

STRATEGIC PLANNING BOARD UPDATE – 26th January 2011

APPLICATION NO: 10/4065C

PROPOSAL: Outline application for 68 residential dwellings over 2.25 hectares. Access from The Green with some matters reserved.

ADDRESS: Land south west of The Green, Middlewich

APPLICANT: Muller Property Group

Additional Supporting Information

An amended site layout plan has been submitted as part of this application. This plan shows the retention of a tree and the reduction in the size of the car parking bay to the south-east corner of the site

The applicant has obtained a legal opinion to support this application which is summarised as followed;

- It has been indicated to Muller that the application might be recommended for refusal on the basis of conflict with the Council's Draft Interim Housing Policy on the Release of Housing Land (IHP).
- The IHP comprises a draft of a policy approach to maintaining a five year supply of deliverable housing land which is apparently to be used as an interim measure pending the adoption of the Local Development Framework Core Strategy. That Core Strategy is at an early stage. The Issues and Options Consultation Paper was out to consultation until 17 December 2010. Little weight can be attached to it in the decision making process.
- The IHP itself was issued for consultation in November 2010. Consultation ended on 17 December 2010. There are representations objecting to the content of the plan which have been made by various parties and the draft has not been considered further. Self evidently, in accordance with settled guidance and principle contained in PPS 12 and "the Planning System General Principles" little weight whatsoever can be attached to such a document. Indeed para 2.15 of the IHP itself accepts that it will not carry significant weight until it is adopted by the Council following consultation. On that basis alone therefore I am surprised at the suggestion that the application might be refused on that basis.
- It is considered however that there are further issues to consider. The document will not constitute a supplementary planning document. At most it seeks to be a draft interim policy. To begin to have any weight whatever however the document would have to be in general conformity with the development plan for the area and also have proper regard to national policy.
- The draft is dated November 2010. It refers to the Regional Spatial Strategy (RS) as having been revoked (para 2.16) and says that the development plans policies relevant to Cheshire East are the saved policies of the Crewe and Nantwich, Congleton and Macclesfield Local Plans. (para 1.3). This is incorrect. The judgment in *Cala Homes (South) Ltd v SoS for Communities and Local Government and Winchester City Council* [2010] EWHC 2866 held the revocation of RS using powers under s79 (6) Local Democracy Economic Development and Construction Act 2009 to be unlawful. The North West RS therefore remains an integral part of the development plan for Cheshire East.

The start point for consideration of this application must therefore be s38 (6) PCPA 2004 which requires the determination to be made in accordance with the Development Plan which includes RS unless material considerations indicate otherwise.

- Further of course under national policy PPS 3 as refreshed in June 2010 housing provision is to be determined expressly having regard to RS and a five year adequate and continuous supply is to be maintained at all times.
- It will therefore be seen that very the basis of the IHP is flawed. A purported SPD which is not in general conformity with the development plan could not have weight attached to it. Clearly it follows a draft informal document suffering from a fundamental defect can have no weight whatsoever.
- Consideration therefore has to be given to specific RS policy. Under RS Policy L4 LAs are to monitor and manage land availability in plans and strategies and through development control decisions are to achieve the housing provision set out in table 7.1. If they do not then they are in breach of development plan policy. That table provides that for the former Congleton administrative area total housing provision 2003-21 should be 5400 (net of clearance) with an annual average provision of 300. That requirement is an entirely separate provision and requirement to that required for Macclesfield and Crewe and Nantwich. The draft IHP proceeds from the basis that following revocation of RS it is for individual authorities to decide their own housing requirement (para 2.16) that post Cala cannot be the case. Further whilst Cheshire East intends to use the cumulative RSS housing requirement figure of 1150 dwelling per annum for their overall area they do not have proper regard to the minimum figures for the individual former districts. In essence they appear to seek to concentrate housing provision around Crewe whilst precluding release of sustainable greenfield sites elsewhere within Cheshire East. There is no evidence that they have properly considered the impact of the IHP on achievement of the housing provision requirements set out for the individual areas in Table 7.1. The IHP is not therefore in general conformity with RS and can therefore be afforded no weight on that basis.
- The draft IHP should of course also be in general conformity with the saved policies of the Congleton Borough Local Plan First Review. In that regard Policy H2 requires that in managing future supply of dwellings the Council should ensure that they are distributed between the five subdivisions and that averaged over a five year period the proportion in any one sub division shall not exceed certain percentages which, in the case of Middlewich, is 25%. Presently the forward supply provision in Middlewich is of the region of 13% whereas currently approximately 46% of housing land supply for the former borough is located in Sandbach. The IHP does not appear to give any proper consideration to the issue of conformity with this spatial vision and policy and again this militates that little weight could be given to the draft document. I therefore consider that the draft IHP does not appear to be in general conformity with the development plan and so no weight should be attached to it.
- The Core Strategy is not at a stage where any considerable weight can be attached to it such as might begin to justify any departure from the development plan. That document does however refer to a spatial priority at para 1.14 which in particular sees "particular potential for quality housing growth in the "Weaver Towns" including Middlewich." Indeed all options canvassed in the document direct a significant amount of development to Key Service Centres such as Middlewich. The restrictive IHP policy does not appear to facilitate satisfaction of such aspirations given the severe lack of brownfield land in Middlewich within the settlement boundary which your supporting planning documentation demonstrated.

- The LPA accept that there is a housing land shortfall although it would appear that there is a view amongst planning consultants and developers that the shortfall is considerably greater than the council admits. You share that view and have elaborated on the issue in the Supporting Planning Submissions where you reach the conclusion that the availability of deliverable brownfield land in Middlesbrough is very limited and greenfield land will be required if the Council is to meet its housing requirement. This of course brings the presumption in favour of development under PPS 3 para 71 into play. Having considered the matter I do not consider the draft IHP as comprising any proper basis for the refusal of the application.

Supporting e-mails from the applicants agent in response to the Committee Report;

- The proposed development makes a significant contribution towards meeting local affordable housing needs. The 2010 Strategic Housing Market Assessment (SHMA) identifies a need for 56 affordable units to be provided annually in Middlesbrough from 2009/10 to 2013/14.
- It is understood by way of information provided by Steven Knowles (Affordable Housing Officer) that the following number of affordable units has been provided in the last 6 years:
 - 2004/05 - 3 units
 - 2005/06 - 8 units
 - 2006/07 - 16 units
 - 2007/08 - 20 units
 - 2008/09 - 34 units
 - 2009/10 - 53 units
- It is clear that in no single year has the Council managed to deliver the number of affordable units now required annually to meet the recognised need in Middlesbrough. The proposed development at The Green will provide 20 affordable units, which is more than a third of the total required in any one year.
- We have conducted a thorough review of sites included in the Draft 2009 Congleton Strategic Housing Land Availability Assessment (SHLAA) and the 2010 Cheshire East SHLAA and we consider that the number of deliverable units which will come forward in the next 5 years totals less than 100 units - this is the total figure, rather than just affordable.
- It is obvious therefore that the Council needs windfall sites such as this one to come forward for development if affordable housing is to be provided to meet the clearly identified need.
- In this context we firmly invite you to carefully reconsider your recent view that the application should be refused and would ask that you contact us with your opinion at your earliest possible convenience.
- Using the PoS provision as a reason for refusal when the Open Space Officer has not objected is also somewhat unfortunate and unfair. There is an abundance of open space within easy walking distance of the site, and we are providing some on-site. An off-site provision should surely be considered entirely appropriate.
- This is a very good site for housing as recognised in the SHLAA - clearly the best in Middlesbrough and it is extremely surprising and disappointing that the Council is not recognising it as such, leaving there little prospect of the required amount of housing, affordable or otherwise, coming forward in Middlesbrough in the next 5 years.

Officer Comments

Protected Species

The amended layout would mean that the tree on the site which has the potential to support a bat roost would now be retained. As a result the Council's Ecologist is satisfied that the development can be achieved without having a detrimental impact upon bats. The reason for refusal relating to bats is therefore removed from the recommendation.

Legal Opinion

It needs to be made clear that the Interim Policy is neither a Development Plan Document nor a Supplementary Planning Document. As such it enjoys limited weight and must not be afforded any status akin to those documents. Paragraph 64 of PPS 12 cautions against the use of such interim statements as an SPD is the preferred route in such circumstances. However this route is not open to the Council at present since the current development plans do not provide a planning framework for the whole Borough. It is recognised in the preceding paragraph that County Councils *may* provide such guidance to "facilitate development" where this encompasses a number of districts. This situation is not unlike that faced by the Unitary Authority and its inheritance of three district plans.

The thrust of PPS12 is that Councils should promote a spatial vision for their area and that a plan led approach is a means of achieving that. This is the approach which the Interim Statement expounds. However the detailed guidance clearly envisages that this would be achieved via policies within a DPD or SPD.

In our view the advice of PPS12, which addresses a system of Development Plans that has been severely modified, must be set against other relevant guidance. In particular PPS 3 'Housing' requires that Councils must maintain a flexible and responsive supply of land. In doing so it is anticipated that this is done in a planned and managed way.

Whilst the Interim Policy as a stand alone document has limited weight, it reflects the Spatial priorities for Cheshire East as they exist at present – and that the arguments in favour of development in Crewe are well founded and clearly derived from within the evidence base of the Core Strategy.

Affordable Housing

The applicants point out that the lack of a deliverable five year housing land supply also impacts on the supply of affordable housing.

The applicants are therefore of the opinion that the site is not constrained in terms of viability and therefore can provide for 30% affordable housing requirement. They state that few affordable homes have been provided within Middlewich. Consequently, not only is affordable housing in Middlewich failing to be provided to a meaningful level to meet predicted need there is a backlog of supply which has failed to be provided because of the poor level of delivery. It is important for sites like this one to deliver their affordable housing requirement.

It is acknowledged that the site will provide 30% affordable housing. However, it should be noted that this is the minimum policy requirement within Local Plan Policy H13 and is expected of all new developments, including those within the Settlement

Boundary and on Brownfield sites where there is a presumption in favour of new development. It is acknowledged that viability arguments have been accepted in respect of some Brownfield sites, where the immediate regeneration of those sites has been seen to outweigh the need for affordable housing. However, it is not considered that by default this renders a scheme which provides the minimum amount of affordable housing in order to be Policy H13 compliant, so exceptional as to warrant a departure from the Local Plan in respect of development within the open countryside.

It should also be noted that the proposed development does not provide for a minimum of 25% of the total housing units on the site as unsubsidized low-cost market housing and this issue forms a reason for refusal.

Conclusions

Reason for refusal 2 (bats) is removed from the original recommendation and the application is recommended for refusal for the following 3 reasons;

- 1. The proposed residential development within the open countryside would be contrary to the provisions of Policies PS8 and H6 of the adopted Congleton Borough Local Plan First Review. Whilst it is acknowledged that the Council does not currently have a five year housing land supply and that, accordingly, in the light of the advice contained in PPS3 it should consider favourably suitable planning applications for housing, the current proposal is not considered to be “suitable” as it is located on the periphery of Middlewich, rather than Crewe. It would undermine the spatial vision for the area and wider policy objectives as it would be contrary to the general thrust of the Core Strategy Issues and Options which directs the majority of new development towards Crewe, as well as the Council’s Draft Interim Planning Policy on the Release of Housing Land and Policies RDF1 and MCR3 of the North West of England Plan Regional Spatial Strategy to 2021, which articulate the same spatial vision. This would be contrary to advice in PPS3 and PPS1, which states these emerging policies are material considerations. For these reasons the Housing Land Supply arguments advanced by the applicants are considered to be insufficient to outweigh the general presumption against new residential development within the Open Countryside as set out in the adopted development plan.**
- 2. The Local Planning Authority considers that the proposed development is unacceptable due to the lack of public open space that would be made available on the site. The proposed layout would include an area of 1264sq.m and the development would require a public open space with an area of 2540sq.m. The proposed development would therefore be contrary to Policies GR1 (General Requirements – New Development), GR3 (Design) and GR2 (Open Space Provision) of the adopted Congleton Borough Local Plan First Review and the Councils SPD on Public Open Space Provision for New Residential Development.**
- 3. The proposed development does not include a minimum of 25% of the total housing units on sites as unsubsidized low-cost market housing. The application site is a Greenfield site and the applicant’s case that there is sufficient affordable housing in the area is not accepted. The proposed development is therefore contrary to Policy H13 (Affordable and Low-cost Housing) of the adopted Congleton Borough Local Plan First Review and the Councils SPD on Affordable Housing and Mixed Communities**

