

Application No: 14/1160N

Location: Land South of Newcastle Road, Shavington

Proposal: Variation or removal of Conditions 48 - 51 Inclusive of Planning Permission 12/3114N - Outline application for residential development of up to 400 dwellings, local centre of up to 700 Sq M (with 400 Sq M being a single convenience store), open space, access roads, cycleways, footpaths, structural landscaping and associated engineering works.

Applicant: Mactaggart & Mickel Homes Ltd

Expiry Date: 12-Jun-2014

SUMMARY RECOMMENDATION:

APPROVE subject to conditions and completion of a Deed of Variation to a Section 106 Agreement on application 12/3114N

MAIN ISSUES

- The impact upon amenity
- The impact upon drainage and flooding

REASON FOR REFERRAL

This application is referred to the Strategic Planning Board as it involves a variation to condition for a large scale major development previously considered by Board.

DESCRIPTION OF SITE AND CONTEXT

The application site falls within the Open Countryside and relates to a large (17.38 ha) triangular parcel of land that is bound on 2 sides by residential development (Stock Lane and Dig Lane) and by Newcastle Road on the other.

The site is made up of a number of fields of varying size. The larger fields occupy the western, central and southern parts of the site which is predominantly in arable use. The north-eastern part is smaller pasture fields and paddocks defined by hedgerows and fences. There are groups of hedgerow trees on the site and several isolated trees which have been identified and which can be retained.

The site straddles the boundary between Shavington-cum-Gresty and Wybunbury Parishes and is relatively level.

Outline Planning Permission was granted on the 23rd January 2014 for the erection of up to 360 dwellings.

DETAILS OF PROPOSAL

The application seeks to vary Conditions; 48, 49, 50 and 51 from approved planning permission 12/3114N.

Planning permission 12/3114N was granted on the 23rd January 2014 and was for:

'Outline Application for Residential Development of up to 360 Dwellings, Local Centre of up to 700 sqm (with 400 sqm being a single convenience store), Open Space, Access Roads, Cycleways, Footpaths, Structural Landscaping, and Associated Engineering Works.'

The applicant seeks to remove the following conditions;

Condition 48

'There shall be no 3 storey development on the site.'

Reason: To protect the amenities of nearby residents and the occupiers of nearby property in accordance with Policy BE1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

Condition 49

'No development shall commence until a drainage scheme for the land at rear of Dig Lane has been submitted to and approved in writing by the Local Planning Authority. No development shall take place except in complete accordance with the approved drainage scheme.'

Reason: To ensure adequate drainage of the site in accordance with Policy NE.20 (Flood Prevention) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

Condition 50

'The Reserved Matters shall make provision for a wildlife corridor connecting 2 existing ponds and creating 2 more ponds and coppice at rear of Dig Lane planted with native trees and shrubs. Area fenced off with Cheshire Railings running full length of Dig Lane with 2 access gates for maintenance'

Reason: To protect the amenities of nearby residents and the occupiers of nearby property in accordance with Policy BE1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

Condition 51

'The Reserved Matters shall make provision for bungalows backing on to the existing bungalows in Stock Lane.'

Reason: To protect the amenities of nearby residents and the occupiers of nearby property in accordance with Policy BE1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

The applicant seeks to remove the above 4 conditions as they believe that they are 'unnecessary' and as such, do not adhere to the relevant conditions tests within NPPF/NPPG.

RELEVANT HISTORY

14/1161N - Variation or removal of Condition 30 of Planning Permission 12/3114N - Outline application for residential development of up to 400 dwellings, local centre of up to 700 Sq M (with 400 Sq M being a single convenience store), open space, access roads, cycleways, footpaths, structural landscaping and associated engineering works – Under consideration
12/3114N - Outline Application for Residential Development of up to 360 Dwellings, Local Centre of up to 700 sqm (with 400 sqm being a single convenience store), Open Space, Access Roads, Cycleways, Footpaths, Structural Landscaping, and Associated Engineering Works – Approved 23rd January 2014

POLICIES

Local Plan Policy

NE.2 - Open countryside
NE.5 - Nature Conservation and Habitats
NE.9 - Protected Species
NE.20 - Flood Prevention
NE.21 - Land Fill Sites
BE.1 - Amenity
BE.2 - Design Standards
BE.3 - Access and Parking
BE.4 - Drainage, Utilities and Resources
RES.5 - Housing In The Open Countryside
RT3 – Provision of Recreational Open Space and Children's Play Space in New Housing Developments
RT.6 - Recreational Uses on the Open Countryside
TRAN.3 - Pedestrians
TRAN.5 – Cycling

National Planning Policy

National Planning Policy Framework (NPPF)

Other Material Policy Considerations

Interim Planning Policy: Release of Housing Land (Feb 2011)
Interim Planning Statement: Affordable Housing (Feb 2011)
Strategic Market Housing Assessment (SHMA)

Relevant legislation also includes the EC Habitats Directive and the Conservation (Natural Habitats &c.) Regulations 1994
North West Sustainability Checklist

Cheshire East Local Plan Strategy – Submission Version

Paragraph 216 of the National Planning Policy Framework (NPPF) states that, unless other material considerations indicate otherwise, decision-takers may give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

In view of the level of consultation already afforded to the plan-making process, together with the degree of consistency with national planning guidance, it is appropriate to attach enhanced weight to the Cheshire East Local Plan Strategy - Submission Version in the decision-making process.

At its meeting on the 28th February 2014, the Council resolved to approve the *Cheshire East Local Plan Strategy – Submission Version* for publication and submission to the Secretary of State. It was also resolved that this document be given weight as a material consideration for Development Management purposes with immediate effect.

Cheshire East Local Plan Strategy – Submission Version

PG5 – Open Countryside
CS6 – The Shavington / Wybunbury Triangle
SC1 – Leisure and Recreation
SC2 – Outdoor Sports Facilities
SD1 - Sustainable Development in Cheshire East
SD2 - Sustainable Development Principles
SE1 – Design
SE2 – Efficient Use of Land
SE3 – Biodiversity and Geodiversity
SE4 – The Landscape
SE5 – Trees, Hedgerows and Woodland
SE6 – Green Infrastructure
SE7 – The Historic Environment
CO1 – Sustainable Travel and Transport

CONSULTATIONS (External to Planning)

Environmental Protection (Cheshire East Council) - No objections

Strategic Highways Manager – No objections

Countryside and Rights of Way (Cheshire East Council) – No objections

Green spaces (Cheshire East Council) - No comments received at time of report

Environment Agency - No objections

Natural England - No objections

Housing (Cheshire East Council) – No objections

United Utilities – No objections, subject to the provision of an updated drainage plan

Mid-Cheshire Footpath Society - No comments received at time of report

Ramblers Association - No comments received at time of report

Open Space Society - No comments received at time of report

VIEWS OF THE PARISH COUNCIL

Wybunbury Parish Council – Object to the proposal on the following grounds;

- Design – 3 storey dwellings not in keeping
- Drainage / Flooding
- Impact upon ecology
- Amenity – Loss of privacy (Stock Lane)

Shavington Parish Council – Object to the proposal on the following grounds;

- Will undo conditions that were imposed to mitigate the effect of the development
- Amenity – Loss of privacy (Stock Lane)
- Drainage & Flooding
- Impact upon ecology

Hough Parish Council - Object to the proposal on the following grounds;

- Impact upon local infrastructure

OTHER REPRESENTATIONS

81 letters of objection to the proposal have been received. This main concerns raised include;

- Insufficient justification for the removal of conditions
- Impact upon open countryside
- Drainage & Flooding – local capacity in extreme weather conditions, overflowing of pumping station

- Impact upon local schools, health facilities
- Design – Over-development of site (density), visual amenity, not respect local character (3-storey), materials, loss of Cheshire railings
- Amenity – loss of privacy, Loss of light / over-shadowing, air pollution, overcrowding, noise and disturbance
- Contrary to Human Rights Act
- Highway safety –increased traffic/congestion, pedestrian safety
- Unsustainable – Lack of jobs, insufficient bus services
- Additional housing not required for Cheshire East Housing Land Supply totals
- Ecology – Impact upon wildlife habitat, impact upon protected species, impact upon Wybunbury SSSI
- Loss of ancient hedgerow
- Trees – Loss of
- Impact on house values

APPLICANT'S SUPPORTING INFORMATION

Letter

OFFICER APPRAISAL

Principle of Development

The site lies in the Open Countryside as designated in the Borough of Crewe and Nantwich Replacement Local Plan 2011, where policies NE.2 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.

As such, the development would be considered to be contrary to the Local Plan.

However, this application site has been specifically allocated for housing within the Cheshire East Local Plan Strategy – Submission Version under Policy CS6. Policy CS6 advises that the development of the Shavington / Wybunbury Triangle over the Local Plan Strategy period will be achieved through the delivery of 350 houses.

In addition, planning permission has been granted on the site for 360 houses (ref: 12/3114N). As such, the principle of residential development on this site has already been agreed.

This assessment shall consider whether the removal of certain conditions attached to this approval would be acceptable.

The acceptability of this proposal shall be considered as to whether each of the conditions sought for removal would meet the 6 tests as detailed within paragraph 206 of the NPPF and detailed within the NPPG

Paragraph 206 of the NPPF states that *'Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.'*

This assessment is made on each of the conditions in turn below;

Condition 48

'There shall be no 3 storey development on the site.'

Reason: To protect the amenities of nearby residents and the occupiers of nearby property in accordance with Policy BE1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

This condition was imposed on amenity grounds by Strategic Planning Board.

As this application relates to an outline planning application only, the layout and scale (e.g. 2 or 3 storey units) of the proposed housing is yet to be agreed. This would be considered under further reserved matters applications or via a new full planning application.

Given that such matters are not for consideration at this stage of the application process, and given that the revised submitted indicative layout plan shows that no dwellings would be in breach of the minimum 21 metre separation distance between the proposed and the neighbouring properties, it is not considered that this condition is *'necessary'* or *'reasonable'* and as such, would fail to adhere with the conditions tests within the NPPF.

Notwithstanding the above, the Council's Urban Design Officer has advised that *'I can see no urban design rationale for the condition, given that the DAS [Design and Access Statement] parameters identify 3 storey within a central zone, not on the periphery, including where that adjoins neighbouring housing and includes a max 10% figure of the overall development as up to 3 storey, supplemented to references in the character area text where it refers in more detail to the use of taller buildings to define views, corners etc.'*

As such, the condition is not necessary on design grounds.

The removal of this condition is therefore recommended for approval.

Condition 49

'No development shall commence until a drainage scheme for the land at rear of Dig Lane has been submitted to and approved in writing by the Local Planning Authority. No development shall take place except in complete accordance with the approved drainage scheme.'

Reason: To ensure adequate drainage of the site in accordance with Policy NE.20 (Flood Prevention) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

The applicant has advised within their supporting statement that they believe that this condition is a repetition of Condition 5 from planning permission 12/3114/N.

Condition 5 states;

'No development shall commence on any phase until a scheme for the management of overland flow from surcharging of the site's surface water drainage system during extreme rainfall events within that phase has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include, inter alia, details of the proposed ground levels and proposed finished floor levels.'

Reason: To ensure adequate drainage of the site in accordance with Policy NE.20 (Flood Prevention) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

The applicant believes that on this basis, the condition is unnecessary, *'...not relevant to the development to be permitted and fails to be precise as it is superfluous.'*

Repetition of Condition 5?

Condition 49 specifically seeks the prior submission of a drainage scheme for the land to the rear of Dig Lane whereas Condition 5 specifically seeks the prior submission of a management plan for the overland flow from surcharging of the site's surface water drainage system during extreme rainfall events for each phase of the development.

As such, Condition 49 seeks an all-encompassing drainage plan for a specific location of the site, whereas Condition 5 seeks a plan for the overland flow of surface water during extreme rainfall events for the entire site to be submitted in phases. One condition refers to overland flow only in extreme weather, whereas the other does not specify. As such, it is not considered that Condition 49 is a direct repetition of Condition 5.

Relevant to the development

In response to application 12/3114N, which this condition relates, the Environment Agency (EA) and United Utilities (UU) were consulted in order to consider flooding and drainage matters respectively.

The EA advised that as the site falls within Flood Zone 1, it is considered to be of a low risk of flooding. The EA recommended that the development should be implemented in accordance with the approved Flood Risk Assessment mitigation measures. This was conditioned accordingly (Condition 6).

The EA also recommended that a scheme for the management of flood risk from overland flow of surface water be submitted to the Local Planning Authority for prior approval. This was conditioned under Condition 5. The EA also recommended conditions regarding Ecology and the river channel and corridor which was also conditioned accordingly.

United Utilities advised that they had no objections to the proposed development, subject to 2 conditions. These included that the site must be drained on a separate system in accordance with the submitted Flood Risk Assessment and that the applicant must discuss the full details of the drainage details with a United Utilities engineer so any necessary enhancements to the existing public sewerage system can be agreed in principle beforehand.

The first of these proposed conditions is considered to be covered in approved Condition 6. The second is not a condition but an informative.

As such, none of the professional consultees specifically referred to the need for a drainage plan to be submitted for land to the rear of Dig Lane. This condition was added by the Strategic Planning Board.

With specific regards to the removal of this condition, the EA have raised no objections, whereas United Utilities have raised no objections, subject to a condition requiring the prior submission of an updated overall drainage plan for the entire site.

Notwithstanding the above, the Council's Flood Risk Manager does have concerns regarding the removal of this condition.

It is advised that *'...Further discussions will be required with the developer concerning proposals to drain this site in conjunction with the EA, to agree how these off site problems can be overcome without exacerbating flood risk to properties adjacent to the site and in particular, Dig Lane. Until such time as these matters have been fully resolved then all conditions relating to disposal of surface water from this site should remain in place.'*

As such, the Local Flood Risk manager does raise flood risk concerns around the localised area of Dig Lane. As such, it is considered that Condition 49 is necessary.

Condition 50

'The Reserved Matters shall make provision for a wildlife corridor connecting 2 existing ponds and creating 2 more ponds and coppice at rear of Dig Lane planted with native trees and shrubs. Area fenced off with Cheshire Railings running full length of Dig Lane with 2 access gates for maintenance

Reason: To protect the amenities of nearby residents and the occupiers of nearby property in accordance with Policy BE1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

The applicant has advised within their supporting statement that this condition is *'unnecessary and overly prescriptive'*.

This condition was imposed by the Strategic Planning Board to protect the amenities of nearby residents.

As this application relates to an outline planning application only, the layout of the development is yet to be agreed. This would be considered under further reserved matters applications or via a new full planning application.

Given that such matters are not for consideration at this stage of the application process, and given that the revised submitted indicative layout plan shows that no dwellings would be in breach of the minimum 21 metre separation distance between the proposed housing and the closest neighbouring properties, it is not considered that this condition is *'necessary'* and as such, would fail to adhere with the conditions tests within the NPPF.

As such, the removal of this condition is considered to be acceptable.

Condition 51

'The Reserved Matters shall make provision for bungalows backing on to the existing bungalows in Stock Lane.

Reason: To protect the amenities of nearby residents and the occupiers of nearby property in accordance with Policy BE1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.'

The applicant has advised that this condition is not necessary and 'unduly restrictive'.

This condition was imposed by the Strategic Planning Board to protect the amenities of nearby residents.

As this application relates to an outline planning application only, the scale of the development is yet to be agreed. This would be considered under further reserved matters applications or via a new full planning application.

Given that such matters are not for consideration at this stage of the application process, and given that the revised submitted indicative layout plan shows that none of the dwellings sought would be in breach of the minimum 21 metre separation distance between the proposed housing and the closest neighbouring properties, it is not considered that this condition is 'necessary' and as such, would fail to adhere with the conditions tests within the NPPF.

There were no design reasons for the inclusion of this condition.

As such, it is considered that this condition is unnecessary and its removal recommended.

CONCLUSIONS

It is not considered that Condition 48, 50 and 51 adhere to the relevant conditions tests as detailed within Paragraph 206 of the NPPF. Specifically, they are not considered to be necessary. As such, the removal of these conditions is considered to be acceptable and is therefore recommended for approval.

However, in light of the advice provided by the Council's Flood Risk Manager, it is considered that Condition 49 is necessary. As such, the removal of this condition is not considered to be acceptable and has been re-attached.

RECOMMENDATION

APPROVE subject to conditions and completion of a Deed of Variation to a Section 106 Agreement on application 12/3114N to secure;

1. Changes to reflect the latest plans, revised application number and any other relevant minor changes to the text.

And conditions;

1. Standard Outline
2. Submission of reserved matters
3. Plans
4. No approval for indicative layout
5. Submission / approval and implementation of a scheme to manage the risk of flooding from overland flow of surface water
6. The development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) from RPS, ref. AAC4908 Issue 3 dated 25/06/2012 and the following mitigation measures detailed within the FRA
7. Submission / approval and implementation of a scheme is agreed to protect the watercourses and ponds on site and to provide a 5 metre wide undeveloped buffer zone around them measured from top of bank. The undeveloped buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping.
8. The watercourse channel and corridor shall be constructed in accordance with a scheme to include the following:
 - plans showing the extent and layout of the undeveloped buffer zone.
 - details of any proposed planting scheme (for example, native species).
 - details demonstrating how the undeveloped buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.
 - The proposed river channel and corridor shall be constructed in accordance with a scheme to include the following features:
 - Detailed designs of new watercourse corridor within the site, which is fully integrated as part of overall scheme design, in such a way as to positively contribute to the nature conservation, landscape and amenity value of the site
 - Plans showing the extent and layout of the undeveloped buffer zone between the new development and the stream.
 - This undeveloped buffer zone shall be a minimum of 5 metres wide measured from bank top. This zone shall be without structure and domestic gardens
 - Details of planting schemes
 - Details demonstrating how the buffer zone will be protected during development and managed/maintained over the long term.
9. Reserved matters to make provision for houses to face waterfronts and footpaths
10. The site shall be drained on a total separate system, with only foul drainage connected into the public foul sewerage system. Surface water should discharge to soakaway and or watercourse. No surface water will be allowed to discharge in to the public sewerage system.
11. Submission / approval and implementation of details of Sustainable Drainage Systems (SuDS).
12. The hours of demolition / construction of the development (and associated deliveries to the site) shall be restricted to: Monday – Friday 08:00 to 18:00 hrs; Saturday 09:00 to 14:00 hrs; Sundays and Public Holidays Nil

13. All Piling operations shall be undertaken using best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties. All piling operations shall be restricted to: Monday – Friday 09:00 – 17:30 hrs; Saturday 09:00 – 13:00 hrs; Sunday and Public Holidays Nil
14. Submission approval and implementation of a piling method statement.
15. Submission approval and implementation of details of location, height, design, and luminance of any proposed lighting
16. Noise levels from any services plant shall be designed to be 10dB below the existing background noise level at the nearest residential property
17. Submission approval and implementation of noise mitigation measures for properties adversely affected by road traffic noise from Newcastle Road to provide for
 - the internal noise levels defined within the “good” standard within BS8233:1999.
 - provisions for ventilation that will not compromise the acoustic performance of any proposals whilst meeting building regulation requirements.
18. Submission / approval and implementation of dust mitigation during development.
19. Submission of revised Air Quality assessment to take into consideration Nantwich Road and mitigation against any impact
20. Submission of archaeological report
21. At least 10% of predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated that this is not feasible or viable.
22. Provision of sustainable design strategy / plan
23. Submission of construction details for access / roads
24. Provision of access / roads
25. Provision of visibility splays of 2.0m x 43m in both directions at each of the access points.
26. Provision of parking
27. Submission of contaminated land report
28. Development to be in accordance with principles set out in Design and Access Statement
29. Submission of Statement Design principles to take into account, the Master Plan, the Parameters Plan and Phasing Plan and to include the principles for:
 - determining the design, form, heights and general arrangement of external architectural features of buildings including the roofs, chimneys, porches and fenestration;
 - determining the hierarchy for roads and public spaces;
 - determining the colour, texture and quality of external materials and facings for the walls and roofing of buildings and structures;
 - the design of the public realm to include the colour, texture and quality of surfacing of footpaths, cycleways, streets, parking areas, courtyards and other shared surfaces;
 - the design and layout of street furniture and level of external illumination;
 - the laying out of the green infrastructure including the access, location and general arrangements of the multi use games area, the children’s play areas and allotments;
 - sustainable design including the incorporation of decentralised and renewable or low carbon energy resources as an integral part of the development
 - ensuring that there is appropriate access to buildings and public spaces for the disabled and physically impaired.
30. Maximum number of units to be 360

31. Submission / approval and implementation of boundary treatment
32. Submission / approval and implementation of materials
33. Submission / approval of landscaping
34. Implementation of landscaping
35. Important hedgerows and trees to be retained and to be incorporated within reserved matters layout
36. Submission of tree and hedgerow protection measures
37. Implementation of tree and hedgerow protection measures
38. Replacement tree/hedge planting
39. Reserved Matters to include details of bin storage
40. Breeding Bird Survey for works in nesting season
41. Provision of bird boxes
42. Retention and enhancement of the on-site ponds
43. Submission / approval and implementation of Construction management plan
44. Retention of no.90 Stock Lane
45. Any future reserved matters application to be supported by a survey and mitigation proposals
46. Provision and implementation of Travel Plan
47. Provision of new footway to Newcastle Road prior to first occupation
48. Prior submission of drainage plan for Dig Lane

In order to give proper effect to the Board`s intentions and without changing the substance of the decision, authority is delegated to the Head of Strategic & Economic Planning, in consultation with the Chair (or in his absence the Vice Chair) of the Strategic Planning Board, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice

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