets.

The application has been re-advertised, giving all interested parties a further 21 days to comment on the application. On 18 February 2011, additional plans were received, which corrected errors on the originally submitted survey drawing, and provided details of the entrance gates, brick piers and boundary wall which were shown on the original plans, but no details of which had been submitted. All parties have been re-notified in respect of the additional plans. The last date for comments is 3 March 2011. All representations previously made will also be considered in the re-determination of the application.

RELEVANT HISTORY

- 09/0150P Replacement dwelling
Refused 8/4/09,
Reason: The replacement dwelling was considered to be materially larger than the existing dwelling, and therefore represented inappropriate development.
- 09/0842M Replacement dwelling
Approved, subject to conditions 24 July 2009
Permission quashed by the High Court 11 May 2010
- 11/0037M Brick garage to replace carport
Current application – on this agenda
- 11/0257M Certificate of lawfulness for the proposed conversion of loft space, insertion of rooflights
Current application

POLICIES

Regional Spatial Strategy

- RDF4 Green Belts
DP1 Spatial Principles
DP4 Making the Best Use of Existing Resources and Infrastructure
DP7 Promote Environmental Quality
EM1(B) Integrated Enhancement and Protection of the Region's Environmental Assets: Natural Environment
EM1(D) Integrated Enhancement and Protection of the Region's Environmental Assets: Trees, Woodlands and Forests

Local Plan Policy

- NE1 Areas of Special County Value
NE2 Protection of Local Landscapes
NE11 Nature Conservation
BE1 Design Guidance
GC1 Green Belt – New Buildings
DC1 New Build
DC3 Amenity
DC6 Circulation & Access
DC8 Landscaping
DC35 Materials and Finishes
DC41 Infill Housing or Redevelopment
H1 Phasing Policy

H2 Environmental Quality in Housing Developments

Other Material Considerations

PPS1 Delivering Sustainable Development
PPG2 Green Belts
PPS3 Housing

CONSIDERATIONS (External to Planning)

Highways:

Permission is sought to reposition the vehicular access, by 6.8 metres to the south west of the existing entrance, and to set it back 3.2 metres from Slade Lane, to improve visibility slays, and to provide a vehicle waiting area.

In 2009, the Strategic Highways Manager was consulted on the application, and raised no objection to the proposal, subject to a number of conditions.

The Strategic Highways Manager has been re-consulted on this application, and has provided the following comments:

“The highway aspects of this development have been considered in the previously and there is no change in the comments following the high court decision. No highway objections are raised, subject to the same highway conditions being attached to the application”.

VIEWS OF THE PARISH / TOWN COUNCIL

Over Alderley Parish Council advise that they have no comments to make on the proposal.

OTHER REPRESENTATIONS

In 2009, representations were received from Sir David Barnes (CBE), Mr & Mrs Feather, Mr John Wilkin, and Mr Geoffrey Sparrow on behalf of the CPRE.

Their concerns were summarised as follows:

- Encroachment of dwelling into agricultural land beyond the domestic curtilage
- The design of the dwelling, and the fact that the proposal would be out of keeping with the character of the area

- Proposed boundary treatment incorporates walls and fencing that are out of keeping with the rural character of the area
- Loss of existing boundary treatment in order to satisfy visibility splays onto Slade Lane
- Impact of the replacement dwelling on the Green Belt
- Proposed dwelling would be materially larger than the existing, providing a floorspace increase of approximately 36%. The dwelling would also represent an increase in the proposed dwellings height, span and width and therefore would represent inappropriate development within the Green Belt
- Concerns are also raised regarding the cumulative impact of the dwelling on the openness of the Green Belt in the future due to the potential to extend
- The existing and proposed replacement would not be similar in terms of scale and massing. Size measurements of the proposed and existing have been put forward in order to demonstrate this.
- The potential cumulative impact of the dwelling if extended by 30% in the future, could potentially increase by 77% overall in the future
- The siting of the replacement dwelling away from the footprint of the existing dwelling, and the impact of this on the openness of the Green Belt
- Objections are raised regarding the increase in the number of floors within the replacement dwelling
- The replacement dwelling would appear 'monolithic' in comparison to the stepped roof design of the existing dwelling on site
- The replacement dwelling would have an adverse impact on the Area of Special County Value
- Information within the design and access statement is incorrect
- The size of the proposed basement (500m²) and the potential impact of this on the general maintenance and servicing of the dwelling. Mention is also made regarding the level of excavation works required for the construction of the basement, approximately 3000m³.
- Potential increase in traffic generated as a result of the proposal
- Increased level of hardstanding proposed to the front of the replacement dwelling
- Impact on the existing trees
- Whether the existing dwelling would be demolished prior to the erection of the replacement. Concerns regarding whether this would result in two dwellings on the site.

The letters received provided several floorspace assessments in terms of the increase to individual floors – as such it is considered that the letters should be viewed in order to understand the objections fully.

Concerns are also raised regarding the potential expansion of the site in the future, with particular reference being made regarding the omission of garaging

at the site. Whilst this concern is noted, it is considered that necessary parking provisions can be made to the site without an additional garage. Any potential future application for garaging at the site will be assessed at the time of application, and therefore is not considered to be a material consideration to the current application. The request for an additional condition relating to the prevention of any application for garaging at the site in the future is not considered to be necessary or reasonable.

Additional observations made in 2009 suggested that the proposal did not comply with policy GC1 of the Local Plan or paragraph 3.6 of PPG2, as the replacement dwelling was materially larger, and therefore represented inappropriate development. Particular concern was also raised in respect of the replacement of the annex section of the building, which is single storey, with a three storey building. The proposal was thought to have an adverse impact on visual amenity, particularly due to the loss of screening along Slade Lane, and its prominence. The overall proposal was considered an over-development of the site.

Any representations received in respect of the re-determination of this application will be summarised within an update report to Members, as the last date for comments falls on 3rd March 2011.

APPLICANT'S SUPPORTING INFORMATION (2009)

- Design and Access Statement
- Tree Survey
- Bat report

OFFICER APPRAISAL

Green Belt Policy

Replacement dwellings may be an exception to the categories of inappropriate development in the Green Belt, so long as the replacement dwelling is not materially larger than the dwelling it replaces. The Local Plan does not contain a saved policy that defines "materially larger" or expands further on the advice within PPG2. Case law has established the factors that should be considered when assessing what is "materially larger". It includes a comparative assessment of the scale of the proposed dwelling against the existing dwelling on the site. This includes matters of floorspace, footprint, height, massing, volume, design and position on the plot. Any or a combination of such factors could contribute towards a dwelling being materially larger than the existing dwelling. Floorspace will normally be a key factor in this assessment. The general intention is that the new building should be similar in scale to that which it replaces.

If a replacement dwelling is considered to be materially larger than the dwelling it replaces then it must be considered as inappropriate development for which there is a presumption against. Inappropriate development should not be permitted, except in very special circumstances. Very Special Circumstances will only exist if the harm by reason of inappropriateness and any additional harm are clearly outweighed by other considerations.

Is the dwelling materially larger than the dwelling it replaces?

The Case Officer has undertaken a detailed assessment of the proposed replacement dwelling, which is outlined below:

| | Existing Dwelling | Replacement Dwelling, including basement and subterranean extension |
|---|--|---|
| Total Floorspace (m ²) | 399 excluding conservatory, carport and 2 attic spaces | 1369 |
| Percentage Increase in total floorspace | N/A | 343% |
| Basement (m ²) | None | 685 |
| Ground Floor (m ²) | 264 excluding conservatory and carport | 311 |
| First Floor (m ²) | 135 | 226 |
| Second Floor (m ²) | Non-habitable, not included | 147 |
| Footprint (m ²) | 264 excluding conservatory and carport | 311 |
| Width (m) | 29 | 28.3 |
| Depth (m) | 11 | 15 (above ground) |
| Eaves Height (m) | 5.6 | 6.0 |
| Ridge Height (m) | 8.9 | 8.7 |
| Alteration to ground level (m) | None | -1.0 |

The conservatory (18 m²) has been excluded from the floorspace calculations as it too is a lightweight structure, and represents an exception from Green Belt policy. The carport has also been excluded from the floorspace calculations as it is open sided: it is a lightweight structure, and it does not generate any habitable space. The two attic spaces (one above the main house and one above the

annex) have been excluded, as they are not easily accessible, and do not form habitable accommodation.

Planning permission is currently sought for the replacement of the carport with a brick built garage, this application (11/0037M) is elsewhere on this agenda. If this application were approved, it could generate 50m² of floorspace. Furthermore, a Certificate of Lawfulness has been submitted for the conversion of the attic spaces into habitable accommodation. If a positive certificate were granted, this could generate a further 83 m² of floorspace.

As these floor spaces have not been approved or built, they can not be considered as part of the floorspace calculations in this application.

If these floors spaces (and the floorspace of the conservatory) were added to the floorspace of the existing house, the total floorspace would be 399 + 151 = 550 m², which is *significantly* less than the 1396 m², proposed.

Clearly there is a significant difference in floorspace between the existing and proposed dwelling, the largest contributor being the basement and subterranean extension, creating 685m², which is a similar to the rest of the floorspace of the replacement dwelling at 684 m².

The increase in depth of the proposed dwelling by 4 metres adds to the increase in the overall footprint by 47 m².

The lowering of ground levels by 1.0 metre and the repositioning of the dwelling to the rear of the existing dwelling also raises issues in respect of the height of the building. In effect, the replacement dwelling will appear 0.8 metres taller than the existing structure, and will be more visible, due to the alterations to the access, and the loss of vegetation as a result of the works.

In terms of volume, 11 of the 29 metre width of the existing dwelling is single storey, whilst the replacement dwelling is two and a half storey for the full 28.3 metre width. This adds a significant volume of mass to the on the front (North West) elevation.

The design of the proposed dwelling in this location also raises concern. The properties within the vicinity of the site are traditional farmhouses and cottages. The replacement dwelling is rather grand, akin to a country house or manor. It is considered rather imposing, with the second floor and roof lantern adding to the perception of scale. At paragraph 11 of his ruling, Mr Justice Langstaff describes the building having:

“a solid appearance with a solid ridge line, therefore differing from the current stepped character of the existing building”.

The repositioning of the dwelling by approximately 8.4 metres further back into the site, and reducing the ground level by 1.0 metre adds to the perception of scale, when viewed from the new entrance on Slade Lane.

Taking into account all of these factors, the proposed dwelling is clearly materially larger than the dwelling it replaces. The proposed replacement dwelling therefore represents inappropriate development in the Green Belt.

Assessment of any additional harm

It is not considered that the proposal conflicts with any of the listed purposes of including land in the Green Belt.

The repositioning of the dwelling 8.4 metres further back into the site will result in some harm to the openness of the Green Belt, as the footprint of the existing house will be largely replaced with a turning circle and fountain, and the new dwelling will be located on the existing rear garden, in turn this will push the new courtyard further back into the site.

The alterations to the access will inevitably result in the loss of some vegetation along the road frontage, which increase views into the site. Whilst this could be overcome in the long term with replacement species, in the short term it will result in the replacement dwelling being readily visible from Slade Lane. Due to its scale, siting and design, it will have a detrimental effect on the visual amenity of the Green Belt.

The proposal would result in a reduction in the openness of the Green Belt and have an adverse impact on the visual amenity. As openness is the most important attribute of the Green Belt, this issue carries a good degree of weight.

Assessment of other considerations

As outlined above, in 2009, the Council granted planning permission for this development. Subsequently, this decision was quashed by the High Court. In his ruling, Mr Justice Langstaff concluded at paragraph 29:

“I cannot be satisfied that the council had regard to what was, it is accepted, a material consideration; namely, the size and scale of the basement. I therefore, cannot be satisfied that the council took that into account in determining whether the building was or was not materially larger. Indeed such indications as there are in the papers before me indicate, and if necessary, I would hold, that they did not do so”.

At paragraph 35, Mr Justice Langstaff goes on to advise:

“But it does not follow that I can say that the decision to be reached by the local authority will necessarily be the same if it has regard to the matters which it should properly have regard as that it actually reached which is the subject of this litigation; indeed, Mr Albutt has not sought to argue that I should sustain the decision upon the basis that is plainly and obviously right. It seems to me that the size of the basement is significant. As a matter of sheer size, the issue of how that affects a conclusion as to whether it is or is not such as to make the building as a whole materially larger than that which it replaces, is not one which I can say necessarily should be determined one way or the other”.

Members must give careful consideration to decision made by the Judge, and fully consider this issue of the basement/subterranean extension in the re-determination of this application. As outlined above, the proposed development would result in a 343% increase in the floorspace, largely as a result of the basement and formation of a second floor within the replacement dwelling.

The overall volume of the dwelling would also be materially larger due to the increase mass at first and second floor level at the north eastern element of the replacement dwelling, and the building would appear 0.8 metres taller due to the lowering of ground levels. As a result of these factors, the replacement dwelling must be considered materially larger, and therefore the development represents inappropriate development within the Green Belt.

No Very Special Circumstances have been advanced to outweigh the harm caused by inappropriateness, or any other harm.

Amenity

The replacement dwelling is situated in a relatively isolated location, therefore the proposal is not considered to have an adverse impact on the residential amenity of adjoining properties.

Landscape

The existing dwelling is set in a matured landscaped garden with large shrub beds and an extensive lawn area to the rear. It is well screened from Slade Lane

by an existing mature hedge and trees. The garden enjoys an open aspect over fields to the rear of the property.

The existing field gate is unobtrusive and compliments the other timber gates used in the dwelling opposite. An appropriate frontage boundary and gate detail is required to ensure that the character of the rural lane landscape is retained.

Currently the building is located behind mature shrub beds at the front which create a framework and landscape setting. By locating the building further back on the site the arrival space at the front becomes more prominent and larger.

The drawings supplied do not indicate how the new dwelling is to be accommodated within the site. An indication of the landscape layout around the new building is required.

The full consultation response is available to Members at the meeting, and is also available on our website, if required.

Forestry

The redevelopment of this site in arboricultural terms, benefits from the size and openness of the garden with the majority of the tree cover contained on the periphery of the plot.

In order to facilitate an improved access/exit point providing greater visibility splays there may be an amount of impact damage in terms of root severance associated with the small ornamental trees and Cypress located in close proximity to the existing to the existing access. All the affected trees are considered to be low value (C) in amenity terms and should they require removal the impact on both the street scene and from public vantage points will be limited, and can be mitigated by replacement planting. The use of flanking walls associated with the re-developed access within the rural setting is not welcome but again with suitable planting outside visibility splays the impact of the structures can be softened.

The full consultation response is available to Members at the meeting, and is also available on our website if required.

Ecology

The application is supported by an acceptable ecological survey undertaken by a suitably qualified and experienced consultant. No evidence of bats was recorded and consequently the proposed development is unlikely to have an adverse impact upon this species group. The proposed development is therefore considered to comply with policy NE11 of the Local Plan.

The Nature Conservation Officer has been re-consulted and raises no objection to the proposal.

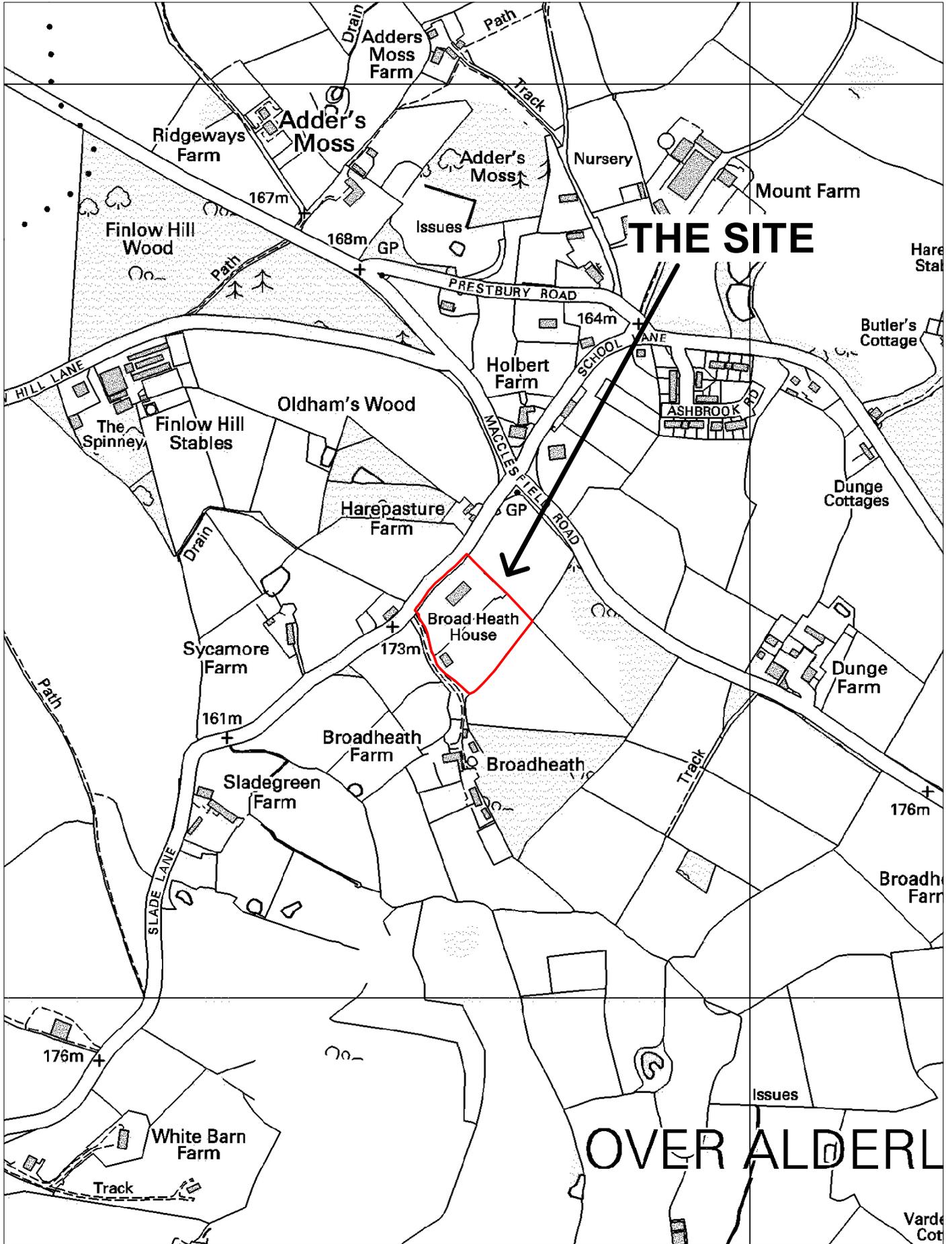
CONCLUSIONS AND REASON(S) FOR THE DECISION

Due to the significant increase in floorspace, and the increase in size of the footprint, depth, volume and height, the proposed replacement dwelling is considered to be materially larger than the dwelling it replaces and therefore represents inappropriate development, having regard to policy GC1 of the Macclesfield Borough Local Plan, and paragraph 3.6 of PPG2 (Green Belts). The proposal would also result in a reduction in openness, due to its repositioning on site, and have an impact on the visual amenity of the Green Belt, due to the loss of screening along the road frontage. No Very Special Circumstances have been advanced to clearly outweigh the harm caused by inappropriateness or any other harm, and therefore a recommendation of refusal is made for the following reasons:

1. The proposal is an inappropriate form of development within the Green Belt, as defined by the Development Plan. The development is therefore contrary to policy GC1 of the Macclesfield Borough Local Plan and would cause harm to the objectives of those policies by virtue of the fact that having regard to the overall scale, design and appearance, the proposed replacement dwelling is materially larger than the existing dwelling. The development is similarly contrary to national policy guidance relating to development within the Green Belt. It is not considered that very special circumstances exist to justify the approval of inappropriate development in the Green Belt.
2. The proposed development, by reason of its size, siting and design, would form a visually obtrusive feature which would detract from the rural character and appearance of the area within which it is located. The approval of the development would therefore be contrary to national planning policy guidance, North West of England Plan Regional Spatial Strategy to 2021 policies DP7 & EM1 and Macclesfield Borough Local Plan policies BE1 and DC1, thereby causing harm to the objectives of those policies.

ANY OTHER ISSUES

It should be noted that there are some minor inconsistencies on the plans, for example rooflights to the basement appear on one plan and not on another. If Members are minded to approve this application, a condition will be required, clarifying this matter.



09/0842M - BROAD HEATH HOUSE, SLADE LANE, OVER ALDERLEY, MACCLESFIELD
N.G.R. - 386,690 - 376,410

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STRATEGIC PLANNING BOARD

Date of meeting: 8 December 2010
Report of: Head of Planning and Housing
Title: Broadheath House, Slade Lane, Over Alderley, Alderley Edge - Judicial Review of decision to grant planning permission

1.0 Purpose of Report

1.1 To notify members of the result of the Judicial Review proceedings brought against the decision of the Council to grant planning permission for the development at Broad Heath House, Slade Lane, Over Alderley, Alderley Edge, the Judicial Review application was successful and therefore the Planning Permission that had been granted was quashed by the Court.

2.0 Decision Required

2.1 To note

(1) the decision of the High Court to quash the grant of planning permission

(2) that a report on re-determination will be presented to the Strategic Planning Board which takes into account the judgment and the views expressed by Mr Justice Langstaff

(3) the implications for future decisions that will be taken based on the judgment and views expressed by Mr Justice Langstaff

3.0 Financial Implications for Transition Costs

3.1 The Council will be required to meet its own external costs of defending this action in an amount of £12,929.95, and will also be required to meet the Claimants costs which have been agreed at £32,987.50.

4.0 Legal Implications

4.1 The decision of the High Court quashes the Planning Permission that was granted on 8 April 2009. The application therefore currently stands undetermined and will need to be re-determined having regard to the judgment.

5.0 Risk Assessment

5.1 Determination of applications for replacement dwellings in the Green Belt will need to be subject to a review, and guidance on whether proposed replacement dwellings are "materially larger" will need to be given to

Planning Officers. Such a review and guidance will minimize the likelihood of further challenge to decisions on such applications.

- 5.2 The possibility of the introduction of a Supplementary Planning Document to assist in the determination of applications that propose a replacement dwelling in the Green Belt needs to be considered.

6.0 Background and Issues

- 6.1 It is relevant to set out some details of the Judicial Review process. This is a process which focuses on the way in which a decision is taken by a public body. It is not a way of challenging a decision on the planning merits.

- 6.2 The challenge will usually be on one or more of the following grounds:
- That there has been a failure to apply the law
 - That there has been a misinterpretation of the law.
 - That a relevant consideration has not been taken into account or an irrelevant one has been
 - That the decision is perverse.

- 6.3 The procedure which governs a claim for Judicial Review is as follows:
- The Claimant sends what is called a pre-action protocol letter to the Council. This sets out the nature of the concerns and the Council has 14 days to respond. The intention of this early step is to allow the Council to produce arguments which either resolve the Claimant's concerns or convinces the Claimant that the claim will not succeed.
 - If the Claimant decides to continue a claim is issued in the Administrative Court which sets out the detailed statement of grounds on which the case is based.
 - The Council must serve an Acknowledgement of Service within 21 days if it wishes to defend the case and must set out summary grounds of defence.
 - The case does not automatically then proceed to a hearing. Rather the claimant has to obtain Permission from the Court. This is a step which allows the Court to filter out hopeless cases. The threshold which the Claimant has to cross is, however, set quite low. Ordinarily the Court decides whether to grant Permission on the basis of the written documents which have been submitted by the parties. If, however, Permission is refused at this stage, the Claimant can require an oral hearing at which the parties attend and where the Claimant tries to convince the Court that Permission should in fact be granted.
 - If Permission is granted the Council then has 35 days to submit its evidence and any further defence it wishes to argue. The case then comes on for hearing.

- 6.4 This case concerned a planning application [09/0842M] which was for the replacement of a dwelling in the Green Belt. The application was

received by Macclesfield Borough on 2 February 2009, but determined by Cheshire East on 8 April 2009. The replacement dwelling included a large entirely subterranean basement which had the effect of significantly increasing the volume and gross floor area of the replacement dwelling as compared to the original but with much smaller increases in height and footprint.

- 6.5 The application had to be determined taking into account the guidance in Planning Policy Guidance 2 Green Belts and particularly paragraph 3.6 thereof. That Guidance indicates that a replacement dwelling may not be inappropriate development provided that it is not "materially larger" than the dwelling it replaces. That requirement has previously been considered by the Court of Appeal and this case centred on whether the Council, in granting planning permission, had applied the right test.
- 6.6 The challenge was two-fold:
 - 6.6.1 that the Council had failed to show that it had properly taken into account the extent and effect of the basement. While the officer's report, which recommended that the Committee should approve the application, mentioned the basement it was alleged that this was solely to do with issues of visual impact and not (as other case law provided) in order to make an objective size comparison.
 - 6.6.2 that, even if the Council had properly taken account of the basement as required by the case law, the decision was flawed because it would be perverse for a local authority to conclude that, on the facts here, the replacement dwelling was not "materially larger".
- 6.7 Permission to proceed with the Judicial Review application, at first instance, was in fact not granted on a consideration of the papers by Mr Justice Pelling. He concluded that the officer report showed that the correct question had been asked and that the Council had taken into account that which it was required to take into account.
- 6.8 Following this initial decision, the Claimant then asked for an oral review hearing at which Mr Justice Foskett granted Permission to continue. He indicated that, while he could see the force in Mr Justice Pelling's conclusion and while his mind had wavered whilst considering the matter, he would allow the case to go forward although he expressly recognised that the arguments which had found favour with Judge Pelling might prevail.
- 6.9 The full hearing took place on 11 May 2010 before Mr Justice Langstaff. Both parties were represented by Counsel. The Judge decided that he could not be certain from the documentary evidence that the Council had properly considered the basement in determining if the replacement dwelling was "materially larger" and so quashed the grant of planning permission on that basis. He also ruled that the Council should pay the

Claimant's costs (the normal outcome when a Claimant succeeds). He did not however accede to the argument that the decision would have been perverse and, unusually, gave quite substantial guidance on how such applications should be dealt with in the future.

6.10 The following extract from the judgment indicates how the Council will need to approach the re-determination of the planning application and future applications for replacement dwellings in the Green Belt:

" 30. ...Here, I conclude that all necessarily depends in an assessment of "materially larger" upon the particular facts and circumstances of a case. It can be said, usually, whether one building is or is not larger than another; though reference may need to be had to particular measurements in respect of which it is said to be larger than the other. Whether it is "materially larger" has to be answered in accordance with the guidance given by the Court of Appeal; that is, primarily as a question of size. But it is not exclusively a question of size...

31. The expression "materially" invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a Green Belt. It is possible to give several examples which may illustrate this, and may demonstrate that it is not a sufficient answer to suggest that a qualitative analysis is only relevant within very small increases in size. The first example was that given in the Surrey Homes case. There, the Deputy Judge pointed out that a building might have a much smaller footprint, and have the same overall floorspace, because it was built as a tower; yet if a tower replaced a bungalow, it is not difficult to see how the relevant considerations of size would have nothing to do with footprint, and nothing to do with floorspace, but everything to do with height. In the context of affecting the openness which green belt policy emphasises, the tower might be said to have much greater impact than the bungalow.

32. It is equally not difficult to see that some buildings may have a much larger floorspace as newly-built than those than they replaced, without altering in any way the external dimensions and footprint of the original building. For instance, where a large barn is converted or rebuilt; where a high-ceilinged building is replaced by one with more floors, and therefore more floorspace, but with no change to exterior dimensions. Similarly, it is not difficult to see how, if one replaced a bungalow with a two-storey building on a narrower footprint, the planning considerations relevant to a determination of material largeness would not depend at all upon floorspace or footprint, but in that case upon height and depth of the building.

33. The dictum of Carnwath LJ at the end of paragraph 36 made the point that if an extension were three times the size of the original - and I note that would mean a building four times the size of the

original, being the original plus the extension - it could not be regarded as proportionate. When looking at a replacement building, the test is not what is "proportionate", though material largeness is to be read in the same spirit. But that is very different, as it seems to me, from the situation here. It seems to me that, in this particular case, a very important fact and issue to which the local planning authority will wish to have regard in attributing whatever weight it thinks is appropriate to the size of the basement is the fact that, as part of the dwelling, that basement is intended to be entirely below ground level.

34. *I could not, in short, have said that it would necessarily and obviously have been perverse for the local authority in this case to have concluded, if it did so having had regard to all proper considerations, that the replacement building was not materially larger than the existing. Providing it did not lose sight of the overall size and floorspace of the basement, the authority would be entitled, in my view, to come to a conclusion that the building above ground was such, and the basement such, that overall, the building, in the contexts to which I have referred, was not materially larger. Indeed, it is plain from (the Officer's statement) that they did not regard that conclusion as being to them, as an experienced planning officer, necessarily perverse.*

35. *But it does not follow that I can say that the decision to be reached by the local authority will necessarily be the same if it has regard to the matters to which it should properly have regard as that it actually reached which is the subject of this litigation...It seems to me that the size of the basement is significant. As a matter of sheer size, the issue of how that affects a conclusion as to whether it is or is not such as to make the building as a whole materially larger than that which it replaces, is not one which I can say necessarily should be determined one way or the other.*

36. *Although this last part of my decision, from paragraph 30 onward, is necessarily obiter, I hope that those observations are of assistance to the parties."*

6.11 As a general comment, it is clear from Mr Justice Langstaff's decision that the Local Planning Authority are entitled to take the view that in a given set of circumstances a proposed replacement dwelling that has a basement is not necessarily materially larger in the context of PPG2, and therefore not inappropriate development. This will, however, essentially involve a comparison of size, and the provision of a basement may well be a determining factor in reaching a decision that a replacement dwelling is materially larger, but there will need to be a judgment made on the circumstances of each case. Whatever decision is reached, there needs to be a clear and comprehensive assessment of the existing dwelling and the proposed replacement dwelling, within either the Committee report or the delegated report, that is explicit regarding what

has been included in that assessment and why. It is not sufficient for the Officer to have considered the matter without explaining that reasoning fully and comprehensively in their report, and the decision maker must then take account of that assessment in making their decision.

- 6.12 Clearly in this case, while the Officer's report was approved by a number of Officer's prior to reaching the Committee, the Judge was of the view that the basement issue was not clearly covered within the report, and therefore had not been clearly in the minds of members when they were making the decision. As such he was not able to determine whether proper regard had been had to the required points and if those points had been dealt with, that a different decision would not have been reached.

7.0 Reasons for Recommendation

- 7.1 To ensure that members of the Strategic Planning Board are aware of the decision of the High Court, are aware that this application will need to be re-determined, and of the comments in the judgment about that, and about the future determination of replacement dwelling applications in the Green Belt across Cheshire East. A similar report will be presented to subsequent meetings of the Northern and Southern Planning Committee's to ensure that those members are also aware of the impact of this decision.

For further information: Nicky Folan
Background papers:

Decision of Mr Justice Langstaff dated 11th May 2010

Portfolio Holder: Jamie Macrae
Officer: Nicky Folan
Tel No: 01270 685851 or 01625 504261
Email: nicky.folan@cheshireeast.gov.uk

Case No: CO/12308/2009

Neutral Citation Number: [2010] EWHC 1420 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Sitting at:
Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M3 3FX

Date: Tuesday, 11th May 2010

Before:

MR JUSTICE LANGSTAFF

Between:

FEATHER

Claimant

- and -

CHESHIRE EAST BOROUGH COUNCIL

Defendant

MR CHRISTOPHER WREN AND MRS SUSAN WREN

Interested Parties

(DAR Transcript of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
Official Shorthand Writers to the Court)

Mr Jonathan Easton appeared on behalf of the **Claimant**.

Mr Ian Albutt appeared on behalf of the **Defendant**.

The **Interested Parties** did not attend and were not represented.

Judgment
(As Approved)
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MR JUSTICE LANGSTAFF:

1. This is an application for judicial review of a planning permission which was granted on 24 July 2009. Permission to appeal was granted on a renewed application by Foskett J on 17 February following a hearing on 12 February this year. The application relates to a planning permission granted by the Cheshire East Borough Council (the Northern Area Planning Committee were essentially responsible for the decision) for a development comprising a replacement dwelling at Broad Heath House, Over Alderley, Macclesfield. The property is owned by a Mr and Mrs Christopher Wren. The claimant, Mr Simon Feather, owns and lives at Broad Heath Farm, adjacent to Broad Heath House. Both properties are in the Green Belt, and Green Belt planning policies govern the approach to development in the area.
2. Those policies derive from national planning guidance, which is set out in what is known as PPG 2. The relevant paragraph of PPG 2 is paragraph 3, which sets out the policies in respect of control over development. Paragraph 3 begins with a presumption against inappropriate development. A new building is to be regarded as inappropriate, unless it falls within one of a specified number of exceptions. Amongst those is:

“Limited extension, alteration or replacement of existing dwellings (subject to paragraph 3.6 below).”

I emphasise the word “limited”. Paragraph 3.6, which is central to this application, reads as follows:

“Provided that it does not result in disproportionate additions over and above the size of the *original* building, the extension or alteration of dwellings is not inappropriate in Green Belts. The replacement of existing dwellings need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces. Development plans should make clear the approach local planning authorities will take, including the circumstances (if any) under which replacement dwellings are acceptable.”

There were no relevant local development plans at the time at which this application fell for consideration. Accordingly, regard had to be had, and had only to paragraph 3, insofar as the policies there set out were concerned.

3. The paragraphs to which I have already referred do not sit in a vacuum. Within paragraph 3 itself, for instance at paragraph 3.8, it is noted that:

“The re-use of buildings inside a Green Belt is not inappropriate development providing:

(a) it does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land in it.”

And it continues. Of particular relevance in this case, and in particular in understanding, in my view, aspects of the planning officer’s advice, is paragraph 3.15. That reads:

“The visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design.”

4. By way of broader background, reference might be made to paragraph 1.4, which sets out what is said to be the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open. The most important attribute of Green Belts, it says, is their openness. The purposes of including land in Green Belts are set out further at paragraph 1.5, and the use of land at 1.6. Paragraph 2.10 may also be worthy of further note, because it considers the consequences for sustainable development, of channelling development toward urban areas inside an inner Green Belt boundary, therefore away from the Green Belt itself.
5. The terms of this guidance, and in particular paragraph 3.6, were the subject of a decision at appellate level, binding upon me. It is common ground that the relevant legal principles are to be found in *R (Heath & Hampstead Society v Camden London Borough Council)* [2008] EWCA Civ 193. That case involved a decision to grant planning permission for a house in the Vale of Health. It was to replace an existing 1950s dwelling house which was in part two storeys high with one which was in part three storeys high. The various calculations could broadly be summarised (see paragraph 3) by saying that there would be a three-fold increase in floorspace, perhaps a four-floor increase in built volume, and between a two and two and-a-half times increase in the footprint of the building. The planning officers in the council had not considered the question of size when determining whether the building was materially larger, but had rather asked whether the relative visual impact of the replacement building was materially different from that of the existing building.
6. The decision to which the court came, the leading judgment being that of Carnwath LJ, with which Sedley and Waller LJJ agreed, was that that approach was wrong. It drew attention, basing itself upon the policy guidance which I have just set out, first to the concept of appropriate development, as compared to that which was inappropriate development; and that the relevant test as to whether a proposed replacement dwelling was appropriate was whether it would be not materially larger than the dwelling it replaced (see paragraph 12). The issue before the Court of Appeal was expressed at paragraph 13 in these terms:

“...whether the ‘materially larger’ test imports, solely or primarily, a simple comparison of the size of the existing

and proposed buildings; or whether it requires a broader planning judgment as to whether the new building would have a materially greater impact than the existing building on the interests which MOL policy is designed to protect [this policy is indistinguishable from that in PPG 2 which I have cited]. Mr Elvin's case [he appearing for the counsel], in a nutshell, is that, in the context of policies designed to protect the MOL, the development cannot said to be 'materially' larger, if the increase has no 'material' impact on the objectives of the MOL; or at least that the authority could reasonably take that view."

The court observed at paragraph 17 that that argument had been rejected at first instance by Sullivan J. He had relied in part upon the reasoning of Deputy Judge Christopher Lockhart-Mummery QC in Surrey Homes Limited v Secretary of State for the Environment (unreported) CO/1273/2000, in which the Deputy Judge had observed that the physical dimension which was most relevant for the purpose of assessing the relative size of the existing and replacement dwelling houses would depend upon the circumstances of the particular case, and might be floorspace, footprint, build volume, height, width etc, although he thought that in most cases, floorspace would be the starting point if not the most important criterion.

7. The court concluded that Mr Elvin's argument, as rejected by Sullivan J, that the argument (see paragraph 33) was to the effect that "material" meant material in planning terms; that it was a settled principle that matters of planning judgment, including the weight to be given to material considerations, were for the local planning authority and not the courts, and that the authority in that case had correctly identified the increased size of the building in all its aspects as a relevant consideration, but had decided on the facts that it was not material; that that was a judgment for them, and involved no issue of law justifying the intervention of a court. As to that, the Court of Appeal said (paragraph 34 of the judgment of Carnwath LJ):

"Although I see the force of that submission, it ignores the context in which the word is used. The words "materially larger" in paragraph 3.6 should not be read in isolation. There are two important aspects of the context. First is that paragraph 3.6 is concerned with the definition of "appropriate development", as contrasted with inappropriate development, which is "by definition harmful to the Green Belt" (see para 8 above). This first stage of the analysis is concerned principally with categorisation rather than individual assessment."

I pause there to note that Mr Albutt, who appears here for the council, draws attention to the word "principally"; he does so to note the point that it is not the only matter to which the planning authority may have regard.

8. The judgment continues (see paragraph 35), making the point in the last sentence of that paragraph that if it had been intended to make appropriateness dependent upon a broad “no greater impact” test, the same words could have been used; but instead, the emphasis was on relative size, not relative visual impact. Then this, at paragraph 36:

“36. That leads to the second aspect of the context, which is that of paragraph 3.6 itself. It is part of the test for a category which covers “limited extension, alteration or replacement...” “Limited” to my mind implies a limitation of size. Paragraph 3.6 deals with both extension and replacement. An extension must be “proportionate” to the size of “the *original* building”. The emphasis given to the word “original” shows how tightly this is intended to be drawn, in order presumably to avoid a gradual accretion of extensions, each arguably “proportionate”. It would be impossible, in my view, to argue that “proportionate” in this context is unrelated to relative size. For example, an extension three times the size of the original, however beautifully and unobtrusively designed, could not, in my view, be regarded as “proportionate” in the ordinary sense of that word.

37. The words “replacement” and “not materially larger” must be read together and in the same context. So read, I do not think that the meaning of the word “material”, notwithstanding its use in planning law more generally, can bear the weight which the authority sought to give it. Size, as Sullivan J said, is the primary test. The general intention is that the new building should be similar in scale to that which it replaces. The *Surrey Homes* case, [2000] EWHC 633 (Admin), illustrates why some qualification to the word “larger” is needed. A small increase may be significant or insignificant in planning terms, depending on such matters as design, massing and disposition on the site. The qualification provides the necessary flexibility to allow planning judgment and common sense to play a part, and it is not a precise formula. However, that flexibility does not justify stretching the word “materially” to produce a different, much broader test. As has been seen, where the authors of PPG2 intend a broader test, the intention is clearly expressed.”

9. Reference is made in his submissions by Mr Albutt to the fact that here, reference is made to such matters as design and disposition on the site as relevant to the question of whether one building is materially larger than another. Neither design nor disposition are themselves direct references to size. They are, however, plainly, and in this paragraph recognised to be, relevant planning considerations.

10. Mr Easton, appearing as he does for the claimants, argues for his part that in this paragraph a distinction is made between a small increase in physical size, measured objectively, as to which planning considerations may make the difference between an increase in size which is material and that which is not, and a larger increase in size, as to which he submits, bearing in mind the example given obiter at the conclusion of paragraph 36, the focus on size simply leaves no space for planning judgment to play a part. It is said here that the planning authority failed in two respects. It is argued by the claimants that the authority did not pay regard to the size of the building as it should have done, and it is said it reached a conclusion to which no reasonable authority could, on the facts, have come.
11. I turn, therefore, to look in greater detail at what was proposed, the advice given by the planning officer, in this case to the Northern Area Planning Committee, and subsequently to those two officials to whom that committee delegated the ultimate decision, and to review the arguments in detail against that background. The proposal in outline was to replace a 5-bedroom house, built in two storeys, which had an attached single-storey element reaching 5.8 metres in height. That existing dwelling has a stepped roof design, acting as a visual break in the overall appearance of the dwelling. The replacement dwelling would take the form of what was described by the planning officer as a solid two-storey dwelling of grand appearance, fabricated in facing brick, render and slate roof. The proposed design, as to a lay observer is manifestly apparent from looking at the architect's pictures and elevations, would be of solid appearance with a solid ridge line, therefore differing from the current stepped character of the existing building. The planning officer noted that the proposed dwelling would be approximately one metre taller than the existing dwelling, but that the overall height would increase only 0.2 of a metre; that may be a reflection of the fact that the replacement dwelling was to be sited further back from the road on the application site than the existing building, and that some minor excavation works were to be carried out. The overall depth and span of the replacement dwelling was to provide a small reduction upon that which exists.
12. In the planning officer's report which was compiled first on 28 May 2009, then updated on 22 June (see page 100 in the bundle) and updated again on 9 July (see page 138), the detail continued as follows:

“In assessing whether the replacement dwelling would be materially larger than the existing it is important to assess the overall scale and appearance of the building, and also comparing the footprint and floorspace of each dwelling. As discussed above, the overall scale and appearance of the dwelling is considered to be relatively similar to the existing. The proposed replacement dwelling would provide a smaller footprint, approximately a reduction of 11%. The amount of floorspace afforded to the replacement dwelling would increase by approximately 30%. This increase in floorspace to the dwelling must be considered in conjunction with the overall scale and

appearance of the dwelling. The increase in floorspace is noted, however, it is considered that as the overall appearance of the building would be broadly similar, therefore it is not considered that the replacement dwelling would be materially larger; therefore, it is considered that the proposal would comply with paragraph 3.6 of PPG2.”

13. One can well understand those observations in relation to the building described in the terms I have already described it; however, that would be to omit what is a very significant feature of the proposed dwelling. It is this: it is proposed that the dwelling has a basement. The basement, so the plans show, extends well beyond the ground-level footprint of the existing dwelling, or the dwelling as described; it is completely subterranean and enclosed. It contains, or is to contain, a swimming pool, changing rooms, and associated plant and equipment. It is plainly an extensive and large basement area. There is no indication in the extracts which I have thus far read from the report to council of the existence of such a basement, or how the area and volume of the basement is to be taken into account in considering the size or scale of the building, and whether it has any relevance at all to the issue whether the building to be erected is or is not materially larger than the existing. But I have omitted to read a short paragraph which immediately follows that which I have already quoted. It reads:

“It is noted that the dwelling would be afforded a large basement area underneath the dwelling. This area would be fully subterranean and therefore it is considered that there would be no impact on the visual amenity of the area.”

14. The advice to the council in each of its forms, that in May, that in June, and that in July, returned toward the end to consider again the question of whether the proposed building was materially larger than the existing. These words are used:

“... as discussed within the body of this committee report it is considered that the proposal would not result in a materially larger dwelling. This assessment has been made using several tests relating to increase in floorspace, foot print, and the scale and massing of the proposed replacement dwelling. The figures used regarding the potential increase in floorspace of the dwelling have been assessed within the report as 32% using the Council’s own figures. The agent has also put forward floorspace counts that demonstrate that the percentage increase in floorspace would be 36%. Whilst this would increase the level of habitable floorspace afforded to the dwelling, it is not considered to result in an unreasonable increase.”

15. The approach which a court should take to the reasoning of a decision made by a planning officer or planning inspector has been expounded in the House of Lords by Lord Brown

of Eaton-under-Heywood in South Buckinghamshire District Council v Porter (No. 2) [2004] UKHL 33 at paragraph 36:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

16. Here I draw attention to these features arising from the case of Heath & Hampstead to which the council was obliged to pay particular attention. First, the question of “materially larger” is regarded as a threshold question. Secondly, that visual amenity is not the determinant of that question, though it is separately and importantly relevant (see paragraph 3.15 of PPG 2). I must bear in mind that the planning officer’s advice fulfils a number of functions. It must draw attention when it is addressed to the committee to the law which applies, to the threshold question, and to those matters which it is relevant to consider in respect of that threshold question; but it must also necessarily consider the other several planning issues which arise. One would thus expect it to contain a mixture of observation about design, size, appearance and the like. And in the light of the approach to be taken (see South Buckinghamshire), it cannot be a valid criticism of that advice or report that it runs a number of matters together. I have to, however, recall that a building which is not materially larger is not thereby necessarily rendered appropriate. It may be, it may not be; that will depend upon other considerations, and one must expect the planning authority to have regard to those other considerations. But what can

certainly be said is that a building which is materially larger cannot be appropriate; except, that is, in very special circumstances indeed, none of which applies here.

17. With those considerations in mind, I turn to look more closely at what was, and what was not, said in the planning officer's report to the council, bearing in mind the forgiving approach which must necessarily be adopted to its wording. Under the heading "Scale and Design", it is plain that the planning officer directed the attention of committee members to issues of size. However, Mr Easton complains that it is clear textually, and on any sensible reading of the paragraph, that it does not include any reference to the basement. It is common ground between counsel that the size of the basement is relevant to the question whether the dwelling is materially larger than that which it is designed to replace. He points to the reference to the amount of floorspace increasing by approximately 30%. It is quite plain, he says, that that 30% can relate in context only to the portion of the building which is at ground level and above, and does not contain any consideration of the size of the basement, swimming pool and adjacent area.
18. Indeed, that point, it seems to me, is obvious simply from looking at the plans for the proposed building; but if it were not so, it has as a matter of objective fact been put beyond doubt, and without any dispute from Mr Albutt, in general terms, by a report -- albeit compiled after the decision was taken -- by a Mr Turley, from which it is apparent that if the floorspace of the basement were to be included, there would be an increase in floor area not of 30% but of some 230%.
19. The footprint of the proposed building which is referred to, it might be added, is referred to in the text as being smaller by 11% than the existing; that plainly looks, and looks only, at the footprint of the building as measured at ground level; it does not look at the basement, which extends considerably beyond the confines of the original foundations. I might add that the paragraph itself indicates that the author drew a distinction between the "dwelling" and "the basement". She posed the question whether the replacement dwelling would be materially larger. She answered that by saying that the replacement dwelling would not be materially larger, but the reference to the footprint of the dwelling, and the reference which immediately follows to the large basement area being *underneath the dwelling*, leads a reader naturally to conclude that when considering the question of material size and largeness, one has regard to that which is built from ground level upwards as constituting the dwelling, and not that which is beneath the dwelling.
20. When the author returned towards the conclusion of her report, and referred to the proposal not resulting in a materially larger dwelling, she mentioned as I have noted that assessment fell to be made using several tests relating to an increase in floorspace, footprint, scale and massing; but all that was said about floorspace, or footprint and scale, and massing, related to the building at ground level and above. The conclusion to which I am bound to come is that any reader of this report would understand that the question of material increase in size was important; but they would think the answer to the question lay in the size of the dwelling above ground level, and would not necessarily include the basement.

21. It is said in his submissions by Mr Easton that there are two reasons for holding the decision made by the council to be flawed. The first is that the council did not take account of a material consideration. He argues that the evidence shows that the council considered, and considered only, the building at and above ground level, and did not take into account the basement. It is accepted by Mr Albutt that the council were bound to have regard to the size of the basement, though he asks me to see it in context. Mr Easton augments his submission by noting that there was no comparison made here in the report between the built volume of the house as is, and the house as was to be. He urges the court to have regard to the fact, as he submits, that the increase in floorspace and in built volume is so significant that it the report to the committee is inadequately stated.
22. As a second point, he argues that a house of this proposed size, containing the basement as it is designed to do, could not be granted planning permission by any reasonable council upon a proper understanding of the law; it would be perverse to do so. He argues this by reference to the material which has emerged since the decision was taken in two reports by Mr Turley, containing a calculation of the built volume; there was no calculation of built volume before the council. He draws my attention to the tables contained in a report dated 15 April 2010 (the second report from Mr Turley). Those tables show that if the floorspace and volume of the basement is to be included, the built volume (see table 1, page 4 of the second report) is 209% larger; that on different scenarios, there is a range of values, all indicating a greater than doubling of the existing volume. This, he says, could not possibly be regarded by any council as not being materially larger.
23. In response, Mr Albutt argues first, that on the evidence, I should conclude that the relevant Planning Committee and Officials did indeed have regard to the size of the basement in determining whether the building was to be materially larger. He relies on a witness statement of Susie Helen Bishop of 26 March 2010. She explains that she is a planning assistant who was the planning officer responsible for the planning application which is subject to challenge. She describes how that application was not determined by her, but was called in for consideration by the Northern Planning Area Committee -- hence it going to committee -- and that at the meeting of that committee on 10 June, oral representations were made by the applicant's agent, Peter Yates (the architect who had designed the replacement building) and by neighbours, including the claimant. The claimant, she reports, drew the basement area to the attention of members, and gave its dimensions to perform floorspace calculations. She notes that that figure was also included within letters of representation received during the course of the application, and reports that during the meeting, members requested a site visit, in order to provide better clarity and understand of the proposal in the context of the site itself. They requested that the basement area be marked out on site. And she comments that they were fully aware of the basement being *part of* the proposed replacement dwelling: I note that her observation here is not to the same effect as that given by a fair reading of the reports which she made to the committee, which as I have noted drew a distinction between the dwelling and the basement.
24. Her statement then says this at paragraph 17:

“The site visit held by the Council’s Northern Area Planning Committee was attended by 13 out of 14 members who considered the application at the meeting of the committee on 1 July 2009. [I should add, the site visit was on 26 June, therefore before that meeting]. As requested by members the basement area was pegged out using hooks and white tape. The area was measured by the attending planning officers, Emma Tutton, Principal Planner and me. The area followed the submitted plans. The planning application plans were also provided during the site visit for members to view. This level of detail enabled members to be better informed of both the application sites site-specific issues and the scale of the basement.”

She went on to describe that the application was not finally determined by the committee on 1st. July because of a letter making representations being missing, but that the members resolved to approve the application, subject to the contents of that missing letter not raising any issues material to the decision-making process which had not already been considered by them. It delegated the decision to its head of planning and policy, John Knight. Miss Bishop comments at paragraph 20:

“The letter of representation was located ... and its contents assessed after the committee meeting on the 1 July. The letter made reference to the basement area, and stated that it should form part of the assessment of whether the replacement dwelling would be materially larger. This was the approach I had adopted in the assessment of the application. The basement area had been considered as part of the proposal in terms of whether the replacement dwelling would be materially larger.”

25. That is evidence that Miss Bishop had in mind the basement as relevant to the issue of size, and had considered it herself as such. It is not, however, evidence that that is how the members of committee saw it. I have no direct evidence from any member of committee. I have no evidence from Miss Bishop or from anyone that the committee were told in terms that they should consider the size of the basement when they came to consider the size of the dwelling. Indeed, I have a repeated description in each of the three planning reports to which I have referred which deal with the “materially larger” question which excludes, rather than includes, the basement, and which appears to deal with the question of the basement by considering whether it would have any visual impact or not; a highly relevant planning consideration under paragraph 3.15 for instance, but not obviously relevant when one is considering the question of material size.
26. There were matters, Mr Albutt asks me to note, which I could conclude directed the minds of the committee on 1 July to having regard to the size of the basement as part of their determination of what was or was not materially larger. Thus, the letters of objection were fairly summarised in Miss Bishop’s reports to council. Thus, the size of

the basement was orally drawn to the attention of the members in committee. One has to ask why it was the members of the committee asked that the basement area be indicated on the ground surface by tape and post, as they did, if they did not fully appreciate the size and scale of the basement. In my view, all these are significant and important points.

Conclusions

27. In reply, Mr Easton has pointed out to me what is contained in a documentary update to the agenda of 29 June 2009 (see page 131). In that, in the first paragraph under the heading “issues”, it is noted that the basement was to be sited within the confirmed garden area, it therefore being considered that the potential outstanding enforcement issues on site would have no impact on the determination of the proposal. That was a reference to the potential for the dwelling -- and one has in mind here the basement of it -- to encroach into agricultural land to the rear of the site. The siting of the basement was thus materially important for that reason.
28. It is impossible for me to determine whether it was for that reason (to be assured there was no material encroachment on agricultural land) or because the members wished to have some proper idea of the size of the basement relative to the existing building, that they asked for it to be mapped out. What was relevant for the consideration of the committee, and the two Officers to whom the decision was delegated thereafter, was how they should approach the question of “materially larger”. Can I be satisfied that they took into account the basement area and size? The planning officers’ reports, upon a fair and not over-technical reading, were to the effect that that was not something which fell for consideration; those precise words are not used, but that is the sense of it. There is no evidence that anything different was said to the members during the course of the hearings. There is no material to indicate to me that they were told to accept as legally valid the point which the objectors were making; one bears in mind that objections are frequently made, so have to be evaluated, and the committee will make that evaluation, one supposes, by reference to the guidance which the Officers of the council can give. And here there was no steer, in terms to which Mr Albutt can point, to assist them to make it properly.
29. I have, therefore, come to the conclusion that in this case, I cannot be satisfied that the council had regard to what was, it is accepted, a material consideration; namely, the size and scale of the basement. I, therefore, cannot be satisfied that the council took that into account in determining whether the building was or was not materially larger. Indeed, such indications as there are in the papers before me indicate, and if necessary I would hold, that they did not do so. That being my conclusion, Mr Albutt accepts that the necessary consequence will follow that the decision made by the council as local planning authority must be quashed, because it was reached in the absence of a consideration to which material regard should have been had.
30. However, I am conscious that the matter of perversity has been fully argued before me, and I should deal with that, since I can see that it may be relevant to the parties in what may follow consequent upon my decision upon the ground on which it was reached. Here, I conclude that all necessarily depends in an assessment of “materially larger” upon the particular facts and circumstances of a case. It can be said, usually, whether one

building is or is not larger than another; though reference may need to be had to particular measurements in respect of which it is said to be larger than the other. Whether it is “materially larger” has to be answered in accordance with the guidance given by the Court of Appeal; that is, primarily as a question of size. But it is not exclusively a question of size; I entirely accept Mr Albutt’s submissions as to that.

31. The expression “materially” invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a Green Belt. It is possible to give several examples which may illustrate this, and may demonstrate that it is not a sufficient answer, as Mr Easton would propose, to suggest that a qualitative analysis is only relevant within very small increases in size. The first example was that given in the Surrey Homes case. There, the Deputy Judge pointed out that a building might have a much smaller footprint, and have the same overall floorspace, because it was built as a tower; yet if a tower replaced a bungalow, it is not difficult to see how the relevant considerations of size would have nothing to do with footprint, and nothing to do with floorspace, but everything to do with height. In the context of affecting the openness which green belt policy emphasises, the tower might be said to have much greater impact than the bungalow.
32. It is equally not difficult to see that some buildings may have a much larger floorspace as newly-built than those than they replaced, without altering in any way the external dimensions and footprint of the original building. For instance, where a large barn is converted or rebuilt; where a high-ceilinged building is replaced by one with more floors, and therefore more floorspace, but with no change to exterior dimensions. Similarly, it is not difficult to see how, if one replaced a bungalow with a two-storey building on a narrower footprint, the planning considerations relevant to a determination of material largeness would not depend at all upon floorspace or footprint, but in that case upon height and depth of the building.
33. The dictum of Carnwath LJ at the end of paragraph 36 made the point that if an extension were three times the size of the original -- and I note that would mean a building four times the size of the original, being the original plus the extension - it could not be regarded as proportionate. When looking at a replacement building, the test is not what is “proportionate” , though material largeness is to be read in the same spirit. But that is very different, as it seems to me, from the situation here. It seems to me that, in this particular case, a very important fact and issue to which the local planning authority will wish to have regard in attributing whatever weight it thinks is appropriate to the size of the basement is the fact that, as part of the dwelling, that basement is intended to be entirely below ground level.
34. I could not, in short, have said that it would necessarily and obviously have been perverse for the local authority in this case to have concluded, if it did so having had regard to all proper considerations, that the replacement building was not *materially* larger than the existing. Providing it did not lose sight of the overall size and floorspace of the basement, the authority would be entitled, in my view, to come to a conclusion that the building above ground was such, and the basement such, that overall, the building, in the contexts to which I have referred, was not materially larger. Indeed, it is plain from Susie

Bishop's statement that she did not regard that conclusion as being to her, as an experienced planning officer, necessarily perverse.

35. But it does not follow that I can say that the decision to be reached by the local authority will necessarily be the same if it has regard to the matters to which it should properly have regard as that it actually reached which is the subject of this litigation; indeed, Mr Albutt has not sought to argue that I should sustain the decision upon the basis that it is plainly and obviously right. It seems to me that the size of the basement is significant. As a matter of sheer size, the issue of how that affects a conclusion as to whether it is or is not such as to make the building as a whole materially larger than that which it replaces, is not one which I can say necessarily should be determined one way or the other.
36. Although this last part of my decision, from paragraph 30 onward, is necessarily obiter, I hope that those observations are of assistance to the parties.
37. In conclusion, for the reasons I have given, this application must succeed. The decision ultimately taken on 24 July 2009, and signed by Head of Planning and Policy for Cheshire East Borough Council, must be quashed, and I shall hear counsel as to any consequential orders which they may seek.

Order: Application granted.

MR EASTON: My Lord, I am grateful. I do have an application for costs against the local authority defendant. My Lord, I have a schedule, a copy of which has been handed to my learned friend and his instructing solicitor, I regret only recently.

MR ALBUTT: And we agreed that to be fair and sensible.

MR EASTON: I do not understand there to be any objection in principle but it is agreed between the parties, subject to anything my Lord has to say, that the costs should be set off to a detailed assessment if not agreed.

MR JUSTICE LANGSTAFF: Very well.

MR EASTON: That is the order that we propose.

MR JUSTICE LANGSTAFF: So be it.

MR EASTON: I am very grateful.

MR ALBUTT: My Lord, there is only one other matter. First of all, with regard to your Lordship's obiter comments towards the end, I express our gratitude, because in terms of the guidance that we can obviously adopt. The next matter that arises is obviously the question of permission to appeal. Clearly, my Lord, I accept that there is a great deal that you have decided clearly upon the particular facts of this case; what I can point to is that is obviously

of considerable importance to the authority, and in addition it is, so far as I am aware, the first case really regarding the application of the test of “materially larger” in circumstances where there is a wholly-enclosed basement. Certainly all of the other cases that have been tested on appeal all relate to where there is some impact, because it is a part of the basement. So my Lord, I do, with respect, seek permission to appeal on those grounds.

MR JUSTICE LANGSTAFF: I do not need to trouble you. No; the reasons are these. You are absolutely right in saying that there has not been a case, so far as I am aware, which involves an enclosed area such as the basement, but in this case it was common ground between counsel before me that the size of the basement was relevant, and my decision was that the council as a matter of fact, so far as I can determine it, did not have regard to that matter. And therefore, it is no more and no less than a failure to take into account what was agreed to be a relevant criterion. It follows that no new principle of law or no issue of law really arises; and if, in the light of that, you wish leave to appeal, you will have to get it from the Court of Appeal.

MR ALBUTT: My Lord, we will see if we can interest the Court of Appeal or not.

MR JUSTICE LANGSTAFF: I should add that on the issue of substance which interests you, I appreciate that Mr Easton may in due course have something to say, that you rather succeeded rather than failed.

MR ALBUTT: Yes, indeed.

MR JUSTICE LANGSTAFF: But that was obiter.

MR ALBUTT: I know, my Lord, and I am most grateful. Thank you.

MR JUSTICE LANGSTAFF: Can I thank you both for the economic way in which you presented your submissions.

MR EASTON: Thank you, my Lord.

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| Planning Reference No: | 11/0037M |
| Application Address: | BROAD HEATH HOUSE, SLADE LANE, OVER ALDERLEY |
| Proposal: | BRICK GARAGE TO REPLACE CARPORT |
| Applicant: | MR CHRIS WREN |
| Application Type: | FULL |
| Grid Reference: | 386699 376409 |
| Ward: | ALDERLEY |
| Earliest Determination Date: | 16 FEBRUARY 2011 |
| Expiry Date: | 2 MARCH 2011 |
| Date of Officer's Site Visit: | 10 FEBRUARY 2011 |
| Date Report prepared: | 25 FEBRUARY 2011 |
| Constraints: | GREEN BELT AREA OF SPECIAL COUNTY VALUE |

SUMMARY RECOMMENDATION

The application is recommended for refusal, as the proposed development represents inappropriate development, and no Very Special Circumstances have been advanced to clearly outweigh the harm.

MAIN ISSUES

- Impact on the character and appearance of the Green Belt, and Area of Special County Value
- Whether the proposal complies with policy GC12 of the Local Plan
- If the proposal is considered to represent inappropriate development, whether the applicant has submitted any Very Special Circumstances to outweigh the harm caused by inappropriateness and any other harm
- Impact on the openness and visual amenities of the Green Belt
- Scale and design of the proposal
- Impact on residential amenity

REASON FOR REPORT

This application is brought before Members at the discretion of the Head of Planning and Housing, as Members are also considering an application for a replacement dwelling at Broad Heath House, which is elsewhere on this agenda (09/0842M), the original decision for which was quashed by the High Court.

DESCRIPTION OF SITE AND CONTEXT

The application site comprises a large detached dwelling, part two storey, part single storey, with attached double garage and open sided carport, set within a generous plot.

The application site is situated within an Area of Special County Value, within the Green Belt, as defined by the Macclesfield Borough Local Plan (2004). The property sits in an isolated position on Slade Lane, and is surrounded by open fields. The property is well screened by mature vegetation along the front and side boundaries. There is one gated access point to the property, off Slade Lane.

DETAILS OF PROPOSAL

Planning permission is sought to replace the open sided carport with a brick built garage of a similar scale and design. The floor plans indicate that the existing garage would then be converted into a gymnasium; however, this is not cited on the application forms.

RELEVANT HISTORY

- | | |
|----------|--|
| 5/5/1911 | House & garage Approved with conditions 11.03.54 |
| 5/5/8146 | Extension Approved with conditions 08.11.66 |
| 5/5/8590 | Extension to form garage, bed sitting room and bathroom (annex building) Approved with conditions 27.07.67 |
| 50750PB | Two storey extension to lounge and bedrooms Approved with conditions 08.10.87 |
| 97/1420P | Free standing carport Approved with conditions 01.09.97 |

POLICIES

Regional Spatial Strategy

- | | |
|--------|--|
| RDF4 | Green Belts |
| DP1 | Spatial Principles |
| DP4 | Making the Best Use of Existing Resources and Infrastructure |
| DP7 | Promote Environmental Quality |
| EM1(B) | Integrated Enhancement and Protection of the Region's Environmental Assets: Natural Environment |

EM1(D) Integrated Enhancement and Protection of the Region's Environmental Assets: Trees, Woodlands and Forests

Local Plan Policy

| | |
|------|-------------------------------|
| NE1 | Areas of Special County Value |
| NE11 | Nature Conservation |
| BE1 | Design Guidance |
| GC1 | Green Belt – New Buildings |
| DC1 | New Build |
| DC3 | Amenity |
| DC6 | Circulation & Access |
| DC8 | Landscaping |
| DC35 | Materials and Finishes |

Other Material Considerations

| | |
|------|------------------------------------|
| PPS1 | Delivering Sustainable Development |
| PPG2 | Green Belts |

VIEWS OF THE PARISH / TOWN COUNCIL

Awaited

OTHER REPRESENTATIONS

3 letters of objection have been received to date, in respect of the following:

- The description of the development is misleading, the proposal is: *“to covert the existing brick built double garage to a gymnasium together with the consequent need to replace the existing car port with a new brick built garage”*. (thus representing an extension to the existing habitable area of the property).
- The original house built in 1954 as the equivalent of an Agricultural Worker's Dwelling nowadays, and benefitted from an integral garage
- The original house had a gross floorspace of 210m², including the integral garage
- The dwelling was not built in full accordance with the approved plans, the built dwelling was 6m² larger
- In 1967 an “annex” extension was permitted for special reasons on medical grounds
- A further outbuilding was added after 1967, without permission, which is now attached to the house
- A two storey side extension was approved in 1987
- A free standing car port was permitted in 1997, this did not create and additional habitable floorspace
- The extensions are summarised in the following table:

| | | |
|--------------|--|--------------------------------------|
| 1954 | Original House Ground Floor GF (including integral garage) | 109 sqm (1,171 sq ft) |
| | Original House First Floor FF | 101 sqm (1,089 sq ft) |
| 1954 to 1967 | 'Outbuilding'/Utility GF | 18 sqm (196 sq ft) |
| | Additional porch enclosure GF Additional porch enclosure FF | 2 sqm (22 sq ft) 4 sqm (39 sq ft) |
| 1967 | Annex - new garage and bed sitting room GF | 79 sqm (852 sq ft) |
| | 'link' section (store/store/wc/shower/hall) GF | 36 sqm (382 sq ft) |
| 1987 | Two storey extension to main house – GF | 21 sqm (223 sq ft) |
| | Two storey extension to main house - FF | 21 sqm (223 sq ft) |

- 180m² of extensions have been added to the original house (210m²), which equates to a 86% increase in floorspace
- The increase in bulk, scale and mass over the original dwelling also needs to be considered
- The scale and appearance of the original house has been significantly altered
- The proposals are far in excess of the 30% extensions permitted under policy GC12, none of the exceptions to the policy are relevant, the dwelling is situated in an isolated location
- The proposal would exacerbate already disproportionate and significant alterations to the original dwelling which have been accumulated over time
- The proposal therefore represents inappropriate development, which by definition is harmful to the purposes of including land within the Green Belt
- No Very Special Circumstances have been demonstrated to clearly outweigh the harm caused by inappropriateness
- Permitted development rights should have been withdrawn under the 1967 annex extension, to prevent further development
- The dwelling was originally built with an integral garage, which has been converted into living accommodation. A second double garage was permitted in 1967, which would be converted into a gym should this application be successful, this would be the **third garage** to this property, which would be located significantly closer to Slade Lane, moving forward the built frontage
- The gradual and incremental extension is what Local Plan Policies seek to prevent
- The proposal fails to comply with policies GC1 and GC12 of the Local Plan
- Further piecemeal development is out of character with the original dwelling, and fails to comply with policy DC1 and DC2 of the Local Plan

- The proposal would not contribute to the openness of the Green Belt, or the purposes of including land within the Green Belt
- The Council need to be mindful of the two further proposals (references 11/0257M and 09/0842M) when determining the current proposals
- The house is big enough already, it is the biggest in the area, and out of character with the surrounding properties
- This application and application 11/0257M (certificate of lawfulness for loft conversion), are only theoretical, to increase the floorspace of the existing house, prior to the re-determination of 09/0842M for the replacement dwelling, to make it somewhat easier to address the test of whether the replacement dwelling is materially larger
- Other rooms within the house could be converted to a gym to negate the need to build an additional garage
- Section 38 (6) of the Planning and Compulsory Purchase Act (2005) requires the determination of proposals be in accord with these policies unless material considerations indicate otherwise. No Very Special Circumstances or other considerations have been submitted, therefore the proposal should be refused

APPLICANT'S SUPPORTING INFORMATION

Design and Access Statement

OFFICER APPRAISAL

Principle of Development

Paragraph 3.6 of PPG2 (Green Belts) advises:

*“Provided that it does not result in disproportionate additions over and above the size of the **original** building, the extension or alteration of dwellings is not inappropriate in Green Belts”.*

Therefore, no objection is raised to the principle of the development, provided that it is not a disproportionate addition to the original dwelling.

Policy

The application site is situated within the Green Belt and Area of Special County Value, therefore policies GC1 and GC12 (Green Belts) and NE1 (Environment) from the Macclesfield Borough Local Plan are of direct relevance.

Policy GC1 re-iterates the guidance found in PPG2, advising that limited extension and alteration to existing dwellings may be permitted, subject to policy GC12. Policy GC12 advises:

Alterations and extensions to existing houses in the countryside may be granted for up to 30% of the original floor space providing the scale

and appearance of the house is not significantly altered. Exceptions to the policy may be permitted where:

The proposal lies in a group of houses or ribbon of development and the extension would not be prominent

The extension is to provide basic amenities or an additional bedroom or living room in a small cottage

The extension is to provide a conservatory or domestic building in the curtilage.

And the proposal would not adversely affect the character and appearance of the countryside.

Consideration of the proposal

History

Broad Heath House was original built in 1954 for a local farmer; however, it is not subject to any Agricultural Occupancy tie. The original floorspace of the dwelling (including integral garage) is approximately 210m². Over the years, the property has benefitted from numerous extensions (as can be seen in the planning history), bringing the floorspace to 390m² excluding the conservatory and carport. The conservatory is excluded, as it is a lightweight structure, and is an exception to Green Belt policy. The carport has also been excluded as it too is a lightweight structure, and does not create any habitable floorspace.

Does the proposed development comply with Green Belt Policy?

Policy GC12 permits up to 30% extensions over the original floorspace, providing the scale and appearance of the house are not significantly altered. As outlined above, there are three exceptions to this policy, the first and second exceptions are not relevant, however, the third exception needs some consideration.

A garage could be considered a domestic building. However, as the proposed garage would physically attached to the house, it must be considered as an extension, rather than a free-standing domestic building within the curtilage, therefore this exception cannot be given significant weight.

The current proposals have to be considered against all of the other extensions to the property, since it was built in 1954. The proposed garage would create a floorspace of 50 m², which would bring the total floorspace to 440m², a percentage increase of 109% over the original house.

It is considered that this, and all the other extensions and alterations significantly change the scale and appearance of the original dwelling. From

studying the microfiche, it can be seen that the original dwelling was rather attractive. However, the various piecemeal extensions and alterations have resulted in loss of symmetry, and have substantially increased the width of the dwelling, particularly at ground floor level. This has had a detrimental effect on the architectural integrity of the building.

As the proposal exceeds 30% and does not benefit from any of the exceptions in policy GC12, it must be considered inappropriate development, which by definition is harmful for the purposes of including land in the Green Belt.

No Very Special Circumstances have been advanced to clearly outweigh the harm caused by inappropriateness.

Any Other Harm?

It should be noted, that this would be the third garage at this property. Concern is raised in respect of the cumulative and incremental effect the approval of this application would have on the openness of the Green Belt. As openness is the most important attribute of the Green Belt, this issue carries a good degree of weight.

Whilst the existing carport sits forward of the dwelling, it is an open-sided lightweight structure, it is considered that a brick built garage would have a more significant impact on the openness and visual amenity of the Green Belt, by virtue of its more solid structure and appearance, and greater degree of permanency.

Design

The proposed garage is of a basic design, with a flat roof, similar to the existing carport. The design is not considered to be particularly sympathetic to the existing dwelling; however, it is not readily visible from outside the site.

Amenity

As the dwelling is situated in relatively isolated position, the proposed development is not considered to injure the amenities of neighbouring properties.

Ecology

An ecological survey was carried out in 2009, in respect of the replacement dwelling application, which found no evidence of any bats, consequently the proposed development is unlikely to have an adverse impact upon this species group. The proposed development is therefore considered to comply with policy NE11 of the Local Plan.

CONCLUSIONS AND REASONS FOR THE DECISION

The proposal is considered to constitute inappropriate development, as it would result in cumulative increase of 109% over the original dwelling, and it, along with the previous extensions would significantly change the scale and appearance of the original house.

Due to its more solid structure and appearance, and greater degree of permanency, it is also considered that the proposal would result in a loss of openness.

No Very Special Circumstances have been advanced to clearly outweigh the harm caused by inappropriateness or any other harm.

RECOMMENDATION

The application is recommended for refusal for the following reasons:

1. The development is therefore contrary to policy RDF4 of the Regional Spatial Strategy for the North West and policies GC1 and GC12 of the Macclesfield Borough Local Plan and would cause harm to the objectives of those policies. The development is similarly contrary to national policy guidance relating to development within the Green Belt. It is not considered that very special circumstances exist to justify the approval of inappropriate development in the Green Belt.

Policy GC12 of the Macclesfield Borough Local Plan only allows for alterations or extensions to dwellings which would neither result in a significant change in the scale and appearance of the original dwelling nor require additional works which would unduly detract from the quality of the environment. The proposed extension is considered by the Local Planning Authority to be a significant and disproportionate addition to this dwelling. The Local Planning Authority considers that the erection of the proposed extension would be contrary to the objectives of these policies which are to retain the prevailing character of housing in the rural areas and the stock of smaller dwellings, and that such proposals, if permitted, would have a cumulative and incremental effect on the openness of the Green Belt.

Location Plan: Cheshire East Council Licence No. 100049045



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|---|---|
| Planning Reference No: | 10/1292M |
| Application Address: | Baguley Farm Hocker Lane Over Alderley SK10 4SB |
| Proposal: | Replacement Dwellinghouse – amendment to approval 09/4124M |
| Applicant: | MR & MRS N SKINNER |
| Application Type: | Full Planning |
| Grid Reference: | 386400 |
| Ward: | 375682 |
| Earliest Determination Date: | 22 December 2010 |
| Expiry Date: | 26 May 2010 |
| Date Report prepared: | 22 February 2011 |

SUMMARY RECOMMENDATION

Refuse as the proposal is inappropriate development in the Green Belt, and very special circumstances have not been demonstrated.

MAIN ISSUES

- Whether the proposal is acceptable in the Green Belt
- Impact upon the character of the area
- Impact upon nature conservation interests

REASON FOR REPORT

The application has been brought to the Strategic Planning Board by the Head of Planning & Housing due to the particular circumstances of the application, notably the fact that the application is for a replacement dwelling in the Green Belt that includes a basement, in light of the High Court judgement last year Feather v Cheshire East Borough Council [2010] EWHC 1420 (Admin).

DESCRIPTION OF SITE AND CONTEXT

The application site comprises a two-storey detached dwelling with 2 two-storey detached outbuildings (barns) and surrounding gardens. The site is located within an Area of Special County Value in the Green Belt as identified in the MBLP.

DETAILS OF PROPOSAL

This application seeks full planning permission for a replacement dwelling. The application has been submitted as an amendment to 09/4124M, and the amendments to that permission comprise a rear dormer window and a basement. The application has been with the Council for some time, but has been delayed due to the implications of the Judicial Review last year which examined the issue of replacement dwellings with basements in the Green Belt.

RELEVANT HISTORY

10/2773M - APPLICATION FOR REMOVAL OF PLANNING CONDITION NO. 13 (REMOVAL OF PERMITTED DEVELOPMENT RIGHTS) ON PLANNING APPROVAL 09/4124M – Refused 12.11.2010

This application was refused due to the dwelling approved under 09/4124M being identified as inappropriate in the Green Belt, but very special circumstances were considered to exist. In this context it was necessary to remove permitted development rights to protect the openness and character and appearance of the Green Belt.

09/4124M – REPLACEMENT DWELLING – Approved 18.03.2010

This scheme was identified as being materially larger than the existing as the proposed dwelling is attached to an existing barn building, which forms part of the resultant dwelling. Very special circumstances were considered to exist to outweigh the harm to the Green Belt.

09/3122M – REPLACEMENT DWELLING – Approved 26.11.2009

09/1403M - REUSE OF BARNS AS ANCILLARY RESIDENTIAL ACCOMODATION TOGETHER WITH VARIOUS ALTERATIONS AND EXTENSIONS - Approved 14.10.2009

09/0606M - REPLACEMENT DWELLING - Approved 10.06.2009

POLICIES

North West of England Plan Regional Spatial Strategy to 2021 - RDF4 (Maintaining the general extent of the Region's Green Belt), DP1 (Spatial principles applicable to development management) & DP7 (Criteria to promote environmental quality)

Local Plan Policy – NE1 (Landscape protection and enhancement of Areas of Special County Value), NE11 (Conservation, enhancement and interpretation of nature conservation interests), BE1 (Design principles for new developments), GC1 (Control over new buildings in the Green Belt), DC1 (High quality design for new build), DC3 (Protection of the amenities of nearby residential properties), DC6 (Safe and convenient access for vehicles, special needs groups and pedestrians), DC8 (Requirements to provide and maintain landscape schemes for new development), DC9 (Protection of trees of amenity value), DC63 (Treatment, containment and control of contaminated land).

National Planning Guidance PPG2 (Green Belts) is of direct relevance to this proposal. Guidance in PPS1 is also applicable.

Other material considerations – *R (on the application of Feather) v. Cheshire East BC and Mr Christopher Wren and Mrs Susan Wren* [2010] EWHC 1420

(Admin); and, *R (on the application of Heath and Hampstead Society) v. Vlachos* [2008] EWCA Civ 193

CONSULTATIONS (External to Planning)

Contaminated Land – No objections subject to advice note

Over Alderley Parish Council – Make no comment on the merits of the proposal.

OTHER REPRESENTATIONS

Two letters of representation have been received from a local resident from Broadheath Farm, Slade Lane objecting to the proposal on the following grounds:

- The proposal relates to the provision of a very extensive basement, of a similar nature to a scheme recently 'quashed' in the High Court following a Judicial Review in May 2010.
- Dwelling is materially larger than that which it replaces and therefore is considered to be inappropriate development in the Green Belt.
- The very extensive and disproportionate size of this basement proposal effectively provides an increased onus on the applicant to justify the granting of this particular permission.
- The planning consultant has failed to introduce any very special circumstances applying to the provision of a basement as part of this replacement dwelling proposal.
- The major part of the case put forward by the planning consultant suggests only what might be the alternative situation if the basement proposal was to be refused. These are not very special circumstances for the provision of basement facilities as they do not relate directly to the basement proposal that is the subject of this application.
- All planning applications where a basement is proposed, relate quite obviously to the possible provision of some form of accommodation, that is under the ground and therefore below ground level. Hence this circumstance, as introduced by the planning consultant, is as ordinary as any other circumstance surrounding a proposal for basement accommodation.
- 'Bratoff' decision (submitted in support of the application) related to a viable fall back position of extensions, which would result in an identical building to that proposed as a replacement.
- In this current case, the fallback may or may not be viable, may or may not be clearly identifiable, and may or may not be permitted development.
- Above ground alternatives to the basement accommodation should not normally be considered to be a material consideration in the determination of 10/1292M.
- Once the development is defined as inappropriate it is of no consequence whether part, all or none of the elements that make up the proposal have a negative effect upon the openness or visual amenity of the Green Belt.

- Very special circumstances must mitigate harm caused by development, not in terms of openness or visual amenity, but in terms of size of proposed development.
- Being underground only shows that there is no 'additional' harm caused by basement.
- Very special circumstances are exceptional, unique or one off circumstances that make the attribute of the proposal such that it could not be brought forward anywhere else or in any other way.
- The application of Green Belt policy in relation to making a successful case for very special circumstances does not vary according to whether or not alternative rights exist under the GPDO.

In light of additional information received on behalf of the applicant, a further letter has been received from the owner of Broadheath Farm making the following additional objections:

- Revised basement drawing totally reconfigures the basement – not just a few minor changes.
- Reduction of 5% does not prevent proposal being judged to be materially larger than the building it replaces.
- Revisions would appear to be a move to differentiate this proposal from Broad Heath House permission that was quashed at recent Judicial Review.
- Basements of this proposal and the Broad Heath House development are not proportionate to original dwelling to be replaced. Both proposals also seek to significantly alter the location of the dwelling.
- Reading material largeness in the same spirit as being proportionate (as stated by the Judge in the JR), it is clear that both basement proposals fail the test.
- Applicant's agent suggests that, because the basement stays entirely within the footprint of the existing and proposed buildings, it would not have any material additional impact / harm to the Green Belt objective of protecting openness. I interpret openness here to mean land which is open in the sense of being undeveloped/untouched by built form.
- The basement will cause harm to the Green Belt by definition because of the size of the habitable accommodation that is being added to previous permitted proposals. This proposal will, however, not cause the 'additional' harm that would be associated with an increase of the same quantity of habitable floor space above ground, which would be in regard to the harm to openness and visual amenity.
- One of the aims of PPG2, as highlighted at paragraph 4 of the JR judgement in May 2010, is to channel development toward urban areas inside an inner Green Belt boundary, therefore away from the Green Belt itself. Residential development, or the provision of habitable floor space, should be directed away from the Green Belt to urban areas where it is sustainable.
- Previous comments relating to very special circumstances apply equally to this new layout of basement accommodation.
- 09/3122M was only granted by virtue of the existence of very special circumstances, as that was viewed by LPA as inappropriate.

APPLICANT'S SUPPORTING INFORMATION

The applicant has submitted a planning, design and access statement and supporting letters which outline:

- A dwelling of virtually identical appearance and size has planning permission
- The current proposal seeks to add a dormer window and a basement during the construction of the dwelling rather than having the equivalent accommodation created after the completion of the dwelling.
- The proposal represents an appropriate form of development.
- Alternatively there are very special circumstances that justify the grant of planning permission for inappropriate development, which are:
 1. Genuine fallback to permission 09/3122M together with permitted development rights.
 2. Alternative fall back to 09/4124M
 3. No impact of basement upon openness
 4. Barn exists and will be converted
 5. Built form on the site not increased above that already approved
 6. Lightweight link would provide visual break and a degree of openness between the dwelling and the barn
- Permitted development rights should not have been removed from 09/4124M as this dwelling was a reconfiguration of the dwelling approved under 09/3122M, without any increase in floor space
- Appeal decision at Bratoft makes it clear that the planning history of the property is capable of being a material consideration sufficient to outweigh the development plan policy for extensions. (The Council could therefore control further additions to the replaced dwelling). The Inspector also accepted that the fall back represented a very special circumstance.

The applicant has also submitted a Counsel opinion on the merits of the planning application, and an appropriate response to a refusal of the same. This opinion sets out the questions the decision maker must ask when faced with a proposal in the Green Belt. This approach is consistent with the format of this committee report. The Counsel opinion is summarised below:

- Consent 09/3122M did not remove permitted development rights
- The removal of permitted development rights on application 09/4124M requires the clearest justification and none are articulated in the relevant delegated report.
- 09/4124M was approved on the basis of very special circumstances rather than on the basis of it being appropriate in Green Belt terms. This seems odd as I cannot see that the provision of the glazed link in itself made the dwelling materially larger than the one it replaces. I acknowledge that the link ties the house to barn B but barn B already exists and has planning permission for domestic use in any event.
- The current application revises the design of 09/3122M by replacing single-storey elements with a totally glazed link between the dwelling and barn B. This reduces the perceived scale and massing of the building

because of the reduction in floor areas to be constructed within masonry. The other difference is the provision of enclosed basement living space.

- From the Hampstead case, it is evident that the meaning of the words “materially larger” must be assessed within the context of Green belt policy and its purposes.
- Size may be the “primary test” but by necessary implication it is not the sole test.
- Paragraph 31 of the Wren judgement states, “The expression “materially” invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a Green Belt”.
- It is quite clear, as a matter of law, that a proposed basement has to be recognised and weighed in undertaking the PPG2 para 3.6 exercise but its weight has to be assessed by reference to its particular policy context, namely PPG2 which primarily determines what is and what is not appropriate in the Green Belt by reference to its impact upon openness.
- The basement will have no impact upon openness, and therefore it should be recognised but given very little weight. The proposal should be treated as appropriate development in the Green Belt.
- With regard to very special circumstances, there is no need for circumstances to be unique or incapable of being repeated.
- There is no need for a decision maker to ascribe precise weight to each element of very special circumstances. They can cumulatively amount to such.
- A fall back position, such as an extant planning permission or PD rights, so long as it has a real prospect of actually occurring is a material consideration in decision making. This has previously been recognised by Inspectors and Council officers.
- The applicant has confirmed he will build out 09/3122M in the absence of planning consent for the current proposal. In addition he will fully utilise his PD rights in respect of 09/3122M to increase the value of his investment of the site.
- Advantages of the current scheme include: less floor space than fall back consent; basement has no adverse impact upon openness; use of glazed link in place of single-storey elements reduces perceived scale and impact on openness; and the applicant is willing to accept a condition that the building should be constructed to Code Level 4.
- If the application is refused then a public inquiry ought to be granted because of the various legal issues that arise. With regard to whether costs will be recoverable on appeal. Much will turn upon the approach taken by the LPA. If the LPA suggest that the basement, without more, makes the proposal inappropriate then they will have committed, in my view, a legal error and such errors are punishable by a costs award.

OFFICER APPRAISAL

Green Belt

The principle of a replacement dwelling has been established following the approval of 09/0606M, 09/3122M and 09/4124M.

This proposal seeks permission for the same dwelling as approved under application 09/4124M but with additional floor space provided within a basement, and a single dormer window to the rear elevation of the dwelling which would allow additional accommodation within the roof space.

Replacement dwellings may be an exception to the categories of inappropriate development in the Green Belt, so long as the replacement dwelling is not materially larger than the dwelling it replaces. The Local Plan does not contain a saved policy that defines “materially larger” or expands further on the advice within PPG2. Case law has established the factors that should be considered when assessing what is “materially larger”. It includes a comparative assessment of scale of the proposed dwelling against the existing dwelling on the site. This includes matters of floor space, footprint, height, massing, volume, design and position on the plot. Any or a combination of such factors could contribute towards a dwelling being materially larger than the existing dwelling. Floor space will normally be a key factor in this assessment. The general intention is that the new building should be similar in scale to that which it replaces.

If a replacement dwelling is considered to be materially larger than the dwelling it replaces, then it must be considered as inappropriate development for which there is a presumption against. Inappropriate development should not be permitted, except in very special circumstances. Very special circumstances will only exist if the harm, by reason of inappropriateness, and any additional harm is clearly outweighed by other considerations

The correct sequential approach to assessing a replacement dwelling in the Green Belt is:

1. Is the proposed development inappropriate?
2. If so, what harm to the Green Belt., if any (in addition to the in-principle harm arising from the fact of inappropriateness), is caused? Are there any material considerations in favour of the development?
3. Are there any material considerations in favour of the development?
4. If so, are they sufficient to outweigh the combined harm caused to the Green Belt by reason of inappropriateness and any other identified harm?
5. And if so, do those material considerations amount to very special circumstances?

Is the proposed development inappropriate?

In this case, the existing dwelling has a footprint of approximately 158 square metres (sqm) and a total floor area (over two floors) of 292sqm. Due to the sloping nature of the land, the existing eaves range from 4.4 to 5.5 metres and the ridge from 6.3 to 7.5 metres above adjacent ground level. The proposed dwelling has a footprint (including existing barn) of 357sqm and

would have a total floor area (over four floors) of 974sqm. This proposed floor space includes 357sqm in the basement, 166sqm in the converted barn and 32sqm in the roof space. In their submitted figures, the applicant has omitted the floor space within the barn and the other figures vary slightly, but the overall floor space still represents a significant increase above the existing. The height of the new build part of the proposed building has a constant eaves level of 5.3 metres, and a ridge height of 8.7 metres above ground level. The height from ground level to the eaves of the existing barn is 5 metres and to the ridge it is 6.9 metres.

Taking into account all of these factors, the proposed dwelling is materially larger than the dwelling it replaces. Given that the previously approved dwelling was deemed to be materially larger than the dwelling it replaces, and the current scheme is larger still, this can be the only logical conclusion. The proposed replacement dwelling is therefore inappropriate development in the Green Belt.

Assessment of any additional harm

Whilst the footprint and floor space of the proposed dwelling are significantly greater than the existing dwelling, the impact on the openness of the Green Belt is considered to be limited. A large proportion of the new dwelling (357sqm) would be contained within the basement, which is entirely concealed beneath ground level. Floor space of 166sqm and massing above ground is also contained with the existing barn which would be linked to the main body of the dwelling. The glazed link itself also makes up approximately 75sqm of the floor space of the dwelling. The glazed link is a lightweight structure and has a limited impact on openness. Furthermore the proposed dwelling sits on lower ground, on a less prominent section of the site than the existing dwelling, and results in a more compact area of development on the site because there is a reduced distance between the existing barn and the proposed dwelling than the existing dwelling. Taking into account these factors, whilst the proposed dwelling is materially larger, the impact on the openness and visual amenity of the Green Belt as a result of the proposed development is limited. As a result it is considered that there is limited additional harm arising from the development beyond that of inappropriateness. This view is made taking into account the other site planning factors considered below, including nature conservation.

Representation has been made regarding the purposes of the Green Belt to focus development in sustainable urban areas. It is considered that the replacement dwelling does not raise any significant concerns in respect of sustainability, and PPG2 accepts the principle of replacement dwellings in the Green Belt. Whilst the replacement dwelling has a larger floor space, it does not automatically follow that this generates a less sustainable form of development. The basement accommodation would provide a swimming pool and other leisure facilities; in terms of sustainability the proposed dwelling is comparable to the planning permissions that have already been granted on the site. It is not considered that the proposal conflicts with any of the listed purposes of including land in the Green Belt.

Assessment of considerations in favour of the development

In the event that the Council considers that the proposal is inappropriate in the Green Belt, the applicant has put forward a number of issues that they consider amount to the required very special circumstances to justify the grant of planning permission. These are:

- 1 A fallback to permission 09/3122M, together with permitted development rights.
- 2 Alternative fall back to 09/4124M.
- 3 No impact of basement upon openness.
- 4 Barn exists and will be converted.
- 5 Built form on the site has not increased above that already approved.
- 6 Lightweight link would provide visual break and a degree of openness between the dwelling and the barn.

The fallback permission of 09/3122M relates to an appropriate form of development in the Green Belt as opposed to the inappropriate development currently under consideration. The absence of any additional impact upon openness simply demonstrates that there is no additional harm arising from the appeal proposal. However, it is acknowledged that alterations could be made to the building approved under 09/3122M in addition to outbuildings being erected (all potentially without planning permission), which could have a significantly greater impact upon the openness and visual amenity of the Green Belt, and would provide the accommodation that the applicant is currently seeking in an alternative format. However no details have been put forward in relation to potential outbuildings or extensions and therefore only limited weight should be afforded to this as a genuine fall back position.

The extant permissions are a relevant material consideration, and the main difference between this current application and the latest extant approval (09/4124M) is the basement, which significantly increases the floor area of the proposed dwelling, of which it forms a part. The dormer window and floor area in the roof space is also a difference between the two applications.

Revised plans have been received which ensure that the footprint of the basement does not extent out beyond the footprint of the above ground element of the building. The basement will be totally enclosed and does not affect the above ground massing of the building. If planning permission 09/4124M was built out, the impact of the development on the Green Belt, in terms of visual amenity and openness, would be very similar to this proposal; the only visible difference being a dormer window. This is a material consideration which should be afforded weight in the balancing exercise of the proposal. Permitted development rights were removed from the previous consent (09/4124M) and therefore no weight should be given to any argument about the ability to build a swimming pool building above ground with this planning permission.

Very special circumstances were considered to apply to extant permission 09/4124M (which was also deemed to be inappropriate development in the Green Belt). These circumstances included the relationship between the barn and the approved dwelling, the fact that the barn building exists and will be converted, the lightweight link being single-storey still providing a visual break and a degree of openness between the new building and barn, and perhaps most significantly the fallback position of the previous scheme (09/3122M). When taken together these factors were considered to amount to the very special circumstances required to clearly outweigh the harm to the Green Belt caused by inappropriate development in that case.

The question is whether these same very special circumstances are sufficient to outweigh the harm to the Green Belt arising from the inappropriate nature of development in this current case? Whilst the fallback of an extant permission, which would result in a replacement dwelling that would have virtually the same impact upon the openness and visual amenity of the Green Belt may be considered, on its own, to amount to a very special circumstance, proper and full regard must be given to the likelihood of the fallback position actually being taken up. In this context officers are mindful of the number of applications made on this site for a replacement dwelling, the timescale that they have been submitted within and the incremental changes that have been proposed.

Permission was first granted in June 2009 (09/0606M) for a replacement dwelling on a similar footprint to the existing dwelling. A redesigned dwelling that was also moved closer to the existing barns was then considered under application 09/3122M, which was submitted on 1 October 2010 and approved on 26 November 2010. On 10 December a third application was received (09/4124M), for a similarly designed dwelling but one which was linked to the existing barn. This latest submission was identified as being inappropriate development in the Green Belt, but was approved on 18 March 2010 as very special circumstances were considered to exist. Then, on 31 March 2010, the current application was received that added the basement and dormer window.

Whilst amendments to approved development proposals are commonplace within the planning process, the above history of successive amendments does serve to question whether there is truly a realistic likelihood of any of the fallback positions actually being taken up. Once permission is obtained, another application is made within a short timescale to amend the previous approval. Substantial weight needs to be given to the fallback positions in order for them to clearly outweigh the identified harm to the Green Belt. However, there is no sign or evidence of this process stopping, conditions have not been discharged, and development has not commenced on site. Furthermore, this proposal adds a significant amount of floor space to the previous approvals and is of a different nature to permission 09/3122M, which is contended to be the most likely fall back position, together with PD rights, by the applicant. Therefore, having regard to the planning history of the site, the likelihood of the fallback positions being taken up at this time is very limited. As a result, the very special circumstances required to outweigh the

harm to the Green Belt arising from the identified inappropriate development have not been demonstrated and the proposal is therefore considered to be contrary to policy GC1 of the Macclesfield Borough Local Plan and the national guidance contained within PPG2.

Due regard has been given to the comments received in representations relating to very special circumstances above. However, it should also be clarified that the Courts have also established that “very special” is not the converse of commonplace. Therefore, whilst rarity may be a contributory factor in the assessment of what constitutes very special circumstances, it is not essential.

Highways

The existing access is to be retained as with the previous approval. Sufficient space exists within the site for adequate parking and turning to serve the proposed dwelling. Given that the parking area is shown on the plans, and the existing accesses are to be retained, no highway safety issues are raised.

Design

As already discussed, the design of the dwelling remains the same as the existing permission, with the addition of the dormer window being the only visible change. The design of the proposed dwelling is considered to be appropriate and adequately in keeping with the character of the area. The dwelling has a traditional design but utilises large areas of glazing in places. The external appearance will be of a traditional pitched roof dwelling, but a small section of flat roof is proposed within the central section to enable the height and massing of the building to be reduced.

The proposed dwelling would utilise natural materials of brick, oak framing, stone roof tiles, and hardwood doors. It also incorporates modern materials with pre-cast coping stone and aluminium framed windows. The scale and appearance of the proposed building sits well within the plot and is sympathetic to the scale of other buildings in the local area. A visual impact assessment and landscaping proposals have been submitted, which are considered to demonstrate that the proposal will comply with Local Plan policies BE1, DC1 and DC8.

Landscaping and trees

As with the previous permission, additional landscaping is considered to be required to ensure any views of the flat roof element of the dwelling are appropriately screened from higher vantage points. In terms of trees, the proposed development is located closer to the nearby bank of protected trees, than the approved scheme, however, the Arboricultural Officer has confirmed that as with the previous scheme it is unlikely to have any significant impact on these trees providing protective fencing is erected in accordance with BS5837:2005 Trees in Relation to Construction.

Amenity

Due to the distance to and relationship with neighbouring properties no significant amenity issues are raised.

Ecology

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places, if there is

- no satisfactory alternative
- no detriment to the maintenance of the species population at favourable conservation status in their natural range
- a specified reason such as imperative, overriding public interest.

The UK implemented the EC Directive in The Conservation (Natural Habitats etc) Regulations 1994 which contain two layers of protection

- a licensing system administered by Natural England which repeats the above tests
- a requirement on Local Planning Authorities (“LPAs”) to have regard to the Directive’s requirements.

Circular 6/2005 advises LPAs to give due weight to the presence of a European protected species on a development site to reflect.. [EC] ...requirements ... and this may potentially justify a refusal of planning permission.”

In PPS9 (2005) the Government explains that LPAs “should adhere to the following key principles to ensure that the potential impacts of planning decisions on biodiversity are fully considered..... In taking decisions, [LPAs] should ensure that appropriate weight is attached to protected species... ... Where granting planning permission would result in significant harm [LPAs] will need to be satisfied that the development cannot reasonably be located on any alternative site that would result in less or no harm..... If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.”

With particular regard to protected species, PPS9 encourages the use of planning conditions or obligations where appropriate and advises, “[LPAs] should refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.”

The converse of this advice is that if issues of species detriment, development alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

A bat survey was carried out by a qualified ecologist on behalf of the applicant who has identified limited bat activity on the site.

The proposed scheme to demolish the existing dwelling and habitat of the bats could have some impact upon the protected species present if some form of mitigation is not incorporated on site.

The proposal to replace the existing dwelling will allow for an improvement to the existing housing stock within the Over Alderley area at the expense of the applicant together with the achievement of modern day energy efficiency standards.

The alternative to the proposed replacement dwelling would be of course to revert back to the extant permission for a replacement dwelling, which would have an equally significant impact upon the presence of the bats.

The mitigation proposes the supervised demolition of the property and the provision of replacement roosts in the form of bat boxes incorporated into the replacement dwelling. The proposed mitigation is acceptable and provided the proposed mitigation is implemented in full the residual impacts of the proposed developments on bats is likely to be very minor. The benefits of the mitigation will provide a new appropriate roost for the bats which will be site adjacent to existing mature tree line and pond which offer a high value of foraging. The proposed mitigation will provide a new habitat which will allow the future protection of the bats in perpetuity.

Having regard to the above it is considered that the proposed replacement roosting facilities is an appropriate form of mitigation which in the long term will provide a more satisfactory habitat for the bats than the existing dwelling. It is considered that the mitigation put forward is a material consideration which if implemented will further conserve and enhance the existing protected species in line with Local Plan policy NE11 and is therefore on balance, considered to be acceptable.

The Council's Ecologist has been consulted on this application and raises no objection to the proposed mitigation subject to a condition to ensure work is carried out in accordance within the submitted scheme.

Other considerations

The Contaminated Land Officer has commented on the application and notes that the application site has a history of use as a farm and therefore the land may be contaminated, and that the site is adjacent to an in-filled former sand pit that has the potential to create ground gas. No contaminated land objections are raised subject to a condition requiring a phase 1 contaminated land survey to be submitted, in order to ensure that the development is suitable for its end use and the wider environment and does not create undue risks to site users or neighbours during the course of the development and having regard to policy DC63 of the MBLP.

CONCLUSIONS AND REASON(S) FOR THE DECISION

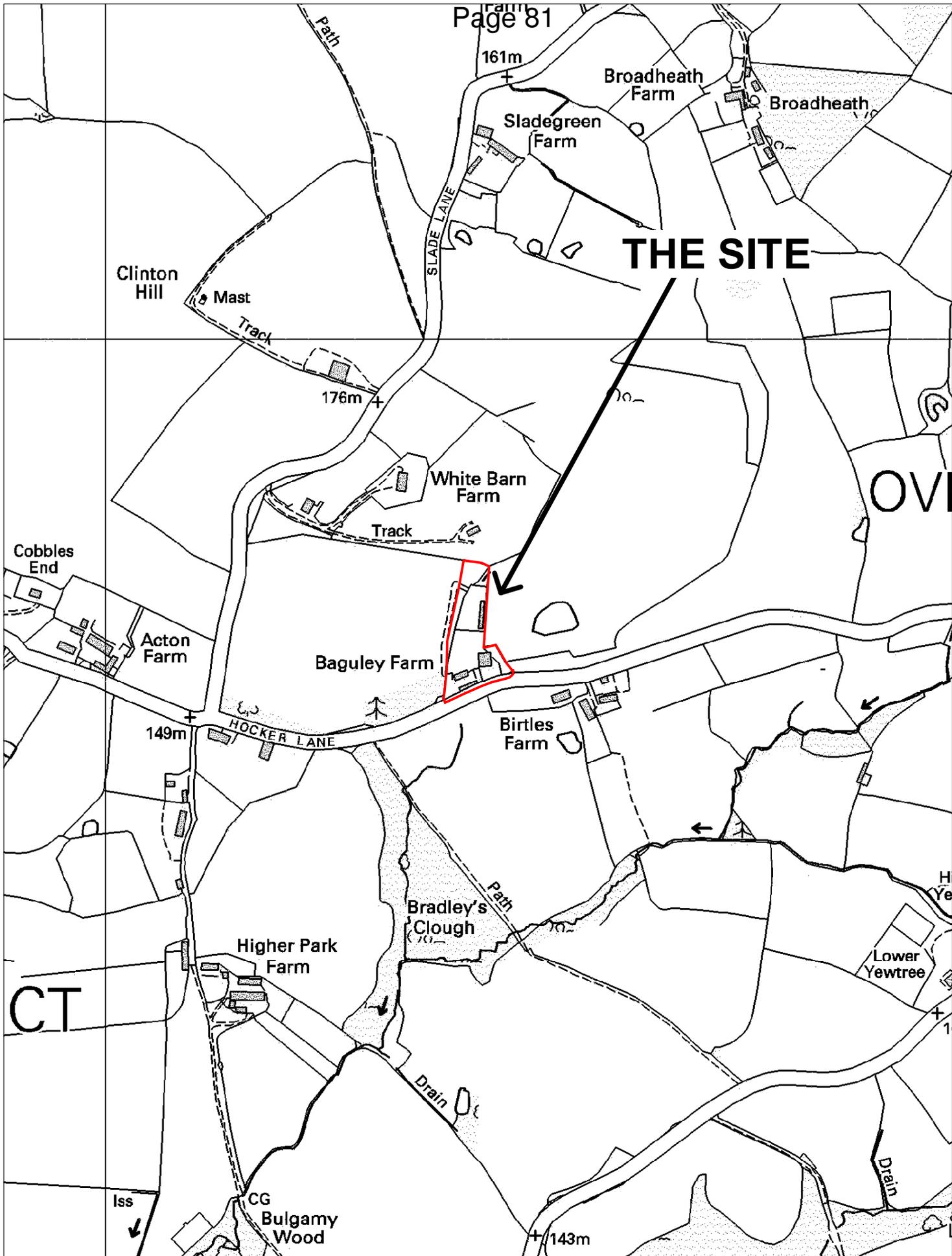
The proposed replacement dwelling amounts to inappropriate development in the Green Belt because it is materially larger than the dwelling it would replace. Only limited harm has been identified beyond the harm to the Green Belt by reason of inappropriateness. Planning permission exists for a replacement dwelling (also deemed to be inappropriate development) which

would have a very similar impact on the openness and appearance of the site and the Green Belt. The key difference in floor space terms is the provision of a basement and dormer window in this application. However, for the reasons outlined above relating to the recent planning history of the site, the likelihood of the fall back position (of the extant permissions) actually being taken up is limited, and therefore these factors are not considered to be sufficient to clearly outweigh the harm to the Green Belt by reason of inappropriateness and the limited additional harm.

RECOMMENDATION

The application is therefore recommended for refusal for the following reasons:

1. The proposal is an inappropriate form of development within the Green Belt, as defined by the Development Plan. Very special circumstances have not been demonstrated that would clearly outweigh the harm to the Green Belt arising from the proposed inappropriate development. The development is therefore contrary to policy GC1 of the Macclesfield Borough Local Plan and would cause harm to the objectives of those policies. The development is similarly contrary to national policy guidance relating to development within the Green Belt.



THE SITE

10/1292M - BAGULEY FARM, HOCKER LANE, OVER ALDERLEY
N.G.R. - 386,420 - 375,680

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| Planning Reference No: | 09/3400C |
| Application Address: | Council Depot, Newall Avenue, Sandbach CW11 4BH |
| Proposal: | New build development of 107 extra care apartments and associated extra care facilities and car parking |
| Applicant: | Nuala Keegan, Cheshire East Council |
| Application Type: | Outline |
| Grid Reference: | 375652 360485 |
| Ward: | Sandbach East & Rode |
| Consultation Expiry Date: | 10 th December 2009 |
| Date for determination: | 19 th January 2010 |

SUMMARY RECOMMENDATION

APPROVE subject to conditions.

MAIN ISSUES:

- The acceptability of the development in principle
- Layout, design and street scene
- Sustainability
- Impact on neighbour amenity
- Landscape and Ecology
- Highways and parking
- Drainage and Flood Risk

REASON FOR REFERRAL

Members may recall that, at it's meeting on Wednesday 23rd December 2009, Strategic Planning Board granted approval to an application by Cheshire East Borough Council to develop 107 extra care apartments and associated extra care facilities and car parking on the former depot site at Newhall Avenue, Sandbach.

Judicial Review proceedings were subsequently issued by a developer with an interest in adjacent land. It was contended that the Council:

1. failed to require the applicant to submit a Transport Assessment, which should have accompanied the planning application to accord with Department of Transport Guidance and the Council's own validation criteria
2. failed in its consultation obligations and
3. failed to consider the issue of overshadowing and loss of daylight / sunlight by the proposed development on their land.

Counsel provided advice to Cheshire East on the merits of the claim. She concluded that, on balance, the Claimants would succeed on the first ground, relating to the Transport Assessment, but not on the other two grounds. While the Council could

have continued with its opposition to this Claim, it was likely that the Claimants would be given Permission to proceed. Accordingly the Borough Solicitor concluded that the Council should not contest the claim but should submit to the judgment.

The effect of submitting to judgment is that the permission that was granted by Board in December 2009 is effectively quashed, and that the Council will have to determine the application with the benefit of a Transport Assessment.

That Transport Assessment has now been carried out and has been submitted to the Council. Re-consultation has taken place on the additional information, including consideration by the Strategic Highways Manager, and the revised report below has been brought before Strategic Planning Board, in order for the application to be re-determined.

DESCRIPTION OF SITE AND CONTEXT

The site comprises of two distinct elements, the former Congleton Borough Council works depot accessed off Newall Avenue which is still in use and a private football pitch with associated pavilion.

The site is roughly triangular in shape narrowing to the north and then widening out to the south. It is bounded to the north by a line of four sheltered housing bungalows which are accessed off Union Street whilst to the south; the site abuts a children's play area which comprises a small infants play area with play equipment and a larger area of open grass from informal sports and other activities. Further to the south are a number of properties which front onto Fairfield Avenue and overlook the site which lies to the north.

To the east is an area of cleared land which is currently being developed by Morris Homes to provide 43 houses. To the west, the site is currently bounded by a high concrete panel fence some 2.2m in height. Beyond this lies Flat Lane which is principally used as a footpath but also provides vehicular access to a small private residential site know as the Caravan and to the football pitch. The remainder of the western boundary of the site beyond Flat Lane is abutted by the side garden of 48 Newall Avenue. Both properties to the west benefit from hedges some 1.7 to 1.9 m high for their boundaries

In terms of its character, the site is level with no noticeable changes in levels. A mature Silver Birch is located to the rear of the depot whilst the only other planting of note on the site consists of a series of trees along the eastern boundary.

DETAILS OF PROPOSAL

This application is for the development of 107 apartments divided into 52 no. 1 bed apartments and 55 no. 2 bed apartments. These will be available for a combination of 50% for rent, 25% for shared ownership and 25% for outright sale. The scheme is similar in nature to the recently approved scheme at Willowmere in Middlewich that was submitted by the former Cheshire County Council (ref. 06/1104/FUL).

The application is outline in nature with access, layout and scale initially being proposed for consideration and landscaping and appearance being held over for a reserved matters application.

The scheme is to be managed by an extra care company on behalf of the Council. Whilst some of the units are for private sale, they cannot be sold on the open market and will be retained for occupiers in need of extra care provision. This can be controlled through the use of conditions.

In terms of the physical character of the development, the main part of the building is to be three storey in nature but on the northern and western ends where the building comes close to neighbouring dwellings, the building is brought down to a traditional two storey level.

Although the application is outline only, the applicants have provided indicative elevation details of the main elevation to the front of the building. The overall character and appearance of the building is of a building with prominent levels of glazing interspersed with forward projecting gables and verandas. Where there is a risk of overlooking, for example on the elevations facing neighbours, the applicants have indicated that these elevations would be blank to maintain privacy. The final details would however be addressed through a reserved matters application if this outline scheme were to be approved.

Access is to be gained off Newall Avenue in approximately the same position as the existing access into the Council Depot and the parking area for 52 vehicles is to be situated at the front of the development.

Secure garden areas for the residents are also to be provided around the building to the north and east. Additional landscaping is also to be provided.

RELEVANT HISTORY

The use of the site for a depot and football pitch has been in place for many years. The planning history for the site therefore relates more to incremental changes in the character of the site.

Notable applications include 13712/3 and 13218/3 both approved in 1981, for the expansion of the site and alterations to the configuration of the adjacent play space and also 24604/3 approved in October 1992

POLICIES

National Policy

PPS 1: Delivering Sustainable Development
PPG 13: Transport
PPS17: Planning for Open Space, Sport And Recreation
Department for Transport – Manual for Streets

North West of England Plan - Regional Spatial Strategy to 2011

DP1 Spatial Principles
DP7 Environmental Quality

Cheshire Replacement Waste Local Plan

Policy 11 (Development and Waste Recycling)

Congleton Borough Local Plan First Review 2005

PS4 Towns
H4 Residential Development in Towns
H13 Affordable and Low Cost Housing
GR1 General Criteria
GR2 Design
GR6 Amenity and Health
GR9 Accessibility, servicing, and parking provision
RC1 Recreation and community facilities – General

CONSULTATIONS (External to Planning)

Environmental Health

No objection to the development proposed although conditions in respect of the following are proposed:

- A contaminated land Phase 1 report shall be submitted to, and approved in writing by the Local Planning Authority with a Phase 2 report and, if necessary remediation works to be undertaken.
- The hours of construction (and associated deliveries to the site) of the development shall be restricted to 08:00 to 18:00 hours on Monday to Friday, 08:00 to 13:00 hours on Saturday, with no work at any other time including Sundays and Public Holidays.
- Details of the method, timing and duration of any pile driving operations connected with the construction of the development hereby approved shall be approved in writing by the Local Planning Authority prior to such works taking place and shall be implemented in accordance with the approved details.
- No development shall commence until an assessment of traffic noise [and vibration] has been submitted to and approved in writing by the Local Planning Authority. The recommendations in the report shall be implemented in accordance with the approved details prior to the first occupation of the development hereby permitted. The assessment must also incorporate the potential impact on the proposed properties from the surrounding industrial premises.
- No development shall take place until an air quality impact assessment has been submitted to and approved by the Local Planning Authority. The impact assessment shall address the following issues;
 - o Current air pollution levels around the development site;
 - o Details of potential sources of air pollutants as a result of development activities;

- Measurable changes (increase and/or decrease) to air pollution concentrations as a result of development activities;
 - Comparison of predicted changes in air pollution concentration to current air quality standards;
 - Precise details of any methodology/guidance used in the assessment of air quality impact;
 - Proactive measures to address potential air quality issues where appropriate.
- Heavy goods vehicles should be restricted and shall only access the site from 9 am to 5 pm Monday to Friday and 9 am to 1 pm on a Saturday.

Nature Conservation Officer

The officer has commented to note that no evidence of protected species was recorded and accordingly they are satisfied that there are no significant adverse ecological impacts associated with the proposed development.

It was noted however note that there may be some removal of trees from the site and so it is recommend that two conditions are attached to any permission granted to ensure that breeding birds are not disturbed during site clearance work and to ensure that some additional provision is made for breeding birds as part of the development of the site

Senior Landscape & Tree Officer

Although stated on the application proforma that there are no trees and shrubs on the site, and no tree survey has been provided, there are some shrubs and a Silver Birch located within the council depot area and trees on the eastern boundary of the site. Whilst apparently healthy, the Silver Birch tree is not exceptional. The belt of trees to the east would be removed in order to implement approved residential development on adjoining land. None of the trees are subject to TPO protection and if the development is deemed acceptable, replacement planting could be secured in mitigation

The proposed layout would appear to provide reasonable scope for landscape treatment to the west and within the resident's garden areas. The location of the bin store has a poor relationship with the public footpath. To the north, south and east, where the building extends close to the boundaries, there would be less scope for landscape treatment and this could be an issue. To the south, I anticipate that there would need to be a secure boundary with the POS and I would not want a situation to arise whereby ground floor properties had a poor quality outlook - say to a tall security fence or wall with little scope for landscape treatment at pinch points.

From the east, where residential development is approved, and the north where there are bungalows on adjoining land, the building could appear overbearing- a situation which could not be mitigated by landscape treatment.

A comprehensive detailed landscape proposal would be required in due course.

Highways Authority (updated)

The Strategic Highways Manager has viewed this application and considered the proposals and accompanying Transport Assessment required for an application of this scale. Significant pre-application discussions have taken place between the S.H.M. and the applicants highway consultant: Mott Macdonald regarding the necessary analysis and content of the Transport Assessment. In addition, Mott Macdonald have provided a Travel Plan Framework which describes the principles by which the proposed facility will manage it's travel options for staff and residents.

Transport Assessment

The TA has been produced with the inclusion of the necessary elements of the guidance in the DfT document: 'Guidance on Transport Assessments' and is deemed to provide acceptable data in respect of the proposed development. The S.H.M. has agreed the method by which vehicular trip rates should be equated for the site, both in terms of the existing use-class and its potential traffic generation, and for the proposed use-class. The traffic generation numbers from the proposed development have then been compared to the existing numbers and it shows an increase in traffic generation, spread across the twelve hour working day. This increase in traffic generation for the working day is 102 vehicles, primarily cars with a limited number of service vehicles such as: ambulances, refuse and other service vehicles. The impact in the peak flow hours will be approximately 10 vehicles over those 60 minute periods which on average would equate to 1 vehicle each 6 minute period. The S.H.M. considers this to be a negligible impact with no material impact on local junction performance.

Sustainable Transport options.

The TA examines the sustainable transport options for the site and shows clearly that there are very good links to bus services with reasonable links to Crewe and Sandbach rail stations. Locally there is an excellent system of footway links. In particular, Flat Lane links directly to the town centre some 350 metres away via a dedicated footpath which is well surfaced and lit. This link benefits from a Pelican crossing where it is necessary to cross Old Mill Road, and this gives pedestrians control to negotiate this road safely. Cycle links are available along Crewe Road which distribute to a wider local cycle network. The Strategic Highways Manager considers that this evidence robustly demonstrates that this site can be considered to be sustainable in its modal choices for travel.

Parking Provision.

The TA provides 3 parking surveys from existing and similar developments, one from a site chosen by the S.H.M. This gives a strong evidence base for the necessary parking provision for the development. The proposal intends to provide 52 car spaces within the development, in a parking layout which provides sufficient room for service vehicles to turn and leave in a forward gear, and also provides a satisfactory dropping off area for visitors. The S.H.M. accepts that in this sustainable location, this is an acceptable level of parking provision. The proposed development also provides 10 secure and covered cycle racks.

Traffic generation and impact.

The Transport Assessment gives robust evidence regarding the traffic generation from the site which has been calculated from agreed and robust trip rates. The impact of the limited additional traffic that the development would produce is spread broadly across the twelve hour working day and develops only 10 additional trips in the peak flow hours. This level of traffic impact is negligible and will have no material impact on the local highway infrastructure or local road capacity.

Access.

The site will be accessed through the existing point of access to the highway depot, though the access will receive an upgrade in design. Historically there has been an expression of concern that with an increase in traffic there would be impediment to the safe passage of pedestrians using Flat Lane, when crossing the end of Newall Avenue. The Design and Access Statement for the development states that an upgraded access will be provided for the development and the S.H.M. will advise the Local Planning Authority on requirements for a detailed design plan for the revised access that will acknowledge the pedestrian desire line for Flat Lane. The Strategic Highways Manager considers that whilst there is a small increase in traffic generation, an appropriate re-design of the access can offer better inter-visibility between pedestrians and access vehicles and reduce vehicle speed. This will help mitigate concerns over pedestrian/vehicular conflict and subject to an agreed design, the S.H.M. considers there would be no reasonable grounds to resist development, particularly as the existing use that could generate more heavy commercial vehicles and a greater percentage of its traffic in the peak flow hours.

Travel Plan.

The proposed development offers a Travel Plan Framework for the development proposals which includes an appropriate list of measures for this type of development.

Conclusion.

This proposal for development offers a balanced and appropriate level of access and parking provision to adequately serve the proposal. The Transport Assessment demonstrates that the traffic generation would have negligible impact on the surrounding highway infrastructure and this has been analysed and accepted by the Strategic Highways Manager. The S.H.M. recommends that the following conditions be attached to any permission which may be granted for this development proposal.

Conditions:

1. Prior to first development, a detailed design plan for the proposed access improvement will be provided to the satisfaction of the Highway Authority and the L.P.A. This design will demonstrate improved inter-visibility between pedestrians on Flat Lane and the development access and associated methods for vehicle speed reduction at the access itself.

2. Prior to first occupation, the development will provide the approved parking layout for 52 car spaces and associated access, turning and drop-off areas.
3. Within 6 months of occupation, the Travel Plan Framework will be formalised into a full Travel Plan with appointed Travel Plan Co-ordinator, to the satisfaction of the Local Planning Authority.

Sport England (updated)

Sport England does not wish to raise an objection to the planning application subject to the following condition being imposed requiring a replacement football pitch to be constructed prior to commencement of development.

VIEWS OF THE PARISH / TOWN COUNCIL (updated)

Sandbach Town Council has the following concerns with regard to the amended plans received:-

- o No alternative access, other than the existing access via Newall Avenue, is being provided. Previous plans indicated that additional vehicular access could be attained through the development off Old Mill Road, thus giving two points of access and substantially lightening the potential traffic on the existing one-way route.
- o Despite the implementation of a travel plan and other supporting information this Council still objects to this application on the grounds that Highway Safety in the adjoining areas will be compromised by the additional traffic generated by these proposals, thus contravening Policies GR9 – 10 and GR18 of the Congleton Borough Local Plan.

OTHER REPRESENTATIONS (updated)

Letters of representation have been received from 3 and 48 Newhall Avenue; 4, 46 and 48 Fairfield Avenue; 30 Townfields; and The Caravan; making the following points:

Highways

- Flat Lane is busy with traffic 7 days a week going to the caravans and not just weekends for the football as some non-residents might think.
- the street map of the estate shows there are nine roads all of which have to exit via Third Avenue to get onto Crewe Road
- It is by the entrance to a well used park, a path used frequently to walk to town and also there is a blind corner which has to be crossed when taking children to school.
- Council Wagons, are very infrequent. This would change dramatically if it were to become an access route for residential development.
- It is close to the school and children park
- The access should be from Old Mill Road via Homebase and the Morris Homes Development.
- There is concern about construction traffic passing the school.

- Concern about access on to Newhall Ave for the following reasons:
 - o It is a built up area with many families – danger to children
 - o Objection to double yellow lines as road is used for visitor parking
 - o Traffic will cause congestion

Other Matters

- Flats are 3 storey and not in keeping with adjoining 2 storey development
- The land slopes considerably from the west down to the east thereby emphasising the height difference between the approved dwellings to this side and the proposed three storey building.
- The development does not relate well to the adjoining open space. It provides a barrier to it rather than interacting with it.
- As proposed, the height and scale of a continuous three storey "wall" of flats close up to the northern edge of the boundary of the playing fields would have an enclosing, overpowering, dominating effect on the openness of the area.
- Residents outlook would be affected and this will affect property values
- There will be loss of privacy and amenity
- Residents will be disturbed by construction noise.
- The park is a focus for anti-social behaviour
- The development would be better located in the town centre where all the amenities and public transport are located. This is paramount in view of the Cheshire East review of public transport and social care.
- The caravans should be given the same consideration as other house dwellers.
- Overall, in it's current form the proposed scheme does not satisfy design factors detailed in PPS1, paras 33, 34 and particularly para 35
- There are a great many plus factors for this proposal. However in its current form the scheme cannot be acceptable whilst the above failures have not been addressed.

A letter has also been received from Sandbach Community Primary School making the following points:

- The school is located at the top of Newall Avenue where it joins Crewe Road.
- 124 3-11 year old children attend the site each day.
- The roads around the site are busy from 8a.m, each day when the Breakfast Club opens, until 9.am. when the morning session begins and at 3.30 when the main school leave at the end of the school day.
- There is also a great deal of traffic to and from the school throughout the day
- The increased volume of traffic that the development will bring which will have to pass directly beside the entrances to the school site.
- Newall Avenue's entrance from Crewe Road is a narrow one way stretch of road with an extremely narrow footpath used by primary school pupils and also the two secondary school's and the newly opened Children's Centre.
- Cars and larger vehicles are often observed driving very close to or on the low kerb at the top of this road.
- This problem will be exacerbated by construction traffic which will be extremely dangerous for the children.

- The traffic generated by the development once completed will increase the risk of an accident to an unacceptable level.
- Approximately 70%, of pupils travel to school on foot
- Those brought to school by car or taxi use Newall Avenue as a drop off and pick up point.
- Parking outside the school is already a problem which requires constant policing. However the new proposals will remove any opportunities to park safely further down on Newall or Price Avenue as the proposal indicates it is extending the double yellow lines to these areas.
- This will exacerbate current parking issues which will have to be policed more regularly by Cheshire East or the police and will also cause difficulties between the school and neighbours
- There is also concerns for the safety of pupils who regularly walk to school and use the alley way at the end of Newall Avenue that links to Union Street.
- Newall Avenue's one way section is frequently used illegally to exit the estate by visitors to the area and this will rise with an increased volume of traffic.
- There are concerns for the young people on the Townfields Estate who use the park facilities at the end of Newall Avenue.
- Whilst there is no objection to the actual development they would urge Cheshire East planning department to look at alternative access roads for both contractors and residents

APPLICANT'S SUPPORTING INFORMATION

Transport Assessment (updated)

The main aims of the TA are as follows

- To predict travel demand for the development
- To demonstrate safe and effective multi modal accessibility to the development
- To identify assess and propose mitigation for any net transport related impacts likely to arise from the development

The main outcomes of the TA are as follows

- The location usage and density of the proposed development has been designed with current transport policy in mind
- The closest bus stops to the site are located approximately 320m from the site entrance on Crewe Road. Bus services from these stops stop at Sandbach railway station, Sandbach Town Centre, Crewe Railway Station and Crewe Bus Station in addition to other local destinations
- The development site is located adjacent to an existing residential development and therefore is well connected to the existing public footway network. Sandbach Town Centre is located approximately 650m from the site access
- Regional Cycle Route 74 (on-Road) is located to the west of the development site along Crewe Road and intersects National Route 5 to the south of the development site along Crewe Road and intersects National Route 5 to the south of the development. It is estimated that the proposed development will increase the number of vehicular trips at the existing site. The arrival and departure of these additional trips will be spread throughout the day and therefore have negligible effect on the operation of the existing highway network

- It is considered that the proposed parking provision is sufficient to meet the needs of the development and meets local development parking policy requirements.
- Five accidents have occurred in the study area over the last five years. Two of these accidents involved pedestrians; one involved a cyclist and the remaining two involved vehicles. It is considered that the presence of the development will not increase the accident rate in the area.
- A Travel Plan Framework has been produced setting out how the development is intended to be managed to encourage sustainable travel to and from the proposed development.

Consultation Statement

Two consultation exercises were undertaken on 29 September 2009 and 1 October 2009 in Sandbach to gauge the public's impression of the development proposed. 20 comments were received which were mostly in favour of the scheme though some people expressed concern about the accessibility of the site to traffic and in one case about the loss of the football field.

Sustainability Statement

A statement has been produced by the applicants indicating measures that will be adopted in seeking to develop the care home to meet Level 3 of the Code for Sustainable Homes.

Wildlife Surveys

The applicant has commissioned a report from JW Ecological Ltd in respect of protected species that may be present on the site.

Design and Access Statement

The applicants have produced a Design and Access statement which examines the viability of the proposal and the character of the surrounding area. The document also provides indicative details on how the final form of the development may be realised at the Reserved Matters Stage.

Flood Risk Assessment / Drainage Strategy

As the site is over a hectare in size, a Flood Risk assessment has been produced. The assessment has established that the site is in Flood Zone 1 with a risk of flooding of less than 1 in 1000 years. A number of conditions have been proposed in respect of the details of the form of the building to enable it to withstand any flooding and for the provision of attenuation.

OFFICER APPRAISAL

Principle of Development

As the site is identified in the Congleton Local Plan as a site for housing development under Policy DP2 (S1), the development of this site for other uses within Use Class C (C2: Extra Care) is considered to be acceptable in principle.

Despite this allocation however, the site is also identified in the Local Plan as being a protected area of open space/ recreation facility.

If this scheme was being brought forward in isolation from any other development in Sandbach, there would be a noticeable concern over the loss of the existing sports pitch. More recently however, the Council has granted approval for the development of 10 football fields and associated changing facilities on land off Hind Heath Road. (ref. 09/2058C).

Paragraph 13 of PPS 17 acknowledges that development may provide the opportunity to exchange the use of one site for another to substitute for any loss of open space, or sports or recreational facility. The key criteria though is that the new land and facility should be at least as accessible to current and potential new users, and at least equivalent in terms of size, usefulness, attractiveness and quality. In addition, wherever possible, the aim should be to achieve qualitative improvements to open spaces, sports and recreational facilities.

It is felt that although this facility is away to the south west of the current site location, the greater quantity and improved quality of the provision including the provision of an all weather 3G pitch represents a more than appropriate alternative provision to off set the loss of the old pitch meeting the criteria set out in the PPS.

Discussions have been held with Sport England on this particular point and they have commented that the development of additional facilities in the Sandbach area is acceptable to offset the loss of this site.

Guidance is also given in PPS 17 that Local Authorities should use planning obligations or conditions to secure the exchange land, ensure any necessary works are undertaken and that the new facilities are capable of being maintained adequately through management and maintenance agreements.

As the scheme at Hind Heath Road has now received planning approval and has funding in place through the Football Association together with the Council, the need for an obligation in this instance is not felt to be necessary.

Layout, Design and Street Scene

Although outline only at this stage, the building has been designed predominantly as a three storey structure lowering to two storey only on the west and northern ends.

Many of the surrounding properties are two storey in nature or, in the case of the properties to the north, single storey. As a result this scheme will appear as a noticeable change in the character of the area. There are some larger properties in the local vicinity however including the Homebase centre off Old Mill Road and the Waitrose store, both to the north. In other directions though, there are few buildings of similar scale. The Sandbach School off Crewe Road is a significant sized building

but its impact on the character of the area is diminished by the separation of the various elements of the building and the distance of the building away from the public highway.

In principle, it is felt that the scale and form of development proposed will not have a severe impact on the character of the area. The stepping down of the built form at the peripheral edges helps to ensure that the immediate impression of the building will be one of a more domestic scale of architecture in keeping with the general development pattern surrounding the site. The transition from two through to three storey development will not then be a significant step change and the larger part of the building will not have a harsh impact on the street scheme which may be considered unacceptable.

The form and shape of the building is then proposed to be broken up through a number of architectural features such as the projecting balconies and the relatively high level of glazing which in turn results in a reduction in the amount of brickwork visible and so results in a less dominant and bulky form of architecture.

Sustainability

Consideration has been given to the sustainability of the scheme particularly in light of the policies in the regional strategy. A Renewable Energy Statement has been provided by the applicants and this sets out that the development is intended to meet Level 3 of the Code for Sustainable Homes.

This is to be achieved through improved thermal efficiency of the building products and additional insulation, reducing air permeability and minimising requirements for mechanical ventilation. Improved heating sources are also to be used and care is to be taken in the detailed design to minimise thermal bridging.

Reduced water consumption and increased use of sustainable construction materials will also minimise the impact of the development on the environment.

The applicants have indicated some recycling facilities near to the front of the site and whilst the location of the buildings is somewhat close to the boundary of the site, the principle of provision is welcome and it is felt that this element of the scheme can be resolved at the reserved matters stage.

Amenity

The relationship of the building to the neighbours on the northern and western boundaries is one of the key issues of concern.

The bungalows to the north already had a concrete panel fence approximately 2.0m high at the end of their gardens so do not have a completely open view. The northern gable wall of the building is proposed to be 14.0m away from the rear of the bungalows which slightly exceeds the 13.8m separation distance suggested in Local Plan Supplementary Planning Guidance.

At this close relationship, consideration is given to whether there are any factors which would require a greater separation distance. Given the existence of the existing fence it is not felt an objection could be sustained on issues of loss of light especially considering the proposed development will be two storeys at this point. The applicant has also confirmed that it is their intention that this elevation be free of windows to prevent overlooking. On this basis, it is felt that this element of the scheme is acceptable in outline and can adequately be controlled through conditions to manage any reserved matters application.

The Council's Supplementary Planning Guidance recommends that a minimum distance of 21.3m should be maintained between elevations containing principal windows. The distance between the development and the properties off Fairfield Avenue to the south is approximately 48m which is considerably in excess of this distance and will compensate for the fact that the development is to be three storey in nature with the possibility of balconies being provided. Furthermore, at the moment, the park to the rear of the properties in Fairfield Avenue allows close views of the rear of the existing houses especially the first floor windows.

Although the rooms in the care home may allow some overlooking of the properties to the south, it is felt that the distances involved between not only the rear of the buildings but also the private garden areas is still considerable and in excess of what would normally be expected in a situation where domestic properties back on to each other in a normal residential area and there is overlooking from bedrooms into other surrounding properties.

Landscape and Ecology

Consideration has been given to the EC Habitats Directive 1992 which requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places,

- In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment and provided that there is
- No satisfactory alternative and
- No detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK implemented the Directive by introducing The Conservation (Natural Habitats etc) Regulations 1994 which contain two layers of protection

- A requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and
- A licensing system administered by Natural England.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. "This may potentially justify a refusal of planning permission."

PPS9 (2005) advises LPAs to ensure that appropriate weight is attached to protected species “Where granting planning permission would result in significant harm [LPAs] will need to be satisfied that the development cannot reasonably be located on any alternative site that would result in less or no harm. In the absence of such alternatives [LPAs] should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where ... significant harm ... cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.”

PPS9 encourages the use of planning conditions or obligations where appropriate and again advises [LPAs] to “refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.”

The converse of this advice is that if issues of detriment to the species, satisfactory alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

In this case, consideration is given to the findings of the protected species survey undertaken on behalf of the applicant. This report has established that there are no species of note on the site and therefore a licence from Natural England is not required in this instance.

The Nature Conservation Officer has suggested two conditions in respect of controlling development during the breeding bird season and these are felt appropriate and are therefore recommended.

Public consultation

At the time of the preparation of the report, only two comments had been received directly in respect of this application. Both of these commented on the suitability of the access arrangements along Newall Avenue and the subsequent impact on Crewe Road. Additional comments on a similar nature were also received during the developers consultation exercise and these are noted.

Highways and Parking

The application seeks approval of the access, which is to be taken from Newhall Avenue. Concerns have been raised by local residents, the Town Council, and the primary school in respect of this aspect of the scheme. They argue that Newhall Avenue is narrow and congested, and that it has a dangerous junction with Crewe Road. There is also particular concern about the fact that the site access crosses Flat Lane, which provides pedestrian access between the town centre, adjacent park, the school and surrounding residential areas. As a consequence it is used heavily by local children. It also provides vehicular access to The Caravan.

The applicant has submitted a full Transport Assessment, which concludes that the proposal will not have any adverse effects in terms of highway safety, traffic congestion or on-street parking. The Strategic Highways Manager has carefully scrutinised this Assessment and endorsed its conclusions. He has commented that the site is also sustainably positioned within the built up area, within easy walking

distance of the town centre and bus route along Crewe Road. Consequently, he has raised no objections subject to appropriate conditions relating to the provision of a full travel plan, parking areas within the site and a detailed design for the proposed access which provides adequate inter-visibility and traffic calming measures, to prevent conflict between pedestrians using Flat Lane and vehicles entering and leaving the site.

Therefore, whilst the concerns of the local residents, Town Council and primary school are noted, in the absence of any objection from the Strategic Highways Manager it is not considered that a refusal on highway safety, parking or traffic generation grounds could be sustained.

Drainage and Flood Risk

The applicants flood risk assessment has shown that the proposed development will not be at risk from flooding nor will it exacerbate flooding in other areas. As a matter of good practice, the applicants drainage consultant has put forward a series of conditions to make use of sustainable drainage techniques and these are welcomed by officers.

11. CONCLUSIONS

Having due regard to all other matters raised, it is considered that the proposal complies with the relevant Development Plan policies, as set out above and in the absence of any other material considerations, it is recommended for approval subject to conditions as set out below.

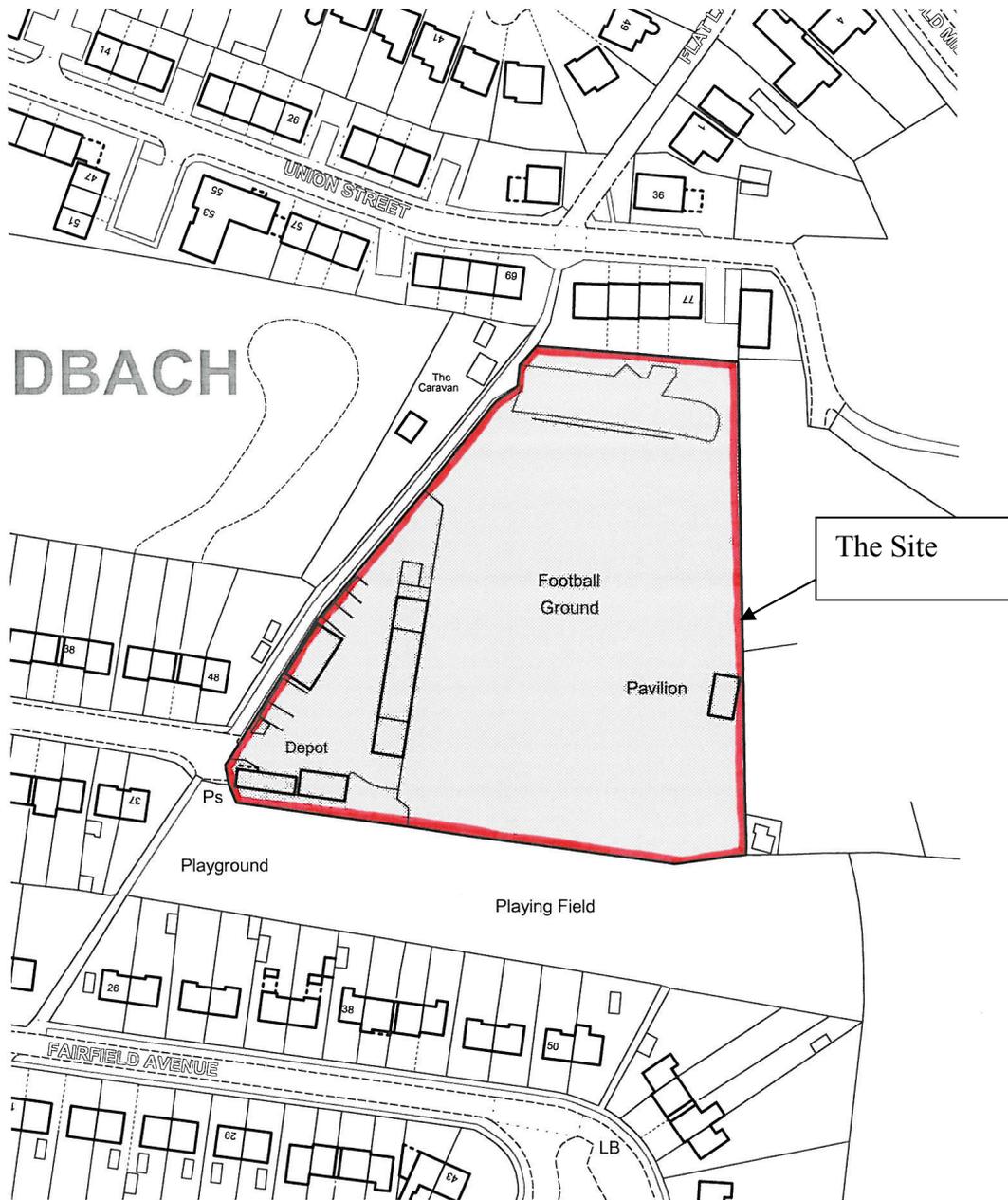
RECOMMENDATIONS

Approve subject to the following conditions:

- 1. Time limit on outline permission**
- 2. Submission of reserved matters (access, landscaping and appearance)**
- 3. Details of materials to be submitted**
- 4. Drainage and surfacing of hard standing areas**
- 5. Landscaping - submission of details**
- 6. Landscaping conditions - implementation**
- 7. Submission of a scheme for the provision and implementation of a surface water regulation system (SUDS scheme)**
- 8. Submission of a scheme for the management of overland flow from surcharging of the site's surface water drainage system**
- 9. Submission of a scheme to dispose of foul and surface water**
- 10. Submission of a contaminated land investigation**
- 11. Submission of a scheme for the provision of affordable housing**
- 12. Notwithstanding the details shown on the approved plan a revised parking and turning layout to be submitted, approved and implemented.**
- 13. Construction site to be subject to the following hours of operations**
 - Monday – Friday 8.00hrs - 18.00hrs**
 - Saturday 8.00hrs - 13.00hrs**
 - With no Sunday or Bank Holiday working**

- 14. Details of the method, timing and duration of any pile driving operations to be approved in writing**
- 15. Submission of an assessment of traffic noise [and vibration]**
- 16. Restriction of heavy goods vehicles to between hours of 9 am to 5 pm Monday to Friday and 9 am to 1 pm on a Saturday.**
- 17. Submission of an air quality impact assessment**
- 18. No windows in the north gable elevations unless fitted with obscured glazing and no opening lights.**
- 19. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey is required to check for nesting birds to be carried out**
- 20. Submission of detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds.**
- 21. The Reserved Matters application to contain a detailed waste audit scheme**
- 22. Submission of a travel plan**
- 23. Reserved matters to include detailed design for the proposed access which provides adequate inter-visibility and traffic calming measures, to prevent conflict between pedestrians using Flat Lane and vehicles entering and leaving the site.**

Location Plan: Cheshire East Council Licence No. 100049045



| | |
|-------------------------------|--|
| Planning Reference No: | 10/4977C |
| Application Address: | Horseshoe Farm, Warmingham Lane, Moston, Middlewich, Cheshire, CW10 0HJ |
| Proposal: | Extension to existing gypsy caravan site including laying of hardstanding, stationing of 9 caravans for residential purposes and, erection of 6 utility buildings. |
| Applicant: | Mr Oliver Boswell |
| Application Type: | Full |
| Grid Reference: | 370941 362636 |
| Ward: | Congleton Rural |
| Expiry Dated: | |
| Date Report Prepared: | |
| Constraints: | Open Countryside |

SUMMARY RECOMMENDATION: Approve

MAIN ISSUES

- The scale of the development in the context of the open countryside location.
- The impact of the development on the character and appearance of the locality.

REASON FOR REFERRAL

This application has been referred to Strategic Planning Board because it is a re-submission of a previous application (09/3918C) which was refused by the Board on the 5th May 2010.

DESCRIPTION OF SITE AND CONTEXT

The site is an area of 0.5 hectare on the westerly side of Warmingham Lane with access 220 metres north of the junction with Forge Mill Lane in the Parish of Moston.

The site is within an area identified as open countryside in the Congleton Borough Local Plan First Review. It is situated close to a former agricultural building and a small set of stables. The immediate surrounding area is characterised by agricultural fields enclosed by traditional hedgerows.

DETAILS OF PROPOSAL

Extension to existing gypsy caravan site, including laying of hardstanding, stationing of 9 caravans for residential purposes and erection of 6 utility buildings.

The Authority received an amended plan on 18th January 2011 following officer comment regarding the site layout. The plan indicated a relocation of one of the residential pitches and the introduction of an amenity block. A full re-consultation exercise has been carried out.

RELEVANT HISTORY

- 1989 (8/20706/3) Temporary permission for wooden sectional building providing loose boxes and storage.
- 1991 (8/22907/3) Temporary permission for wooden sectional building providing two loose boxes.
- 1994 (8/26098/6) Renewal of planning permission 8/20706/3 – wooden sectional building providing loose boxes and storage.
- 1994 (8/26099/6) Renewal of planning permission 8/22907/3 – wooden sectional building providing two loose boxes.
- 1999 (8/30970/6) Renewal of planning permission 8/26098/6 – wooden sectional building providing loose boxes and storage.
- 1999 (8/30971/6) Renewal of planning permission 8/26099/6 – wooden sectional building providing two loose boxes.
- 1999 (8/31265/3) Permission for the exercising of horses.
- 2002 (8/34297/3) Application for removal of temporary condition relating to stables and barns on permission 8/30971/6 – withdrawn.
- 2002 (8/34471/3) Permission for removal of temporary conditions relating to stables and barns on permissions 8/3030970/6 and 8/30971/6.
- 2003 (8/36153/3) Permission to replace existing timber stables and barn with steel frame and block building to include tack room, fodder and implement store and toilet.
- 2008 (07/0647/FUL) Permission granted on appeal for gypsy caravan site for 3 families, together with 2 transit pitches, including the laying of a hardstanding and erection of toilet blocks.
- 2008 (EA829) Enforcement Notice upheld on appeal in respect of the change of use of the land from keeping of horses to a mixed use for keeping of horses and stationing of residential caravans/mobile homes together with associated works, structures and paraphernalia including the deposit of broken bricks, broken concrete, demolition materials, crushed stone and road planings to create a hardstanding, the installation of kerbs, construction of toilet block and sheds, erection of close boarded timber panel fencing and lighting columns.
- 2010 (09/3918C) Extension of existing Gypsy caravan site including laying of hard standing, stationing of 9 caravans for residential purposes (including

3 static caravans) storage of 2 touring caravans, erection of 9 utility buildings and installation of lighting. This application was refused by Board on 5th May 2010. However, due to a clerical error the Decision Notice was not sent out until the 7th September 2010.

POLICIES

Cheshire 2016: Structure Plan Alteration

Saved Policy HOU6 – Caravan Sites for Gypsies

Local Plan Policy

PS8 Open Countryside
GR1 General Requirements for All Development
GR2 Design Requirements for All Development
GR6 Amenity and Health
H7 Residential Caravans and Mobile Homes
H8 Gypsy Caravan Sites

Other Material Considerations

Circular 01/2006 – Planning for Gypsy and Traveller Caravan sites
The Gypsy and Traveller Accommodation Assessment 2007 (GTAA)

Designing Gypsy and Traveller Sites – Good Practice Guide, Communities and Local Government 2008.

Model Standards 2008 for Caravan Sites in England, Communities and Local Government.

Appeal Ref APP/R0660/A/10/2131930: New Start Park, Wettenhall Road, Reaseheath, Nantwich. Change of Use to Use as a Residential Caravan Site for 8 Gypsy Families.

CONSULTATIONS (External to Planning)

Highways: No objection

Environmental Health: If planning permission were granted a site licence would be required under the Caravan Sites and Control of Development Act 1960.

VIEWS OF THE PARISH / TOWN COUNCIL: (awaiting comments)

OTHER REPRESENTATIONS:

Objections from: Warmingham Parish Council (Adjacent Parish); Anonymous letter and email correspondence from a person who failed to provide an address:

- Conditions attached to the previous permission have been consistently ignored and there is no confidence that any new conditions will have any effect on the activities;

- The scale of the new site is unsuitable to the location;
- The proposed Localism Bill intends to close loopholes relating to retrospective planning applications such as this. Therefore, refusal of this application and enforcement of the original conditions would be in line with government policy;
- The site is not an official Gypsy site and the occupiers have continually ignored the original planning permission. Also, there are always more vehicles/caravans than permitted;
- The Agent for the applicant states that the approval would contribute 6 pitches towards the (alleged) unmet need, the extension would do nothing to add to the existing totals and consequently his reasons for granting permission is not valid and should be disregarded.

APPLICANT'S SUPPORTING INFORMATION:

Design and Access Statement

The Design and Access Statement dated 20th December 2010 submitted by Philip Brown Associates with this application states that the application is designed to meet the reasons for refusal of the previous application ref 09/3918C.

The salient points of the statement are as follows:-

The revised application provides for 3 residential pitches and 2 transit pitches (as amended).

The statement describes that this application is for an extension of the authorised site including re-organisation of the existing site. The site would still only accommodate 9 caravans including 3 static mobile homes for use as living accommodation.

A manege is proposed, utilising part of an existing, and lawful, hard standing area. However, this area has been excluded from the application site, but is in the ownership of the applicant and its use can be made the subject to a planning condition.

The proposed layout of the site includes grass amenity areas, parking facilities for 14 vehicles and turning facilities.

Although the provision of the manege, amenity open space, boundary landscaping has resulted in the western extension of the caravan site beyond its previously approved boundary, such extension ensures that:

- Firstly all horse related activity is kept separate from the residential area where children may be playing,
- Secondly, that all residential activity is contained within well defined boundaries.

The site is already well screened by existing buildings and hedgerows. These would be supplemented by tree and hedge planting along the western and northern

boundaries of the site. In addition, tree, hedge, and shrub planting would be carried out either side of the site access, and between caravan pitches. This will screen and break up the mass of caravans on the site, and help assimilate them into their landscape setting.

The area occupied by hard standing has been substantially reduced since the last application. In particular, each residential pitch would now have a private grassed garden area, and a large communal open space would be created in the middle of the site for children's play.

In terms of planning policy, the development plan pre-dates Circular 01/2006 and hence fails to reflect up-to-date Government advice. The Circular makes clear that in principle Gypsy sites are acceptable in the countryside.

In the case of the site at Horseshoe Farm, the extended site would contribute 5 pitches towards meeting the unmet need within the timescale envisaged by Circular 01/2006 (i.e. before the end of February 2011). I therefore trust that you look favourably on my client's proposals, which will assist the Council in meeting its obligations to the gypsy/traveller communities.

OFFICER APPRAISAL

Introduction

Permission was granted on appeal ref APP/B0610/C/08/2073155 for the use of the part of the land as a residential caravan site comprising 3 pitches for permanent residential occupation, 2 pitches for visitors in transit and an overall maximum of 9 caravans. However, the occupiers increased the physical size of the site prior to the decision date, giving rise to issues relating to the enforcement of the conditions attached to the appeal decision.

In order to achieve an improved development scheme, negotiations took place with the occupiers which resulted in the submission of a revised application.

Planning application to regularise the situation (09/3918C) was refused for the following reason:

The scale of the development to which this application relates is inappropriate in this location within an area of predominantly open rural countryside and as such is contrary to criterion (III) of Local Plan policy H8. In particular the extension of the site further westwards and the parking area and associated 1.8 metre high earth mound projecting from the northerly end of the site into part of the adjacent field would have a detrimental effect upon the character and appearance of the surrounding locality contrary to policies GR1 and GR2 of the adopted Congleton Borough Local Plan First Review.

The above application proposed that the site be used to accommodate for 9 residential pitches and the storage of 2 towing caravans (11 caravans in total). The assumption that the site could be used to accommodate for 9 pitches was the applicant's interpretation of the Planning Inspector's decision notice which stated, that consent was

granted for use of the site for a Gypsy caravan site for 3 families, together with 2 transit pitches and that no more than 9 caravans (of which no more than 3 shall be a static or mobile home) shall be stationed on the site at any one time. This interpretation was contrary to that of the Authority which is, that the permission allowed for 5 pitches in total of which 2 were to be transit.

The current application returns the number of pitches to 5 (3 permanent residential and 2 transit) and the maximum number of caravans to 9 and it deletes the westward extension and mound which were the substance of the refusal in 2010.

Planning Policy

When considering the appeal against the Authority's refusal of planning permission in 2008, the Inspector indicated that Local and Structure Plan policy relating to the Gypsy and Traveller sites was based on guidance contained in Circular 1/94. However, this document has now been superseded by Circular 01/2006. Therefore, he gave particular regard to the new document.

In a recent appeal decision against the Authority's refusal of planning permission for use of land as a residential caravan site for 8 Gypsy families in Reaseheath, Nantwich, the Inspector stated that:

"The Secretary of State has recently announced an intention to revoke Circular 01/2006, describing it as "flawed". No timing of such revocation has yet been announced and he has indicated that an impact assessment is required. The Secretary of State's announcement is clearly a material consideration which must be taken into account, and effects the weight that can be attached to the Circular as a statement of Government policy, albeit that it remains in place for the time being with, as yet, no draft replacement."

The Inspector went on to describe 01/2006 as the most up to date and authoritative document. This statement clearly indicates that the advice contained within Circular 01/2006 still has considerable material weight.

Human Rights and Race Relations

In considering this application the decision maker should have regard, *inter alia*, to the provisions of the Human Rights Act 1998.

Article 8 of the Human Rights Act states that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or the protection of the rights and freedoms of others.

The applicants are Irish Travellers, a racial group protected from discrimination by the race relations act 1976. Further, Article 14 of the Human Rights Act states that the enjoyment of the rights and freedoms set forth in that Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion,

political or other opinion, national or social origin, association with a national minority, property, birth or other status.

In this particular case, the determination of this application will not have a direct impact on the occupiers rights given that the application is for the most part retrospective. Should the application be refused, any resultant enforcement proceedings would only be taken following due consideration of the aforementioned rights.

The impact of the development on the rights of the local residents has been fully assessed, both in this report and the previous appeal decision relating to a Gypsy caravan site in this location and accordingly any impact is considered acceptable.

Principle of Development

There is some debate as to whether the planning permission granted on appeal has been implemented or whether the development that has been carried out 'on the ground' is actually a different development. However, it is clear that the majority of the proposed site has genuinely been occupied as a Gypsy caravan site, in line with the 2008 appeal decision, albeit in breach of conditions attached to this permission.

To attempt to refuse the current application on matters of principle would almost certainly be unsustainable at appeal, since it would be contrary to the 2008 appeal made by the Planning Inspectorate and the Council would be at significant risk of a successful claim for costs.

Need

The revised application now under consideration indicates that the total number of caravans stationed on the site will be 9, which is inline with the maximum allowed by the aforementioned appeal. However, the design and access statement which accompanies the application states that 3 transit pitches would be created which is one more transit pitch than approved on appeal. This statement is contrary to the impression given by the applicant during pre-application discussions. Therefore, attempts were made to contact the agent for an explanation. Unfortunately, the agent failed to respond in good time. The applicant was contacted directly and confirmed that the application should be considered on the basis of the creation of 3 residential and 2 transit pitches and he has given authorisation to amend the design and access statement accordingly.

Given that there is no additional pitch provision proposed by this application, issues relating to need and sustainability do not require consideration as these matters were addressed by the Inspector when granting permission in 2008 and remain unchanged.

Member's attention is also drawn to the recent appeal decision involving 8 residential caravan pitches for Gypsy families at New Start Park, Reaseheath, Nantwich. The Inspector concluded that the figures referred to in the GTAA and the Panel Report in respect of the Partial Review of the North West Plan, Regional Guidance provide a good starting point to the assessment of need as referred to in the Questions and Answers section of the Chief Planners (DCLG) letter to Chief Planning Officers in England dated 6th July 2010 informing that regional strategies were being revoked. The Panel's report concluded that the need in Cheshire East to 2016 is for an additional 74 permanent pitches and the requirement to 2011 would be for a minimum of 27 additional permanent pitches.

The Inspector then went on to say that the new sites approved in the Cheshire East area since the GTAA was published in 2007, including Horseshoe Farm, have made little inroad in satisfying the identified need.

The Inspector stated that there was little or no prospect of the Council being able to successfully address the challenge in Circular 01/2006 to increase significantly the number of Gypsy and Traveller sites in appropriate locations and concluded that there was urgent and substantial unmet need for permanent residential pitches for Gypsy and Travellers in Cheshire East.

Scale

The previous application ref. 09/3918C was refused predominantly due to the increased size of the site to facilitate the additional pitches. The size of the site is similar to that previously refused, although the small intrusion into open countryside on the northern boundary has been removed and the manege area omitted because the manege was granted consent by virtue of a previous permission ref. 8/31265/3. These omissions result in a site which measures approximately 4000m² which equates to 800m² per pitch based on five pitches. This ratio is similar in comparison to a recently approved residential caravan site for Gypsies in Reaseheath ref. 09/4331N which equated to 814m² per pitch.

The size and number of caravans which make up a pitch is not defined and can vary upon the size of the dependant family in the same way as a settled household varies. However, the GTAA concluded that the average was 2 caravans per pitch. Although 5 pitches are proposed here, the maximum number of caravans would be limited to 9.

Design

The layout of the site consists of:

- Three caravans, (each on a concrete base) adjacent to the boundary with Warmingham Lane (2 transit pitches).
- Three mobile caravans (each on a concrete base), one adjacent to the southern boundary, one adjacent to the western boundary and one adjacent to the northern boundary. Each of the mobile homes is accompanied by a smaller towing type caravan to make up the pitch.

The site also contains 5 utility buildings (3.7m x 2.2m x 2.8m high) with a concrete pebble dash finish to the walls and a profiled steel roof. The proposal also includes an amenity block comprising 2 units (6m x 4m x 3.9m high) placed side by side. This building would be located in the south west corner of the site and would be of rendered finish with light weight roof covering to give a tile like finish.

3 grassed areas would be provided which could be utilised as garden space, 2 adjacent to two of the residential pitches and the third close to the amenity block. A fourth amenity area would be provided within the centre of the site with a 0.5m high trip rail around the parameter to help prevent children from inadvertently coming into contact with vehicles manoeuvring around the site. The remainder of the site would retain the current gravel finish, which will also provide for the on-site parking. The submitted plan indicates 11 parking spaces. However, it is envisaged that these will not be formally laid out.

The layout of the site with a central play area surrounded by the caravans and the provision of the amenity and utility buildings is in line with advice contained within *Designing Gypsy and Traveller Sites – A Good Practice Guide*. The guidance also recommends the inclusion of individual garden areas for each pitch where space permits.

The size and layout of the site as approved on appeal failed to meet the criteria set out in the *Good Practice Guide* in terms of layout design and lack of amenity space. The absence of amenity space would have also been contrary advice contained within *Model Standards for Caravan Sites* document.

The southern and eastern boundaries are well defined by substantial native hedging. The southern boundary also includes a 1.8m concrete post and wooden panel fence. However, the remaining boundaries have a more open character with low had hoc walls and post and rail fencing defining the limits of the site.

Landscaping/planting may help sites to blend into their surroundings, give structure and privacy, and maintain amenity. However, enclosing a site with too much hard landscaping, high walls or fences can give the impression of deliberately isolating the site and its occupants from the rest of the community and should be avoided. The submitted plan indicates that landscaping will be provided both on the inside of the site and along the northern and western boundaries. Nevertheless, further detail, including species and planting density will be required. It is considered that this issue can be dealt with by the use of a planning condition.

The revised application does not specify the number, location, or type of lighting to be used. However, once again this can be controlled through the use of an appropriate planning condition.

Amenity

The impact of the development on the amenity of nearby residents was considered by the previous appeal Inspector. Even though the site is larger than that approved by the Inspector, the additional area is to the rear of the site and the nearest residential properties are still a considerable distance away. Consequently, it is not considered that adjacent occupiers would be unduly disturbed as a result of the larger development.

Ecology

The previous application did not raise any concerns relating to ecological impact of the development. No additional hard standing areas are proposed by this application therefore, it is considered that there will be no material change in circumstances.

CONCLUSIONS

Whilst there had been questions raised in the past as to whether the approval granted on appeal in 2008 has actually been implemented. It is the clear that the predominant element of that permission, the use of the land as a residential caravan site for the occupation of 3 Gypsy families, has taken place albeit contrary to a number of planning conditions.

This application, if approved, would result in new stand alone permission together with the introduction of a new set of conditions.

It is considered that the additional space for the occupiers is justified in order to provide acceptable levels of amenity space for the occupants, especially the children and safe manoeuvring room for vehicles associated with occupation of the site.

The visual intrusion of the site can be mitigated by the introduction of appropriate landscaping both within the site and along the northern and western boundaries which will help to screen and soften the visual impact of the caravans and associated buildings.

Given that the proposal does not introduce additional pitch requirement over that already approved, subject to the introduction of appropriate conditions in line with those attached to the previous consent, via appeal, ref. 07/0647/FUL, the proposal is considered to satisfy the appropriate adopted local plan policy, and guidance contained within circular 01/2006 and is recommended for approval.

RECOMMENDATION

APPROVE subject to the following conditions:-

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

2. There shall be more than 3 permanent residential pitches and two transit pitches on the site and on each of the 3 residential pitches hereby approved no more than two caravans shall be stationed at any one time, of which only one caravan shall be a residential mobile home. No more than 9 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time.

3. The stationing and or occupation of any caravan(s) located on the transit pitches as identified on the approved site plan ref 10/4977C/1 shall be limited to a period not exceeding 13 weeks in any calendar year.

4. The use of the land as a caravan site hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use (including the areas of hard standing /surfacing) shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

i) within 3 months of the date of this decision a Site Development Scheme (the scheme) shall have been submitted for the written approval of the local planning authority indicating (a) the layout of the site including the siting of caravans/plots, hard standing areas for roads/parking, storage and recreational/open space areas, (b) the means of foul and surface water drainage, (c) the landscaping of the site including the retention and enhancement of the existing hedgerow along the highway boundary, the creation of earth mounds parallel to the western boundary and at the entrance to the site together with proposals for the maintenance thereof and, (d) external lighting (whether fixed to a building or freestanding). The scheme shall include a timetable for its implementation.

ii) within 11 months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the date of this permission and any trees or plants which within a period of tree years from the completion of the development die, are removed , or become seriously damaged or diseased shall be replaced the next planting season with other of similar size and species unless the local planning authority gives written consent to any variation.

6. No commercial activities, including the storage of materials, shall take place on the land.

7. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site without the prior written agreement of the local planning authority.

