

Application No: 13/4830N

Location: PUSEY DALE FARM, MAIN ROAD, SHAVINGTON, CW2 5DY

Proposal: Erection of new dwelling

Applicant: Stuart Shaw

Expiry Date: 08-Jan-2014

SUMMARY RECOMMENDATION

REFUSE

MAIN ISSUES

Impact of the development on:-

**Planning Policy and Housing Land Supply
Highway Safety and Traffic Generation
Hedgerow and Tree Matters
Ecology
Design
Amenity**

REASON FOR REFERRAL

The application has been called in to Southern Planning Committee by Councillor David Brickhill on the following grounds:

"I am calling in application 13/4830N which is a resubmission of a previous application which was refused by an officer under delegated powers. I support this application and wish my fellow councillors to consider it for approval. It is for one new house situated on the applicants land intermediately between houses fronting Main Road Shavington and his own house, which is set a distance back from the road. The parish council considered it last night and had no objection. On the previous application there were no objections from neighbours. I therefore believe that this application should be approved and would be allowed on appeal especially under the current no local plan circumstances. I am prepared to speak on the applicants behalf to the committee as indeed is the applicant themselves."

DESCRIPTION OF SITE AND CONTEXT

The application site covers an area of approximately 1321sqm and is located to the west of Main Road, Shavington. It is sited to the rear of existing dwellings on Main Road and to the east of Pusey Dale Farm. There are several trees on the eastern boundary of the site. Access would be taken from the existing access to Pusey Dale Farm which also serves three other dwellings.

The site has a public footpath running through it and is designated as being within the Open Countryside and Green Gap in the adopted local plan.

DETAILS OF PROPOSAL

This application is for full planning permission for the erection of one dwelling. The dwelling would be two-storey with four bedrooms and would have a barn like appearance.

RELEVANT HISTORY

13/3499N 2013 Refusal for one dwelling for the following grounds:

1. *The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policy NE.2 (Open Countryside) and NE.4 (Green Gaps) and the principles of the National Planning Policy Framework and create harm to interests of acknowledged importance. The Local Planning Authority can demonstrate a 5 year supply of housing land supply in accordance with the National Planning Policy Framework. As such the application is also contrary to the emerging Development Strategy. Consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan.*

2. *The proposed development will clearly erode the physical gaps between the built up areas and fundamentally change the existing agricultural landscape character into a domestic character and so is contrary to policy NE.4 of the Borough of Crewe and Nantwich Replacement Local Plan which seeks to maintain the definition and separation of existing communities and prevent Crewe and Shavington merging into one another.*

POLICIES

National Planning Policy

National Planning Policy Framework

Local Plan policy

BE.1 – Amenity

BE.2 – Design Standards

BE.3 – Access and Parking

BE.4 – Drainage, Utilities and Resources

BE.6 – Development on Potentially Contaminated Land

NE.2 – Open Countryside

NE.4 – Green Gaps

NE.5 – Nature Conservation and Habitats

NE.9 – Protected Species

NE.17 – Pollution Control

Cheshire East Local Plan Strategy

Members are aware that the submission version of the new local plan is now in the public domain. This will be presented to the Strategic Planning Board and full Council at the end of February. Subject to this being accepted an update will be provided in relation to this issue.

Other Considerations

‘Planning for Growth’

‘Presumption in Favour of Economic Development’

The EC Habitats Directive 1992

Conservation of Habitats & Species Regulations 2010

Circular 6/2005 - Biodiversity and Geological Conservation - Statutory Obligations and Their Impact within the Planning System

CONSULTATIONS (External to Planning)

United Utilities:

None received at the time of report writing.

Strategic Highways Manager:

No objection.

Environmental Health:

Recommend conditions relating to hours of construction and piling.

Public Rights of Way:

The development will affect Public Footpath Rope No. 4, as recorded on the Definitive Map of Public Rights of Way held at this office (working copy extract attached). An application is currently in progress to divert this footpath and we therefore have no objection to the planning application.

The PROW Unit expects that the Planning department will ensure that any planning conditions concerning the right of way are fully complied with. In addition, advisory notes should be added to the planning consent as follows:

"No change to the surface of the right of way can be approved without consultation with the PROW Unit. The developer should be aware of his/her obligations not to interfere with the public right of way either whilst development is in progress or once it has been completed; such interference may well constitute a criminal offence. In particular, the developer must ensure that:

- *there is no diminution in the width of the right of way available for use by members of the public*
- *no building materials are stored on the right of way*

- *no damage or substantial alteration, either temporary or permanent, is caused to the surface of the right of way*
- *vehicle movements are arranged so as not to unreasonably interfere with the public's use of the way*
- *no additional barriers (e.g. gates) are placed across the right of way, of either a temporary or permanent nature*
- *no wildlife fencing or other ecological protection features associated with wildlife mitigation measures are placed across the right of way or allowed to interfere with the right of way*
- *the safety of members of the public using the right of way is ensured at all times"*

If the development will temporarily affect the right of way then the developer must apply for a temporary closure of the route (preferably providing a suitable alternative route). The PROW Unit will take such action as may be necessary, including direct enforcement action and prosecution, to ensure that members of the public are not inconvenienced in their use of the way both during and after development work has taken place.

Please note the Definitive Map is a minimum record of public rights of way and does not preclude the possibility that public rights of way exist which have not been recorded, and of which we are not aware. There is also a possibility that higher rights than those recorded may exist over routes shown as public footpaths and bridleways.

VIEWS OF THE PARISH COUNCIL

No objection.

OTHER REPRESENTATIONS

None received at the time of report writing.

APPLICANT'S SUPPORTING INFORMATION

- Planning Statement

This document is available to view on the application file.

OFFICER APPRAISAL

Principle of Development

The site lies in the Open Countryside and Green Gap as designated in the Borough of Crewe and Nantwich Replacement Local Plan 2011, where policies NE.2, NE.4 and RES.5 state that only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. Residential development will be restricted to agricultural workers dwellings, affordable housing and limited infilling within built up frontages.

The proposed development would not fall within any of the categories of exception to the restrictive policy relating to development within the open countryside. As a result, it

constitutes a “departure” from the development plan and there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004 which states that planning applications and appeals must be determined “*in accordance with the plan unless material considerations indicate otherwise*”.

The issue in question is whether there are other material considerations associated with this proposal, which are a sufficient material consideration to outweigh the policy objection.

Members should note that on 23rd March 2011, the Minister for Decentralisation, Greg Clark published a statement entitled ‘Planning for Growth’. On 15th June 2011, this was supplemented by a statement highlighting a ‘presumption in favour of sustainable development’ which has now been published in the National Planning Policy Framework (NPPF) in March 2012.

Collectively these statements and the National Planning Policy Framework mark a shift in emphasis of the planning system towards a more positive approach to development. As the minister says:

“The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy”.

Housing Land Supply

The National Planning Policy Framework (NPPF) confirms at paragraph 47 the requirement to maintain a 5 year rolling supply of housing and states that Local Planning Authorities should:

“identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land”.

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.”

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:

n 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
n specific policies in the Framework indicate development should be restricted.”

A number of recent appeal decisions have concluded that the Council has not conclusively demonstrated a five year supply of deliverable housing land, founded on information with a base date of 31 March 2012 selectively updated to 31 March 2013. However, the Council has recently published a 5 Year Supply Position Statement which seeks to bring evidence up to date to 31 December 2013. The approach taken to the Statement has been informed by policy requirements and by consultation with the Housing Market Partnership.

The Borough's five year housing land requirement is 8,311. This is calculated using the 'Sedgefield' method of apportioning the past shortfall in housing supply across the first five years. It includes a 5% buffer, which is considered appropriate in light of the Borough's past housing delivery performance and the historic imposition of a moratorium.

A standard formula of build rates and lead-in times has been applied to most housing sites, unless more detailed site-specific information is available. Those considered deliverable within the five year supply have been 'sense-checked' and assumptions altered to reflect the circumstances of the particular site. The Criticisms made of the yields from certain sites in the recent appeals, particularly those in the merging Local Plan, have also been taken on board.

Sources of supply include sites under construction; sites with full and outline planning permission; sites awaiting Section 106 Agreements; selected Strategic Sites which are included in the emerging Local Plan; sites in adopted Local Plans; and small sites. This approach accords with the *National Planning Policy Framework*, existing guidance and the emerging *National Planning Policy Guidance*.

A discount has been applied to small sites, and a windfall allowance included reflecting the applications which will come forward for delivery of small sites in years four and five.

A number of sites without planning permission have been identified and could contribute to the supply if required. However, these sites are not relied upon for the five year supply at present.

The current deliverable supply of housing is assessed as being some 9,757 homes. With a total annual requirement of 1,662 based on the 'Sedgefield' methodology and a 5% 'buffer', the *Five Year Housing Land Supply Position Statement* demonstrates that the Council has a 5.87 year housing land supply. If a 20% 'buffer' is applied, this reduces to 5.14 years supply.

In the light of the above the Council will demonstrate the objective of the framework to significantly boost the supply of housing is currently being met and accordingly there is no justification for a departure from Local Plan policies and policies within the Framework relating to housing land supply, settlement zone lines and open countryside in this area.

Additionally, the adverse impacts in terms of conflict of this proposal with the emerging draft strategy of releasing this site for housing development would, in the planning balance, outweigh the benefits of the proposal in terms of housing land supply, since the site is not

relied upon with the Cheshire East Local Plan Strategy – Submission Version or the Assessed Housing land supply.

Therefore, the site is not required for the 5 year housing land supply plus buffer.

Open Countryside Policy

As well as assessing housing supply, the recent Appeal decisions at Sandbach Road North Congleton Road Sandbach, the Moorings Congleton and Crewe Road, Gresty Green are also significant for clarifying the status and intent of settlement zone line and countryside policies.

Some have sought to argue that as settlement boundaries effectively contain the built area of a town or village – and so define the area in which development is usually concentrated – that accordingly they should be viewed as housing supply policies. This subsequently could mean that those policies, along with normal countryside policies, should be considered “out of date” if there is no five year supply of housing land. This view is derived from paragraph 49 of the framework which states that:

“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”.

There are appeal decisions that appear to support this perspective, although those in Cheshire East have generally taken a different approach.

The recent appeal decisions consider this matter in some detail. It was noted by the Inspector that the settlement zone lines serve a variety of purposes – and take account of land allocated for development up to a particular point (in this case 2011). However, the Inspector considered that settlement zones lines were not driven by the need to identify land for development, but rather are based on the objective of protecting countryside once development land is identified. Consequently, he concluded that the related policy (Policy PS4 of the Congleton Local Plan) was *“not sufficient directly related to housing land supply that it can be considered time expired for that purpose.”* Instead the Policy is *“primarily aimed at countryside & green belt protection”*. These objectives are largely in conformity with the NPPF and attract *“significant weight”*. In both appeals conflict with countryside policies were acknowledged.

This means that these policies remain important in the planning balance – but are not necessarily determinative. The two decisions pinpoint that much depends on the nature and character of the site and the individual circumstances pertaining to the application. At Congleton Road, the Inspector considered that the objective to boost significantly the supply of housing outweighed the “relatively moderate” landscape harm. In contrast, at Sandbach Road North the provision of housing was viewed as an “important and substantial” material consideration, but there would also be serious harm resulting from the impact on the character and appearance of the countryside. On this occasion that identified harm, combined with the significant weight attributed to countryside policies, outweighed the benefits in terms of housing supply.

In reaching this conclusion, the Inspector memorably noted that:

“the lack of a 5 year supply of housing land does not provide an automatic ‘green light’ to planning permission”.

Therefore, countryside policies in existing local plans can be considered as consistent with NPPF and are not housing land supply policies – and thus not of date, even if a 5 year supply is not in evidence. They accordingly need to be played into the planning balance when decisions are made. Where appropriate, as at Sandbach Road North, conflict with countryside protection objectives may properly outweigh the benefit of boosting housing supply. Therefore, the proposal remains contrary to Open Countryside policy regardless of the 5 year housing land supply position in evidence at any particular time.

Green Gap

As well as lying within the Open Countryside, the application site is also within the Green Gap. Therefore, as well as being contrary to Policy NE.2, it is also contrary to Policy NE.4 of the Local Plan which states that approval will not be given for the construction of new buildings or the change of use of existing buildings or land which would:

- result in erosion of the physical gaps between built up areas;
- adversely affect the visual character of the landscape.

In allowing a recent Appeal relating to a site at and adjoining Rope Lane, which was also located within the Green Gap the Inspector determined that Policy NE.4 is not a freestanding policy; its genus is in Policy NE.2 and if Policy NE.2 is accepted as being out-of-date, then it must follow that Policy NE.4 must also be considered out-of-date for the purposes of applying Framework policy.

However, given that the Council now has a 5 year supply of housing land, it is no longer considered that Policy NE.2 is out of date. Furthermore, as detailed, above, more recent Appeal decisions in Cheshire East have indicated that even in a scenario where no five year housing land supply exists Open Countryside policy remains up-to-date and consistent with the Framework and must be taken into account in the “planning balance”. Therefore, following the Rope Lane Inspector’s logic, Policy NE.4 must also still stand.

This proposed development when taken cumulatively with the Rope Lane site which has been allowed at Appeal will completely eradicate the physical gap between Shavington and Crewe and the proposal would therefore clearly be contrary to Policy NE.4. The impact on the landscape is discussed in greater detail below.

Policy NE.4 goes on to state that exceptions to this policy will only be considered where it can be demonstrated that no suitable alternative location is available. Through the emerging Development Strategy it has been demonstrated that there are a number of sites on the periphery of Crewe which, although designated as Open Countryside, are not subject to Green Gap policy and can be used to address the Council’s housing land supply shortfall and which would not contravene the provisions of Policy NE.4.

Highways Implications

The dwelling would be served by an existing access which is considered to be acceptable by the Strategic Highways Manager. In addition there is adequate space for the parking of a minimum of three vehicles.

The proposal is therefore considered to be in compliance with Policy BE.3 (Highways & Parking).

Amenity

The siting of the dwelling means that all the minimum separation distances to neighbouring properties would be exceeded. There would be an adequate level of private open space for future occupiers of the dwelling.

The proposal is therefore considered to be acceptable and in compliance with Policy BE.1 (Amenity).

Public Rights of Way

A Public Right of Way, namely Public Rope No.4, as recorded on the Definitive Map and Statement, the legal record of Public Rights of Way, would be affected by the proposed development.

The PROW has no objection to the proposal as an application is currently in progress to divert the footpath.

Design

The importance of securing high quality design is specified within the NPPF and paragraph 61 states that:

“Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.”

The proposed dwelling has been designed in such a way as to have the appearance of an agricultural building and would be constructed of traditional materials such as Cheshire brick and clay tiles. This form of design is considered to be appropriate and in keeping with the character of neighbouring properties and the surrounding area.

Ecology

There is a pond in close proximity to the site, however it contains a large number of fish and as such the Council's Ecologist has confirmed that there is unlikely to be any adverse impact on Great Crested Newts. No other adverse impacts on ecology are anticipated to result from the proposed development.

Agricultural Land

Policy NE.12 (Agricultural Land Quality) of the Crewe and Nantwich Replacement Local Plan has been saved. The National Planning Policy Framework highlights that the use of such land should be taken into account when determining planning applications. It advises local planning authorities that, 'significant developments' should utilise areas of poorer quality land (grades 3b, 4 & 5) in preference to higher quality land.

It is not known what grade this parcel of land is classified as. However; given the scale of the proposal and the siting of the plot of the land, it is not considered that its loss would be significantly detrimental.

CONCLUSIONS

The site is within the Open Countryside where under Policy NE.2 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. However, the recently published 5 Year Supply Position has shown that the Council can demonstrate a supply of between 5.14 to 5.87 year housing land supply.

Details of amenity, design, ecology and highway safety are considered to be acceptable.

However, these are considered to be insufficient to outweigh the harm that would be caused in terms of the impact on the open countryside and Green Gap, and as a result, the proposal is considered to be unsustainable and contrary to policies NE2 and NE4 of the local plan and the provisions of the NPPF in this regard.

RECOMMENDATIONS

REFUSE:

1. The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policy NE.2 (Open Countryside) and NE.4 (Green Gaps) and the principles of the National Planning Policy Framework and create harm to interests of acknowledged importance. The Local Planning Authority can demonstrate a 5 year supply of housing land supply in accordance with the National Planning Policy Framework. As such the application is also contrary to the emerging Pre-. Consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan.

2. The proposed development will clearly erode the physical gaps between the built up areas and fundamentally change the existing agricultural landscape character into a domestic character and so is contrary to policy NE.4 of the Borough of Crewe and Nantwich Replacement Local Plan which seeks to maintain the definition and separation of existing communities and prevent Crewe and Shavington merging into one another.

In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons

for approval/refusal) prior to the decision being issued, the Planning and Interim Place Shaping Manager has delegated authority to do so in consultation with the Chairman of the Southern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

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