

STRATEGIC PLANNING BOARD – 3rd June 2015

APPLICATION NO: 14/3892C

PROPOSAL: Redevelopment of the site to provide up to 200 homes and a community facility.

ADDRESS: Land West of Crewe Road, Sandbach, Cheshire

APPLICANT: HIMOR (Land) Ltd

ADDITIONAL INFORMATION

Following the publication of the committee report the applicant has submitted a Legal Opinion. This is summarised as follows:

- The applicants for this application have objected to the Draft Sandbach Neighbourhood Development Plan (SNDP)
- Reference is made to the *Woodcock* case (*Woodcock Holdings Limited v Secretary for State for Communities and Local Government*)
- *Woodcock* clearly shows that in relation to the weight to be attached to emerging plans that it is necessary, in order for the decision-taker properly to take into account paragraph 216 of the NPPF, that all criteria in that paragraph are considered. It also shows equally that, in relation to prematurity, all the key aspects of the policy in the PPG must be considered in order that the policy is properly taken into account. Referring to advice in the PPG that prematurity is seldom justified as a ground of refusal in the case of a draft neighbourhood plan before the end of the local authority publicity period, Holgate J characterised that in terms of whether a draft plan had reached a sufficiently advanced stage by way of an “entry point” for considering prematurity as a possible reason for refusal
- It seems that the Council’s reliance on paragraph 216 of the NPPF to justify its reason for refusal is misplaced. Proper application of the three criteria in paragraph 216 shows that the SNDP could only be accorded very limited weight. The SNDP is at an early stage having only just been subject to pre-submission consultation; there are already (as per Gladman Developments Ltd’s objections) significant unresolved objections to relevant policies; and there are also (as those objections again reveal) serious questions as to the consistency of relevant policies with the NPPF. The officers report does not properly consider these matters. It is also to be noted that, while the officers report considers that the development conflicts with Policy H1 of the SNDP, the officers report does not put forward any such conflict as the basis for refusal but instead fixes on prematurity as the decisive consideration. Presumably the officers report does not seek to rely on conflict with H1 because of the lack of weight of such policy. There is a further problem with this policy and all other policies of the SNDP which are relevant policies for the supply of housing. *Woodcock* clearly holds that paragraph 49 of the NPPF applies to policies in draft plans

(including draft neighbourhood plans). Accordingly, no relevant policies for the supply of housing in the SNDP can be considered up-to-date given the accepted lack of a five year housing supply in Cheshire East. While the weight to be given to out-of-date policies for the supply of housing is a matter for the decision-taker, *“it will normally be less, often considerably less, than the weight due to policies which provide fully for the requisite supply”*: see *Crane v Secretary of State for Communities and Local Government*.

- Turning specifically to prematurity, this is not a justifiable reason for refusal in the light of the clear guidance in the PPG that prematurity is only likely to justify a refusal where an *“emerging plan is at an advanced stage”* and that *“refusal of planning permission on grounds of prematurity will seldom be justified ... in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period.”* That period (the regulation 16 stage under the Regulations) has not yet begun in this case. The SNDP has not yet advanced as far as the “entry point” (as Holgate J referred to it in *Woodcock*) for considering prematurity as a possible reason for refusal. There does not appear to me to be any good reason why this case might be considered one of the seldom occasions when the advice in the PPG need not be followed. The circumstances which apply in Sandbach appear far from exceptional.
- There is a very clear echo in the Fox case of Holgate J’s criticism of the appeal decision in the *Woodcock* case that the point taken there by the Secretary of State on prematurity was devoid of content. The judge indicated that it was clear that the Secretary of State had not applied himself to the key tests in the PPG on prematurity as to whether particular issues should be determined in the examination of a neighbourhood plan rather than in the decision on a planning appeal but had, in fact, determined the relevant issues in the planning appeal in any event. So also in this case the officer report seeks to make the case that the scale, extent and form of development in Sandbach should be considered through the SNDP process yet nevertheless finds, for example, that the site is sustainable, that (with mitigation) there would not be a detrimental impact on the landscape character of the area, that the development would not be unacceptable in terms of the green gap between Elworth and Sandbach, that there would be no impediment to the grant of permission on the basis of impact on infrastructure and that an acceptable design could be secured. It is thus hard to see how the contention in the officer report that the proper planning of the Sandbach area would be threatened by approval of the appeal proposals could be sustained.
- Further, given the acknowledged benefits of the development (not least in terms of the provision of market and much needed affordable housing as well as significant economic benefits), it is also not easy to see how the Council can justify the requirement of the PPG on prematurity that it must be *“clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits”*.
- The proposals could not properly be considered premature.

OFFICER COMMENTS

It is acknowledged that the Sandbach NP is at an early stage in the adoption process and that comments and objections have been received in respect of the initial consultation period, including comments from Cheshire East Council.

Policy H1 in the Draft Sandbach NP should be considered as a policy for the supply of housing – and accordingly it should be afforded a reduced degree of weight based upon its status, context and the fact that no 5 year supply of housing is in place. However, the approach to housing embodied in policy H1 reflects broader aspects of the Plan, such as its vision, aims and objectives. Accordingly the case rests on the assessment of the weight to be applied to emerging policy (albeit limited) and the scale, context of circumstances of developments in Sandbach.

Paragraph 216 of the NPPF states. From the day of publication, decision-takers may also 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 this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

The PPG provides the further guidance as in the main report and advises on the grounds where prematurity. This further advises that circumstances are only likely to significantly and demonstrably outweigh the presumption in favour of sustainable development, but not exclusively, to be limited to situations where the development is so substantial to undermine the plan making process due to its scale, location of phasing and the emerging plan is at an advanced stage.

The recent Woodcock case confirms that NP should be treated in the same way as any other emerging plan and it is clear that there are some outstanding objections made in respect of the NP. However, in respect of the NP and also the Cheshire East Local Plan Strategy there is consistency with level of development for Sandbach, which aligns with the identification of Sandbach as a key service centre where an accepted level of development would be encouraged.

In terms of the submitted Cheshire East Local Plan Strategy, Sandbach is unusual in that existing commitments (2,754) already markedly outstrip the

planned level of development (2,200). Thus whilst generally an uplift in housing numbers might ordinarily be expected as a result of the Inspector's comments on Objectively Assessed Need, the fact that numerous permissions have already been granted in Sandbach correspondingly limits the scale of any likely further uplift in housing numbers in this particular Key Service centre.

In the officer's view it is this contrast between the scale of the development within the current application and the likely scale of any further uplift in housing numbers in Sandbach (if indeed there is any at all) that renders the development unusually significant. Consequently the decision on this application becomes absolutely central to the process of plan making in Sandbach.

In the Officer's view this issue is so substantial to afford sufficient weight to provide a prematurity argument in accordance with the NPPF and PPG and also the recent Woodcock case.

It is acknowledged that this is very much a balanced assessment which ultimately must rest the decision maker.

Correction to the Main Report

The second reason for refusal relating to BMV agricultural land is not included within the officer recommendation. This will be included within the updated recommendation below.

RECOMMENDATION

REFUSE for the following reasons:

- 1. The Local Planning Authority considers that having regard to the context of developments in the Sandbach area and the scale of the proposed development that it would be premature following the publication consultation draft of the Sandbach Neighbourhood plan. As such allowing this development would prejudice the outcome of the neighbourhood plan-making process and would be contrary to guidance contained at Paragraph 216 of the NPPF and guidance contained within the NPPG.**
- 2. Whilst it is acknowledged that there is a presumption in favour of sustainable development in the planning balance, it is considered that the development is unsustainable because of the conflict with the draft Sandbach Neighbourhood plan and because of the unacceptable environmental and economic impact of the scheme in terms of loss of best and most versatile agricultural land and open countryside. These factors significantly and demonstrably outweigh the social benefits in terms of its contribution to boosting housing land supply, including the contribution to affordable housing. As such the proposal is contrary to Policies**

PS8 and H6 of the adopted Congleton Borough Local Plan First Review 2005 and Policies PG 5 and SE 2 of the Cheshire East Local Plan Strategy – Submission Version and the provisions of the NPPF.

In order to give proper effect to the Board`s/Committee`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 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.

Should the application be subject to an appeal, the following Heads of Terms should be secured as part of any S106 Agreement:

A scheme for the provision of 30% affordable housing – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:

- The numbers, type, tenure and location on the site of the affordable housing provision**
 - The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing**
 - The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved**
 - The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and**
 - The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.**
- 2. Provision of Public Open Space and a NEAP (8 pieces of equipment) to be maintained by a private management company in perpetuity**
 - 3. Provision of a fully serviced site to be large enough to accommodate a 1 Form Entry Primary School (or other community facility to be agreed in writing with the LPA) and the requested contributions of £390,466 (for primary education) and £424,910 (for secondary school education).**
 - 4. Highways Contribution of £166,000**
 - 5. PROW Contribution of £42,280**