

## **CHESHIRE EAST COUNCIL**

### **STRATEGIC PLANNING BOARD**

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**Date of meeting:** 22 May 2013  
**Report of:** Steve Irvine – Development Management and Building Control Manager  
**Title:** Forthcoming Appeal concerning application 12/3025C, Land at Goldfinch/ Kestrel Close - material changes since Board's 'Minded to approve' resolution on 5 December 2012 which require Board's further consideration during the life of the ongoing Appeal to enable Officer's to put forward the Council's current position to the forthcoming planning appeal.

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#### **1.0 Purpose of Report**

- 1.1 To appraise Members of the implications for the two forthcoming appeals having regard to the publication and adoption of the Development Strategy on 6 December 2012 and the 2012 SHLAA on 11 February 2013. This report concerns one of the sites.
- 1.2 The Appeals are presently proceeding on the basis of a Public Inquiry on a date yet to be confirmed.

#### **2.0 Decision Required**

- 2.1 To authorise Officers to contest the forthcoming planning appeal in respect of the site at Goldfinch/Kestrel Close, Congleton, as set out in the recommendation below.

#### **3.0 Background**

- 3.1 Members will recall that two outline planning applications for up to 40 dwellings per site with associated open space and infrastructure were submitted in August 2012. Both applications applied for their respective accesses but all other matters were reserved for future consideration.
- 3.2 The Officers recommendation was one of 'Approve subject to S106 and conditions', in the main, on the basis that at the time the Council was unable to demonstrate a 5 year housing land supply. However, this was subsequently amended to one of being 'Minded to Approve subject to S106 and conditions' in the light of the fact that the Applicant had lodged an appeal with the Planning Inspectorate. This transferred the decision making

ability on the application to the Planning Inspectorate. Members subsequently resolved to accept the Officers recommendation and not to contest the Appeals.

- 3.3 Since 5 December 2012, there have been a number of changes in the Council's policy position with regard to the Housing Land Supply as well as the publication and adoption of both the emerging Development Strategy and the most recent SHLAA (2012) which have significant implications for forthcoming appeals. In this case the appeal is presently being contested in the light of the Committee resolution on 5 December 2012 of being 'Minded to Approve' the application.
- 3.4 Leading Counsel has advised that the changes in the Housing Land Supply as expressed in the 2012 SHLAA is a material change in circumstances which requires a fresh consideration of the case by the Committee. However, it is important to remember that this is not an opportunity to revisit other issues which have previously been deemed acceptable. Consequently, this assessment considers material changes in housing land supply policy only.

### **Housing Land Supply**

- 3.5 It is considered that the most up-to-date information about housing land supply in Cheshire East is contained within the emerging Strategic Housing Land Availability Assessment (SHLAA) February 2013. The SHLAA has put forward a figure of 7.15 years housing land supply. This document was considered by the Strategic Planning Board on 8<sup>th</sup> February and the Portfolio Holder on 11<sup>th</sup> February 2013.
- 3.6 The Council's housing policy position is constantly moving with new advice, evidence and case law emerging all the time. However, the Decision Maker (the Inspector) has a duty to consider applications on the basis of the information that was pertinent at determination time. By virtue of the fact that the Appeal is still ongoing and a decision has yet to be reached, this application has yet to be determined by the Inspector. It is therefore appropriate that the Strategic Planning Board consider the position that it takes at the forthcoming Appeal in the light of the changed circumstances. Consequently, it is recommended that the application be reconsidered in the context of the 2013 SHLAA.
- 3.7 Paragraph 47 of the NPPF requires that there is a five year supply of housing plus a buffer of 5% to improve choice and competition. The NPPF advocates a greater 20% buffer where there is a persistent record of under delivery of housing. However, for the reasons set out in the report which was considered and approved by Strategic Planning Board at its meeting on

30<sup>th</sup> May 2012, these circumstances do not apply to Cheshire East. Accordingly, once the 5% buffer is added, the 2013 SHLAA shows that the Borough has an identified deliverable housing supply of 7.15 years.

3.8 The NPPF clearly states at paragraph 49 that:

*“housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”*

3.9 This must be read in conjunction with the presumption in favour of sustainable development as set out in paragraph 14 of the NPPF which for decision taking means:

*“where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
- *specific policies in the Framework indicate development should be restricted.”*

3.10 However, given that Cheshire East can now demonstrate a five year supply of housing land, it is considered that policies H6 and PS8 which protect Open Countryside are not out of date and the provisions of paragraphs 49 and 14 no longer apply in this case.

3.11 The Cheshire East Development Strategy was approved by Strategic Planning Board on 6 December 2012 and Cabinet for consultation until 26 February 2013. It is a material consideration which directs additional housing in Congleton to 4 strategic sites:

- Back Lane and Radnor Park
- Congleton Business Park Extension
- Giantswood Lane to Manchester Road
- Manchester Road to Macclesfield Road

3.12 The NPPF consistently underlines the importance of plan led development. In the recent Secretary of State decision in Doncaster MBC (APP/R0660/A/12/2173294 refers), it was found that a development was to be premature even though the Development Plan was still under preparation. Important to this decision was the finding that a five year supply of housing land was available. There is nothing in national guidance

to suggest prematurity and housing supply should be linked in this way, and logic might question how the two are interlinked, but this factor was evidently influential in this case. Given that the Council now has a 5 year supply of housing, it is considered that a pre-maturity case can now be defended in this case.

### **Conclusion – Housing land Supply**

- 3.13 The site is within the Open Countryside where under Policy PS8 and H6 there is a presumption against new residential development. The NPPF states that where authorities cannot demonstrate a 5 year supply of housing land, relevant local plan policies are out of date and there is a presumption in favour of development unless:

*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*

*specific policies in the Framework indicate development should be restricted.*

- 3.14 The 2013 SHLAA shows that the Borough has an identified deliverable housing supply of 7.15 years and therefore the automatic presumption in favour of the proposals does not apply in this case.
- 3.15 The appeal proposal does not accord with the emerging Development Strategy on open countryside and loss of agricultural land grounds. Previous Appeal decisions have given credence to such arguments where authorities can demonstrate a five year supply of housing land. On the basis of this material change in circumstances it is recommended that the Council **changes its stance** in respect of the forthcoming Appeal from one of being “minded to approve” to being “**minded to refuse**”.

### **Loss of Agricultural Land**

- 3.16 In the original consideration of this application, it was resolved that the lack of a 5 year supply of housing outweighed the loss of the Grade 3a agricultural land present on the site. Appeal decisions, both locally and nationally, have considered the loss of best and most versatile agricultural land but have shown the lack of a 5 year housing land supply would outweigh the loss of agricultural land on the Appeal sites. Therefore it was not considered that a reason for refusal could be sustained on these grounds.

- 3.17 The Appeal decisions for Loachbrook Farm and Abbeyfields amongst others make it clear that, in situations where authorities have been unable to demonstrate a 5 year supply of housing, the need for housing land has been accepted by Inspectors as outweighing the loss of agricultural land in the planning balance.
- 3.18 However, given that Cheshire East has a 7.15 year supply of housing, it is considered that this argument does not apply in either of these sites and that the loss of the agricultural land contributes to the un-sustainability of the proposal by using open countryside when there is no necessity in housing land supply terms to use that land for that purpose.

### **Conclusion**

- 3.19 Since this application was brought before Strategic Planning Board on 5 December 2012, there has been a material change in circumstances as a result of the publication of the 2012 SHLAA, which demonstrates a 7.15 year supply of housing land.
- 3.20 On this basis, the provisions of paragraphs 14 and 49 of the NPPF no longer apply and consequently, it is recommended that Board amend its previous resolution to be one of '**minded to refuse**' on the basis that the proposal is contrary to open countryside policy and housing policies.
- 3.21 Furthermore, Appeal decisions both locally and nationally have made it clear that in situations where authorities have been unable to demonstrate a 5 year supply of housing, the need for housing land outweighs the loss of agricultural land.
- 3.22 However, given that Cheshire East has a 7.15 year supply of housing it is considered that this argument does not apply and that the loss of the agricultural land contributes to the un-sustainability of using open countryside for housing purposes when there is no necessity in housing land supply terms to use the land for that purpose.

## **4.0 Proposed Recommendation**

- 4.1 In the light of the above, it is recommended that the 'Minded to Approve' recommendations in respect application 12/3025c be changed to one of being '**Minded to refuse**' and Officers be authorised to contest the Public Inquiry on the basis of the following;

**The proposal would be located within the Open Countryside, contrary to Policies PS8 and H6 of the Congleton Borough Adopted Local Plan First Review 2005, which seek to ensure that only appropriate development in a rural area is allowed and the core principles of the NPPF which seek to protect the intrinsic character and beauty of the countryside. Moreover, the proposal would also result in a loss of Grade 3a Agricultural Land, contrary to Policy PS8 and H6 of the Congleton Borough Adopted Local Plan First Review 2005, which seek to protect such land from inappropriate use and ensure an adequate supply of agricultural land.**

**The Local Planning Authority can demonstrate a five year land supply of housing, in accordance with the requirements of the NPPF. Consequently, the Development Plan is up to date and there are no material circumstances to indicate that permission should be granted contrary to the Development Plan. As such the proposal is an unsustainable form of development, contrary to the 'golden thread' of the NPPF**

## **5 Financial Implications**

- 5.1 There is a danger that the Appellant will seek costs in respect of any new evidence which the Council seek to introduce at the Planning Appeal if it is unreasonable.
- 5.2 It is not considered that the change in the Housing Land Supply position during the life of this appeal can be regarded as being unreasonable given that it is a matter to which the Decision Maker must have regard to in determining the appeal.

## **6 Legal Implications**

- 6.1 The Borough Solicitor has been consulted on the proposals and raised no objections

## **7 Risk Assessment**

- 7.1 There are no risks associated with this decision.

## **8 Reasons for Recommendation**

- 8.1 To allow the Council to contest the forthcoming appeal in respect of this application.

***For further information:***

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***Background Documents:***

- *Application 12/3025c. and Committee Update Report*