

## CHESHIRE EAST COUNCIL

### SOUTHERN PLANNING COMMITTEE

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**Date of meeting:** 18 September 2013  
**Report of:** David Malcolm – Southern Development Manager  
**Title:** Forthcoming Appeal concerning Application 12/3807c (Land Adj to Rose Cottages, Holmes Chapel RD, Somerford - material change since application was refused on 13 December 2012 which require Committee'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 with regard to housing land supply.

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

- 1.1 To appraise Members of the implications for the forthcoming appeal having regard to the publication and adoption of the Development Strategy on 6 December 2012 and the 2012 SHLAA on 11 February 2013.
- 1.2 The Appeal is presently proceeding on the basis of a Public Inquiry due to commence on 15 October 2013.

#### **2.0 Decision Required**

- 2.1 To authorise Officers to contest the forthcoming planning appeal in respect of the site at land adj Rose Cottages, Somerford, as set out in the recommendation below.

#### **3.0 Background**

- 3.1 Members will recall that, contrary to the Officers recommendation, they refused permission for 25 dwellings on 13 December 2012 for the following reason;

*Notwithstanding the fact that the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites, the presumption in favour of sustainable development does not apply in this case because the proposal does not constitute sustainable development, due to its remote location, isolated from shops, services, employment sites, schools and other facilities. It is considered that the adverse impacts of approving the development in sustainability terms would significantly and demonstrably*

*outweigh the benefits, of the increase in housing land supply. The proposed development is therefore contrary to the NPPF.*

- 3.2 Since 13 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 appeal. In this case the appeal is proceeding in the light of the Committee resolution on 13 December 2012 .
- 3.3 The changes in the Housing Land Supply as expressed in the 2012 SHLAA, namely that the Council can now demonstrate a five year housing land supply is a material change in circumstances since this case was originally determined.

### **Housing Land Supply**

- 3.4 The majority of the site lies within the Infill Boundary Line for the settlement of Brereton Heath, where, according to Policies PS6 and H6, limited development will be permitted where it is appropriate to the local character in terms of use, intensity, scale and appearance and does not conflict with the other policies of the local plan.
- 3.5 The sub-text to Policy H6 states that "*limited development is defined as the building of a single or small group of dwellings*". Whilst no definition is provided for the term "*small group*", it is considered that 25 dwellings does not constitute "limited development" and that there is a conflict with Policy H6.
- 3.6 A narrow triangle of land at the rear of the site lies outside the infill boundary line as shown on the local plan map. This also represents a departure from adopted local plan policy although given that this area of land is proposed predominantly for use as public open space and garden, with the gable end of plot 8 being the only built form within this part of the site, the impact on the openness of the countryside is comparatively minor.
- 3.7 Sec.38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications and appeals must be determined "*in accordance with the plan unless material considerations indicate otherwise*". The most important consideration in this case is the National Planning Policy Framework (NPPF).
- 3.8 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.

- 3.9 At the time that this application was originally determined by Southern Planning Committee, the most up-to-date information about housing land supply in Cheshire East was contained within the Strategic Housing Land Availability Assessment (SHLAA) which was adopted in March 2012. The SHLAA put forward a figure of 3.94 years housing land supply. Once the 5% buffer was added, the Borough had an identified deliverable housing supply of 3.75 years.

- 3.10 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.”*

- 3.11 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.”*

- 3.12 Consequently, the main issues in the consideration of this application, and the appeal are the sustainability of the site and whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits in terms of housing land supply.

- 3.13 In determining the application Members concluded that at that time the benefits in terms of housing land supply outweighed the conflict with the development plan in terms of the fact that this number of units did not represent “limited infilling”, and the development would result in the loss of the triangle of open countryside to the rear of the site. However, they felt that, as stated in the reason for refusal, the proposal did not constitute sustainable development, due to its remote location, isolated from shops, services, employment sites, schools and other facilities and therefore the presumption in favour of sustainable development did not apply, regardless of the housing land supply position at that time.

- 3.14 It was concluded that the adverse impacts of approving the development in sustainability terms would significantly and demonstrably outweigh the benefits, of the increase in housing land supply at that time. The proposed development was therefore contrary to the NPPF.
- 3.15 However, since the decision to refuse the application, more up-to-date information about housing land supply in Cheshire East has been published in the form of the 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 appeals 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 Committee consider the position that it takes at the forthcoming Appeal in the light of the changed circumstances. Consequently, it is recommended that the Committee consider its stance in the context of the 2013 SHLAA and the Emerging Development Strategy.
- 3.7 Having regard to the need to provide a 5% buffer, as set out above, the 2013 SHLAA shows that the Borough has an identified deliverable housing supply of 7.15 years.
- 3.8 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 do not apply in this case. Accordingly, greater weight can be attached to the conflict with the adopted local plan policy in respect of the fact that this did not represent "limited infilling", and the development of the triangle of open countryside to the rear of the site.
- 3.9 Furthermore, the emergence of the 5 year housing land supply, further reduces the case for major development in an inherently unsustainable location, isolated from shops, services, employment sites, schools and other facilities. In summary, given that the Authority can demonstrate a housing land supply in excess of 5 years, there is no need for the development, and the housing which it would provide could be accommodated elsewhere in a more sustainable location.
- 3.10 Neither Somerford nor Brereton Heath have any allocated strategic sites within the emerging Development Strategy, which reflects their inherently

unsustainable location. The Borough's housing need in this area will be adequately catered for by a number of strategic sites which have been identified in Holmes Chapel and Congleton, which are the nearest sustainable service centres.

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

- 3.11 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.*

- 3.12 The 2013 SHLAA shows that the Borough has an identified deliverable housing supply of 7.15 years. Therefore the presumption in favour of sustainable development does not apply in this case and policies regarding the protection of open countryside and the restriction of development within infill boundary lines to "limited infilling" remain up-to-date. Furthermore, the proposal, due to its remote location, isolated from shops, services, employment sites, schools and other facilities, coupled with its scale, remains un-sustainable development.

## **4.0 Proposed Recommendation**

- 4.1 The formal planning decision notice has already been issued. However, in the light of material change in circumstances in this case, the Development Plan policies are not out of date. Additionally, the appeal proposal do not accord with the emerging Development Strategy. It is recommended that the Council contests the appeal on the following basis - :

***The proposal, due to its remote location, isolated from shops, services, employment sites, schools and other facilities, coupled with it's scale, which is not considered to be "limited infilling"; does not constitute sustainable development. Given that the Authority can demonstrate a housing land supply in excess of 5 years, there is no need for the development, and the housing which it would provide could be accommodated elsewhere in a more sustainable location. The proposed development is therefore contrary to policies PS8 and***

***H6 of the adopted Congleton Borough Local Plan First Review and the National Planning Policy Framework.***

***Additionally, given the Appeal is proceeding, to ensure appropriate provision of affordable housing and play space provision on site, it is also recommended that the Borough Solicitor be authorised to enter into a S106 Legal Agreement/ Unilateral Undertaking negotiations with the Applicants' legal representatives.***

## **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 12/3807c*