

Application No: 17/0195C

Location: Land off, WAGGS ROAD, CONGLETON

Proposal: The erection of 104 residential dwellings, including open space, together with associated works including landscaping, the formation of access, site works, necessary engineering works to facilitate highway and footway improvements to Waggs Road and other necessary works.

Applicant: Mr Mike Stone, Bellway Homes Ltd (Manchester Division)

Expiry Date: 19-Apr-2017

SUMMARY

The proposed development would be contrary to Policy PS8 & H6 and the development would result in a loss of open countryside. However Paragraph 49 of the NPPF 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 and that where this is the case housing applications should be considered in the context of the presumption in favour of sustainable development.

It is therefore necessary to consider whether the proposal constitutes “sustainable development” in order to establish whether it benefits from the presumption under paragraph 14 by evaluating the three aspects of sustainable development described by the framework (economic, social and environmental).

The development would provide benefits in terms of affordable housing provision, delivery of housing, POS, a play area and economic benefits through the usual economic benefits during construction and through the spending of future occupiers.

The development would have a neutral impact upon education, protected species/ecology, flooding, living conditions, landscape, trees, design and contaminated land.

The adverse impacts of the development would be the loss of open countryside and the severe impacts to highway safety.

Whilst locational sustainability is not a determining factor in its own right this is considered to weigh against the proposal in the overall planning balance. Given the distance of the site to local services/amenities future occupants would have no option but to utilise the substandard access routes in order to reach these services/amenities. Whilst the Council actively encourage walking rather than use of motor vehicle, it does not encourage the use of unsafe pedestrian routes.

As a result the development is clearly contrary to open countryside policies yet as it stands these are considered out of date. So the presumption in favour of sustainable development applies. However, with reference to the Richborough Court of Appeal weight can be given to those policies.

There is now a solution to the housing supply in hand through the forthcoming adoption of the Local Plan. As a consequence of the Inspectors most recent comments in December increased weight can be afforded to these 'out of date' policies. In addition given the progression of emerging policies towards adoption it is considered that greater weight can now be given to those emerging policies. A further factor that weighs against the scheme is the scale and location of the development which extends further away from the village settlement.

Therefore taking a balance of the overall benefits, the current policy position and the scale of harm it is considered that the presumption in favour is outweighed in this case and a recommendation of refusal is made.

RECOMMENDATION

REFUSE

PROPOSAL

The application seeks full planning consent for the erection of 104 residential dwellings, including open space, together with associated works including landscaping, the formation of access, site works, necessary engineering works to facilitate highway and footway improvements to Waggs Road and other necessary works.

The dwellings would comprise 16 two bedroom properties (all affordable), 50 three bedrooms properties (40 open sale 10 affordable) and 36 four bedroom properties. The affordable dwellings would be 65% affordable rent and 35% shared ownership.

The density of the proposal will be 28.65 dwellings per hectare

The development would have a mix of dwelling types including detached, semi-detached and mews style properties, all of which would be two-storey, with varying finishes including brick and render.

Access, both vehicular and pedestrian would be taken from a single point adjacent to No.124 Waggs Road.

The north western corner of the site is to be retained as an area of public open space, with the existing trees and vegetation to be retained.

A Local Area of Play (LAP) is proposed centrally within the site.

SITE DESCRIPTION

The application site comprises an irregular parcel of Greenfield land, 3.63 hectares in size, situated to the south of Waggs Road and Meadow Avenue, Congleton. The land is designated as being within the open countryside in the adopted local plan.

The land is in agricultural use and is Grade 3 (subject to urban pressures). There are native hedgerows on the northern boundary with the existing housing development, a bank top hedgerow on the western boundary with Fol Hollow and a hedge and trees on part of the southern boundary in the vicinity of New Bank Farm. The remainder of the southern boundary and the eastern boundary are largely open giving views towards the hills. The site is divided by a continuous central hedge running north-south and there are two mature field oak trees near to the proposed site entrance.

Public Footpath No.6 runs along the eastern boundary of the site.

The north western corner of the site slopes steeply down several metres to Waggs Road where there is a large amount of mature vegetation and this is a valuable habitat for protected species.

RELEVANT HISTORY

20958/1 & 20956/1 – 8 NEW HOUSES – Refused 02-May-1989 for the following reason:

- 1. the proposed development would be contrary to the policies and proposals contained in the recently approved Congleton town local plan.**
- 2. the site lies outside any area proposed for development and would represent an undesirable intrusion into the agricultural and rural surrounding to the town.**
- 3. adequate supplies of land for housing to meet the requirements of the town for the next five years at least.**

13/30785 – Environmental Impact Assessment Screening Opinion for 104 Dwellings together with associated access roads, footpaths, parking and amenity planting and the provision of public open space/play areas – Approved 20-Nov-2013

13/3764C – The erection of 104 residential dwellings, including open space, together with associated works including landscaping, the formation of access, site works and other necessary works – Refused 10-Dec-2013 and dismissed at appeal for the following reason:

The proposed development is located within Open Countryside and would have a severe adverse impact on Waggs Road and Fol Hollow due to the sub-standard nature of these two highway routes. This severe adverse impact would significantly and demonstrably outweigh the benefits of the scheme notwithstanding a shortfall in housing land supply. The development is therefore contrary to Policies GR1(V), GR18, PS8 and H6 of the Congleton Borough Local Plan First Review 2005 and to a core planning principle of the National Planning Policy Framework (paragraph 17), which recognises the intrinsic character and beauty of the countryside.

NATIONAL & LOCAL POLICY

National Policy

The National Planning Policy Framework establishes a presumption in favour of sustainable development.

Of particular relevance are paragraphs:

- 14. Presumption in favour of sustainable development.
- 50. Wide choice of quality homes
- 56-68. Requiring good design

Development Plan

The Development Plan for this area is the Congleton Local Plan, which allocates the site, under policy PS8, as open countryside.

The relevant Saved Policies are:

- PS8 Open Countryside
- GR1 New Development
- GR2 Design
- GR3 Residential Development
- GR5 Landscaping
- GR6 Amenity and Health
- GR9 Accessibility, servicing and provision of parking
- GR14 Cycling Measures
- GR15 Pedestrian Measures
- GR17 Car parking
- GR18 Traffic Generation
- GR21 Flood Prevention
- GR 22 Open Space Provision
- NR1 Trees and Woodland
- NR2 Statutory Sites (Wildlife and Nature Conservation)
- NR3 Habitats
- NR5 Habitats
- H2 Provision of New Housing Development
- H6 Residential Development in the Open countryside
- H13 Affordable Housing and Low Cost Housing

The saved Local Plan policies are consistent with the NPPF and should be given full weight.

Cheshire East Local Plan Strategy – Submission Version (CELP)

The following are considered relevant material considerations as indications of the emerging strategy:

- PG2 – Settlement Hierarchy
- PG5 - Open Countryside
- PG6 – Spatial Distribution of Development
- SC4 – Residential Mix
- SC5 – Affordable Homes
- SD1 - Sustainable Development in Cheshire East
- SD2 - Sustainable Development Principles
- SE3 – Biodiversity and Geodiversity
- SE5 – Trees, Hedgerows and Woodland

SE 1 - Design
SE 2 - Efficient Use of Land
SE 4 - The Landscape
SE 5 - Trees, Hedgerows and Woodland
SE 3 - Biodiversity and Geodiversity
SE 13 - Flood Risk and Water Management
SE 6 – Green Infrastructure
IN1 – Infrastructure
IN2 – Developer Contributions

Supplementary Planning Documents and other relevant material:

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
Interim Planning Statement Affordable Housing
Interim Planning Statement Release of Housing Land
Provision of Private Open Space in New Residential Developments

CONSULTATIONS

CEC Flood Risk Manager: No comments received at the time of writing the report

CEC Environmental Health: Object due to insufficient information regarding air quality

CEC Ansa (Public Open Space): No objection subject to contribution of £104,475

CEC Education: No objection subject to contribution of £513,063 for primary, secondary and SEN.

Housing: No objection subject to 31 affordable dwellings being provided

CEC Public Rights of Way: No objections however informative note offered to the applicant

NHS England: No comments received at the time of writing the report

United Utilities: No objection subject to drainage conditions

Archaeology – No objection subject to condition requiring a programme of archaeological work

VIEWS OF THE PARISH COUNCIL

Congleton Town Council: Objection

- Outside settlement boundary
- Harm to highway safety
- Flooding
- No suitable walking route to school
- Previously refused at appeal
- Contrary to the emerging Local Plan
- Effluent cleaning

REPRESENTATIONS

Over 200 letters of objection have been received local households raising the following points:

- Road and pedestrian safety
- Harm to character/appearance of the area
- Loss of amenity
- Loss of open countryside
- Not required to deliver the local plan housing
- Previously refused appeal
- Outside of the settlement
- Not sustainable location
- Impact on the future Congleton link road
- Impact on local infrastructure and services (schools, health, roads)
- Flooding
- Air quality
- Loss of landscape
- Loss of wildlife
- Merging of settlements
- Loss of trees/hedgerows
- No one bedroom units proposed
- Loss of agricultural land

APPRAISAL

Principle of Development

The site lies largely in the Open Countryside as designated by the Congleton Local Plan, where policy PS8 states 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.

Housing Land Supply

On 13 December 2016 Inspector Stephen Pratt published a note which sets out his views on the further modifications needed to the Cheshire East Local Plan Strategy. This note follows 6 weeks of Examination hearings concluding on 20 October 2016.

This note confirms that his previous endorsement for the core policies on the plan still stand and that *“no new evidence or information has been presented to the examination which is sufficient to outweigh or alter my initial conclusions”*. This signals his agreement with central issues such as the ‘Duty to Cooperate’, the overall development strategy, the scale of housing and employment land, green belt policy, settlement hierarchy and distribution of development.

The Inspector goes on to support the Council’s approach to the allocation of development sites and of addressing housing supply. He commented that the Council:

“seems to have undertaken a comprehensive assessment of housing land supply, and established a realistic and deliverable means of meeting the objectively assessed housing need and addressing previous shortfalls in provision, including assessing the deliverability and viability of the proposed site allocations”

The Inspector went on to state that the development strategy for the main towns, villages and rural areas appeared to be *“appropriate, justified, effective, deliverable and soundly based.”* As a consequence there was no need to consider other possible development sites at this stage.

The Inspector’s recommendations on Main Modifications mean that under paragraph 216 of the Framework the emerging policies of the Cheshire East Local Plan Strategy can be attributed a greater degree of weight – as the Plan as revised is at an enhanced stage, objections are substantially resolved and policies are compliant with National advice.

The Inspector’s recommendations on housing land supply, his support for the Cheshire East approach to meeting past shortfalls (Sedgepool 8) indicate that a remedy is at hand to housing supply problems. The Council still cannot demonstrate a 5 year supply of housing at this time but it will be able to on the adoption of the Local Plan Strategy. This is highly relevant to the assessment of weight given to housing supply policies which are deemed out of date by the absence of a 5 year supply. Following the Court of Appeal decision on the Richborough case, the weight of an out of date policy is a matter for the decision maker and could be influenced by the extent of the shortfall, the action being taken to address it and the purpose of the particular policy.

Given the solution to housing supply now at hand, correspondingly more weight can be attributed to these out of date policies. In addition given the progression of emerging policies towards adoption greater weight can now be given to those emerging policies. The scale of the development may also be a factor that should be weighed in the overall planning balance as to the degree of harm experienced.

Attention is also drawn to a recent appeal decision regarding a site in Cheshire East ref APP/R0660/W/16/3156959 where the inspector gave a view on the status of the Councils Merging Local Plan

“This plan is now at an advanced stage of preparation, with the consultation on the main modifications having started on 6 February 2017. It was indicated that apart from a minor modification to the wording of the supporting text, the Local Plan Inspector has not suggested any modifications to this policy. As

such, it is proposed that it would be adopted in its current format. In the light of this, and in accordance with paragraph 216 of the National Planning Policy Framework (the Framework), I consider that substantial weight can be given to this policy”

SOCIAL SUSTAINABILITY

Affordable Housing

The Councils Interim Planning Statement: Affordable Housing (IPS) states in Settlements with a population of less than 3,000 that we will negotiate for the provision of an appropriate element of the total dwelling provision to be for affordable housing on all unidentified ‘windfall’ sites of 10 dwellings or more or a combined housing floor space including garages larger than 1000sqm in size.

The desired target percentage for affordable housing for all allocated sites will be a minimum of 30%, in accordance with the recommendations of the Strategic Housing Market Assessment carried out in 2013. This percentage relates to the provision of both social rented and/or intermediate housing, as appropriate. Normally the Council would expect a ratio of 65/35 between social rented and intermediate housing.

This is a proposed development of 104 dwellings therefore in order to meet the Council’s Policy on Affordable Housing there is a requirement for 31 dwellings to be provided as affordable dwellings with the above 65/35 split.

The affordable housing provision will be secured as part of a S106 Agreement.

Public Open Space

Amenity Green Space

With regards to CNLP, policy RT3 requires a combined area of shared recreational open space and shared children’s play space of 35sqm per dwelling equating this development to a minimum of 3640sqm. This area should be of a size that it will form a viable attractive and functional area of play space which can be easily maintained.

The majority of the public open space is being provided in the north-western and southern boundaries of the site. Existing trees are being retained and the addition of a swale/pond to accommodate SUDS.

The amount of space provided is considered acceptable however there does appear to be slightly conflicting information in the submitted information which requires clarification.

Children and Young Persons Provision

Again there appears to be conflict within the various documentation supplied by the applicant. The Planning Layout drawing shows a LAP, whilst the Planning Statement refers to a LEAP.

Having calculated the existing amount of accessible Children and Young Persons Provision within 800m of the site and the existing number of houses which use it, 104 new homes will generate a need for a new NEAP play facility. The area allocated for the LAP/LEAP will be insufficient and will need to be addressed through amendments or conditions.

Although no consultation response has been received from the NHS there is a medical centre in Congleton (Readesmoor Medical Centre) within 0.4 mile of the site and according to the NHS choices website this practice is currently accepting patients indicating that they have capacity.

Location of the site

To aid this assessment, there is a toolkit which was developed by the former North West Development Agency. With respect to accessibility, the toolkit advises on the desired distances to local amenities which developments should aspire to achieve. The performance against these measures is used as a "Rule of Thumb" as to whether the development is addressing sustainability issues pertinent to a particular type of site and issue. It is NOT expected that this will be interrogated in order to provide the answer to all questions.

An assessment detailing the proximity of the site to the services within the tool kit has not been provided however a brief assessment has been made by the case officer. The site is located 780m to the nearest bus stop of Newcastle Road however this is not assessable by public footpath. The site is also located 1100m to the nearest bus stop on West Street. Whilst this is assessable by public footpath it is quite narrow in places and was noted as a concern by the planning inspector for the appeal that was dismissed where the inspector stated:

"Whilst town centre facilities, services and transport links would be nearby, access to these facilities by pedestrians would in the majority of cases be along the sub-standard footways of Waggs Road. The proposed road junction would fail to provide safe highway conditions"

As a result it is clear that the site is outside of those distances as recommended in the checklist and would likely result in future occupants relying on motor vehicles in which to reach local services and amenities. However it is noted that the planning inspector considered that "***facilities, services and transport links would be nearby***", suggesting that he considered the proximity of the site to be within acceptable levels.

Whilst the Council does not necessarily agree with this view given the distance of the site to services, the physical location of the site remains unchanged since the appeal decision, therefore it would be difficult to argue this point based on the comments of the Inspector.

Nevertheless locational sustainability is not the determinative factor in its own right but does weigh against the proposal in the overall planning balance.

ENVIRONMENTAL SUSTAINABILITY

Residential Amenity

The main residential properties affected by this development are properties to the east of the site on Waggs Road (124-102) & 17-7 Meadow Avenue, property to the south New Bank Farm and properties to the north 139-135 Waggs Road.

The nearest plot (plot 1) would be sited 38m to the front elevation of the nearest property to the front (No.139 Waggs Road). These distances are sufficient to prevent significant harm to living conditions.

The plots closest to 124-102 Waggs Road would be sited between 32-45m to main face rear elevations. Although plots 8,9 would be sited 13m to the rear boundary is No.124 Waggs Road which is considered sufficient to prevent significant harm through overlooking of the garden area. Whilst plot 53 would be sited 5m to the rear boundary of No.124 Waggs Road, use of planning conditions requiring side facing windows to be fitted with obscure glazing would prevent harm through overlooking/loss of privacy.

Plots 65-69 would be sited 13m to the side elevation of 17 Meadow Avenue. This distance would prevent significant harm to living conditions through overlooking. These plots would also be sited 10 to the boundary shared with No.17 Meadow Avenue which is also considered sufficient to prevent significant harm through overlooking of the garden areas.

Plots 73-85 would be sited between 38-44m between main face elevations which is considered sufficient to prevent significant harm to living conditions.

Plots 12-15 would be sited 24m to nearest buildings of New Bank Farm which is sufficient to prevent significant harm to living conditions.

Some of the internal separation distances are slightly shy of the recommended spacing distances, however these are only minor breaches which would be outweighed by the benefits of providing new housing and would also be a marketing consideration for future occupants.

It is noted that the majority of the proposed garden areas as in excess of the recommended minimum garden area of 65sqm. Whilst a limited number of plots are noted as being shy slightly of the recommended garden area, the mixed garden size reflects the mix of property sizes and does provide some level of private amenity space in which to undertake basic tasks such as hanging washing out etc and public open space is also provided on the site to off-set this shortfall.

Air Quality

Insufficient information has been submitted with the application, in order to adequately assess the impact of the proposed development having regard to Air Quality.

However as part of the refused application an Air Quality Assessment was provided and a number of conditions were requested to mitigate the impact of the proposal which would be added again should the application be approved.

Contaminated Land

As the application is for new residential properties which are a sensitive end use and could be affected by any contamination present a contaminated land condition will be attached to any approval.

Public Rights of Way

On consultation of the Definitive Map, the legal record of Public Rights of Way, the proposed development appears to be adjacent to a Public Right of Way, namely Footpath No. 6 in the parish of Congleton.

However it appears unlikely, that the proposal would affect the Public Right of Way, although the PROW have requested an informative be added to the decision notice should permission be approved.

Highways

Sustainable access

Although the site is located a considerable distance from the nearest bus services, the town centre and associated services and amenities are not too distant a walk from the site and on balance with suitable footway provision can be considered sustainable.

Safe and suitable access

The main highway concerns as noted in the Highways consultation response of the previous application 13/3764C were; access visibility, footway provision, and sub-standard carriageway widths.

The access visibility related to that of the proposed site access onto Fol Hollow. This has been improved on the previous application and now reflects the design speed of Fol Hollow. There are concerns of the knock on effect of this which has been a reduction of access visibility for properties across the road from the site access. The reduction in visibility to the property has not been provided by the applicant but an approximate measurement is 2m x 20m that is 50% of the visibility requirement at the access point.

The existing footway provision from the site to Congleton town centre is sub-standard on both sides of Waggs Road. It has been proposed to improve the footway on northern side by providing a 2m footway, approximately 300m east of the site for a distance of 145m.

The carriageway width, north of the site where the footway is being widened, has also been widened from around 4.5m to 5m for an approximate 30m stretch. Whilst this widening of the carriageway is welcomed, Waggs Rd is unsuitable to accommodate the additional traffic that would be generated from this development. While a 5m carriageway width is adequate to allow for a car and an HGV to pass each other, the practical width of the carriageway is reduced by the presence of a wall which sits alongside the eastern side of the carriageway edge. This reduces the carriageway width to a point where an HGV and car cannot safely pass each other.

Continuing north, the carriageway width reduces to 4.5m, with the wall continuing along the eastern edge of the carriageway. A car and HGV cannot pass each other at this point and although 2 cars could pass each other, they could only do so with extreme care and at very low speeds.

There is an approximate 100m length of carriageway which is not capable of accommodating opposing car and HGV movements, and an approximate 20m length of carriageway that is unsuitable for opposing car movements. Opposing vehicles would have no option but to either reverse along Waggs Road or mount the footway.

North of the proposed footway improvements on Waggs Rd the carriageway width remains narrow at around 4.2m to 4.5m and in addition on-street parking occurs, reducing the practical width of the carriageway.

As mentioned in the Highways consultation response of the previous application, Fol Hollow is no more than a single track in places with a very poor alignment and sharp bends and forward visibility is

limited. Fol Hollow at its narrowest point at bends, the carriageway width measures between 5.3m to 4.8m. There are no pedestrian footways and for much of its length has no street lighting and it also has a derestricted speed limit. Fol Hollow will also be the route used to access Congleton High School and the applicant has not assessed Fol Hollow in this application.

Conclusion

It is noted that as part of the dismissed appeal the inspector considered the access routes leading to local services/amenities were inadequate quoting:

“Whilst town centre facilities, services and transport links would be nearby, access to these facilities by pedestrians would in the majority of cases be along the sub-standard footways of Waggs Road. The proposed road junction would fail to provide safe highway conditions. A package of works to the highway sufficient to appropriately limit these impacts cannot be assured and in their absence, the detrimental effect of the development on the safety of highway users would I consider be severe.”

It is noted that the current application has attempted to address these concerns by proposing to widen a section of the footway on Waggs Road to the north-east of the site. However the visibility of an existing access opposite the proposed site access has been affected by the revised access plans and the visibility has been reduced to an unacceptable distance, rendering the access unsafe and unsuitable for the existing residents.

The reduced carriageway widths and on-street parking on Waggs Road and Fol Hollow are existing issues. However the inadequate infrastructure that provides access to the site is considered not to be of a satisfactory standard to support further major development proposals whose generated traffic will have a direct impact on both Waggs Road and Fol Hollow.

As a result it is not considered that the previous highway safety concerns have been adequately addressed.

Landscape

This is a full planning application for the development of a maximum of 104 residential dwellings. The application site is agricultural land and is located to the south of Congleton, along the southern part of Waggs Road. There are a number of existing residential dwellings along both sides of Waggs Road, some of these dwellings, along with a number along Meadow Avenue follow the northern boundary of the application site; a number of these dwellings also extend along Stony Lane, part of which forms the eastern boundary of the application site. Stony Lane (FP6), which follows a route from Waggs Road to the north, is on a roughly north-south alignment, meeting Lambert's Lane at a distance to the south of the application site. The western part of the application site's northern boundary extends up to Waggs Road and is characterised by a hedgerow boundary and the curved alignment of the road. The existing access to New Bank Farm forms the extent of the application site along this boundary.

The Congleton Borough Local Plan First Review (01/05) identifies that the application site is located within the Open Countryside (PS8), but that it has no landscape designations. The application site is currently agricultural land with native hedgerows along the northern boundary and a hedge and a number of trees along the southern boundary in proximity to New Bank Farm, and the remainder of the southern boundary being open. There is a hedgerow that divides the site along a north-south

alignment and there are a number of mature trees located near to the proposed access from Waggs Road.

The submitted Planning Statement, Location Plan (Drwg LP01) and the submitted Planning Layout drawing (BHWL223/01) show two large irregular extensions along the southern boundary. However Fig 1 of the LVIA identifies that the southern boundary as a continuous line running in an approximately east – west alignment, linking Stony Lane to the east with the New Bank Farm track to the west, incorporating a small dog leg section of hedgerow along this route. Figure 12 of the submitted LVIA (Landscape Framework Plan) identifies that tree planting in these two areas as offsite planting. The two submitted Planting Plans (LDS372-01/LDS372-02) show both areas as being outside the red line boundary, neither plan shows any tree planting in these areas.

The submitted LVIA indicates that the landscape quality is ordinary, that the landscape value of the site is moderate and that it is likely to have a moderate-substantial effect at year 1, reducing to a moderate effect by year 15, and that on the study area the landscape effect at year 1 will be slight-moderate, reducing to slight at year 15. While the LVIA makes a number of references to 'the study area' it is not clearly defined – apart from in para 6.4 which identifies it as the agricultural land and settlement associated with the southern edge of Congleton. A number of plans do have a dotted red circle – it is assumed that this is the study areas referred to. The visual assessment identifies 9 receptors, residential, pedestrian and vehicular, and offers a sensitivity for each (Table 2).

In terms of the landscape assessment, the Councils Landscape Officer broadly agrees with the assessment of quality and value, as well as the moderate substantial effect at year 1. Whist the Landscape Officer considers that the effect may reduce, this will be dependant on mitigation. Mitigation will be effective along the western part of the development along the boundary with Fol Follow/Waggs Road, as shown on Planting Plan I (LDS372-01), however the mitigation indicated along the southern boundary on the Landscape Framework Plan Fig 12 (LVIA) appears to be outside the red line boundary and there appears to be no mitigation or boundary planting along the boundary of plots 89-104, apart from a badger proof fence. The Landscape Officer has concerns regarding this part of the proposed development and feels that clarification is needed. However he would broadly agree with the study area and wider area assessments.

In terms of the visual assessment, while the landscape officers agrees with the sensitivity of the receptors, he does think that the visual effects will be more adverse for a number of receptors – notably 1,2, 3, 7. The landscape officer would also note that although viewpoint 3 has been taken from FP6, that there does seem to be some confusion over the exact route of FP6, some of which follows Stony Lane and some of which appear to follow the route of a slightly sunken ditch , before returning to Stony lane again. While views from some of the sunken parts of this route are difficult, this is not the case for the whole of the route, and the visual effects will be more adverse along part this route. The resolution over mitigation along the southern boundary, notably to the south of plots 89-104 will also determine the visual impact for users of Stony lane, further to the south from Viewpoint 3.

It was noted by the inspector at the previous appeal for this site (APP/R0660/A/14/22214018) that

“The appeal site lies within an area know as Priesty Fields that has survived largely unchanged for many centuries and forms part of the rural setting of Congleton. The construction of 104 dwellings on the site would fundamentally alter its appearance resulting in the loss of its rural and agricultural character. Protection of the natural and historic environment is part of the environmental role of the planning system as set out in paragraph 7 of the Framework. In simple terms the proposal would

conflict with this objective. That said, whilst suburban development would extend further along the northern end of Stony Lane, the proposed housing would be seen here in the context of existing housing in Meadow Avenue. From further south, down the slope and along Lambert's Lane the appeal site is largely concealed by the ridge of the hill. Gardens and planting would form the southern boundary of the site and where visible at all only glimpses of the houses would be seen. From Fol Hollow the enclosing banks, rising ground and vegetation would largely screen the buildings none of which would sit on the road frontage. The visual impact of the development on the wider landscape character would therefore be limited and the weight I give to harm in this respect is therefore modest.”(31)

The landscape officer would agree with the Inspector's comments that the proposed development would result in the loss of the site's rural and agricultural character, and that this would be seen in the context of existing dwellings along Waggs Road and Meadow Avenue, and also that in terms of the visual effects, the proposals would also be seen in the context of existing development, largely screened along Waggs Road/Fol Hollow by existing residential dwellings and along the western part of the application site by the rising ground and vegetation.

Consequently the landscape officer does not feel that the proposed development would result in long terms substantially adverse effects. The main concern is the proposed mitigation along the southern boundary, in the two areas identified as being offsite. Provision of offsite planting in these areas would reduce the landscape and visual effects of the proposed development in the longer term.

Trees

The original application (13/3764C) on this site was supported by an Arboricultural Impact Assessment (AIA) dated July 2013 by Ascerta Consulting Ltd'. There appears to be an absence of such a document as part of this submission with the only Arboricultural detail supplied relating to trees associated with Waggs Road.

The AIA supporting the proposed highway improvements dated June 2016 identifies the removal and loss of two individual trees four groups and part of three other groups; it is also noted that in the absence of suitable controls, the proposed works may well have an indirect impact on a number of trees adjacent to the working area. The trees identified for removal have been categorised as moderate and low value specimens (B –C). The Councils Arborist concurs with these designations; implementation of a Tree Preservation Order individually or collectively is not considered appropriate.

The proposed development layout in respect of the two TPO'd trees broadly corresponds with the original application 13/3764C, accordingly the comments made previously and detailed below are still applicable.

The new access including the graded banking has been positioned to respect the Root Protection Area (RPA) of T1, allowing the access road to be constructed to an adoptable standard. The proposed driveway which serves Plots 1 and 2 extends through the RPA's of both T1 and T2. Highways have advised that as the driveway would be private, as we do not normally adopt such cul-de-sacs serving 5 or less properties, and providing we are satisfied that the junction with the spine road is safe, and the construction of the access is not likely to be such that any inherent weakness would migrate to affect the highway, therefore no concerns over the form of construction. It is accepted that ground levels and conditions are considered suitable to a “no dig” construction technique allowing implementation as presented whilst retaining both trees. This type of construction will require

additional details in the form of a suitable Construction Method Statement, but can be address by conditions if highways are still accepting of a non adoptable construction standard.

The proposed development in terms of build footprints respects the RPA's associated with both T1 and T2. A limited amount of selective pruning is anticipated but this will not detract from their natural shape and form or contribution to the immediate area or the wider landscape. It appears T1 will be located within an area of POS with T2 forming part of a private garden. Whilst it is not anticipated that there will be any significant issues post development in terms of light and nuisance, the formal protection afforded to the trees enables their presence to be defended.

In order to gain access to the site and facilitate the designed road layout a number of short sections of hedgerow require removal from, no details have been provided in terms of informing if they are considered to be important in respect of the 1997 Hedgerow Regulation. Where those hedges which form the boundary with both an existing dwelling house and a constructed property should the development proceed regulations do not or would not apply.

The southern boundary of the site supports a number of individual and groups of trees located both on site and on adjacent land. No direct impact in terms of construction is anticipated with a reasonable offset achieved in terms of RPA's utilisable garden space and rear elevations.

Should the application be approved the Councils Arborist recommends conditions regarding no dig construction for the driveway near T1 and T2, tree protection Measures and tree pruning/felling specification.

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.”

This application seeks full planning permission for 104 dwellings, therefore full details of layout and design form part of the application.

Access to the site would be taken from Waggs Road adjacent to number 124; it would then branch off to the east and west with narrower, shared surface mews streets and spaces. The layout contains a series of linked landscape squares and spaces to punctuate the route and provide focal points and destinations, including the Local Area of Play. The majority of the trees and hedgerows will be retained within the site.

The dwellings would be of varying designs with a mixture of finishes including brick and render. They would all be two storey, many with gable features to the front. The finishes would vary from a combination of brick and render with timber detailing, solely render and solely brick finish all with grey roof tiles, which it is considered would provide a varied and interesting streetscene.

A mixture of detached, semi-detached and mews style properties are proposed and these would be distributed throughout the site, in order to provide a varied appearance to the street scene. It is considered that these would be in keeping with the character of the surrounding development and would create an attractive form of built environment.

The density of development is 28.65 dwellings per hectare, which is a similar density to the nearby Marsh Farm development. The density in the local area varies from some properties set in large plots on Waggs Road, to a mixture of large and small plots on Meadow Avenue and smaller plots on Fields Crescent. It is considered that whilst the development would not contain large plots such as those on Waggs Road, it would reflect the urban grain of the wider area.

The position of the proposed habitat protection areas softens the edge to the open countryside, and as shown on the layout, would be well overlooked by some of the proposed units.

On this basis, it is considered that an appropriate design has been submitted, which will sit comfortably alongside the mix of existing development within the area. The proposal is therefore considered to be in compliance with Policy GR2 of the adopted local plan.

Ecology

Habitats

The grassland habitats on site are unlikely to qualify as a Local Wildlife Site. The Councils Ecologist advises that the habitats on site are of low value and do not present a significant constraint upon development. The development proposals however may still result in an overall loss of biodiversity. It is therefore recommended the applicant undertakes and submits an assessment of the residual ecological impacts of the proposed development using the Defra 'metric' methodology.

An assessment of this type would both quantify the residual ecological impacts of the development and calculate in 'units' the level of financial contribution which would be required to 'offset' the impacts of the development to enable the total ecological impacts of the development to be fully addressed in a robust and objective manner. Any commuted sum provided would be used to fund habitat creation/enhancement works of site.

Great Crested Newts

The ponds located in close proximity to the proposed development are not reasonable likely to support this protected species, therefore no further action in respect of this species is required.

Common Toad

Common toad a UK Biodiversity Action Plan priority species has been recorded at Astbury Mere. The Councils Ecologist advises that the proposed development is unlikely to have a significant impact on the local conservation status of this species.

Bats

A tree on site has been identified as having bat roosting potential. The submitted illustrative layout shows this tree as being retained. If planning consent is granted a condition would be required to retention this tree.

Badgers

A badger sett has been recorded immediately adjacent to the proposed development. The previously submitted badger survey recommends the provision of a 30m undeveloped buffer around the sett. This recommendation has been incorporated into the indicative layout which shows open space provision in the vicinity of the sett. I advise that the proposed development will result in the loss of some foraging habitat utilised by badgers. This is however not likely to be critical to the local badger population.

The status of badgers on a site can change. Therefore in the event that planning permission is granted it is recommended that a condition be attached requiring an updated badger survey and mitigation strategy to be submitted prior to the commencement of development.

Breeding Birds

A number of Biodiversity Action Plan priority bird species have been recorded within 1km of the application site. The previously submitted ecological assessment states that these species are likely to occur on the application site and utilise the hedgerows and scattered trees present. Much of the hedgerows and trees on site are retained as part of the submitted layout and a new native species hedgerow is proposed which would at least partially mitigate the impacts of the development upon breeding birds. If planning permission is granted it is recommended that a condition be attached regarding a detailed birds survey and incorporation of features for breeding birds.

Flood Risk

The application site falls within a Flood Zone 1 and is over 1 hectare in size therefore a Flood Risk Assessment (FRA) is required.

Campbell Reith were appointed to prepare a Flood Risk Statement and Preliminary Drainage Appraisal to assess the risk of flooding both to and from the site and to support the forthcoming Planning Application. A Preliminary SW Drainage Strategy has been formulated for the Site which demonstrates that run-off from the Site can be managed in a sustainable manner and post-development discharge rates can be controlled so as not to exceed existing run-off rates agreed with the Environment Agency and Lead Local Flood Authority (LLFA) .

United Utilities have considered the report and raised no objections subject to the imposition of appropriate planning conditions.

The Environment Agency have not provided any comments however they did comment on the previous application and offered no objection to the proposal, but stated that the discharge of surface water should, wherever practicable, be by Sustainable Drainage Systems (Suds). Suds, in the form of grassy swales, detention ponds, soakaways, permeable paving etc can help to reduce the discharge rate. Given that the site location, number and positioning of dwellings remains as per the previous application that these comments remain valid.

At the time of writing the report no comments have been received from the Councils Flood Risk Team, therefore these will be provided either in the update report or at the committee meeting itself.

Subject to the response from the Flood Risk Team it would appear that any flood risk/drainage issues, would be suitably addressed by planning conditions.

Agricultural Land Quality

It is noted that Policy NR8 (Agricultural Land) of the Congleton Borough Local Plan has not been saved. However, 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.

In this instance, an Agricultural Land Use and Land Classification Report has been submitted. This report found the site is not graded in the 1 to 5 category, excellent to very poor and as such is not classed as being the 'best and most versatile agricultural land' defined in the NPPF.

Thus, whilst the proposal would result in the loss of a small quantity of Grade 3 agricultural land, the loss would not be 'significant' and would not outweigh the benefits that would come from delivering housing.

ECONOMIC SUSTAINABILITY

With regard to the economic role of sustainable development, the proposed development will help to maintain a flexible and responsive supply of land for housing as well as bringing direct and indirect economic benefits to Congleton including additional trade for local shops and businesses, jobs in construction and economic benefits to the construction industry supply chain.

CIL Regulations

In order to comply with the Community Infrastructure Regulations 2010 it is necessary for planning applications with planning obligations to consider the issue of whether the requirements within the S106 satisfy the following:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

As explained within the main report, POS and play equipment is a requirement of the Local Plan Policy RT.3. It is necessary to secure these works and a scheme of management for the open space and play equipment. This contribution is directly related to the development and is fair and reasonable.

The development would result in increased demand for school places in the area and there is very limited spare capacity. In order to increase capacity of the schools which would support the proposed development, a contribution towards secondary school education is required. This is considered to be necessary and fair and reasonable in relation to the development.

The proposal would result in a requirement for the provision of 31 affordable units which would be split on a social rented/intermediate basis. This is considered to be necessary and fair and reasonable in relation to the development.

On this basis any S106 requirements (if approved or subject to appeal) would be compliant with the CIL Regulations 2010.

PLANNING BALANCE

The proposed development would be contrary to Policy PS8 & H6 and the development would result in a loss of open countryside. However, Paragraph 49 of the NPPF 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 and that where this is the case housing applications should be considered in the context of the presumption in favour of sustainable development.

It is therefore necessary to consider whether the proposal constitutes “sustainable development” in order to establish whether it benefits from the presumption under paragraph 14 by evaluating the three aspects of sustainable development described by the framework (economic, social and environmental).

The development would provide benefits in terms of affordable housing provision, delivery of housing, POS, a play area and economic benefits through the usual economic benefits during construction and through the spending of future occupiers.

The development would have a neutral impact upon education, protected species/ecology, flooding, living conditions, landscape, trees, design and contaminated land.

The adverse impacts of the development would be the loss of open countryside and the severe impacts to highway safety.

Whilst locational sustainability is not a determining factor in its own right this is considered to weigh against the proposal in the overall planning balance. Given the distance of the site to local services/amenities future occupants would have no option but to utilise the substandard access routes in order to reach these services/amenities. Whilst the Council actively encourage walking rather than use of motor vehicle, it does not encourage the use of unsafe pedestrian routes. The previous concerns over the dismissed appeal have not therefore been resolved.

As a result the development is clearly contrary to open countryside policies yet as it stands these are considered out of date. So the presumption in favour of sustainable development applies. However, with reference to the Richborough Court of Appeal weight can be given to those policies.

There is now a solution to the housing supply in hand through the forthcoming adoption of the Local Plan. As a consequence of the Inspectors most recent comments in December increased weight can be afforded to these ‘out of date’ policies. In addition given the progression of emerging policies towards adoption it is considered that greater weight can now be given to those emerging policies. A further factor that weighs against the scheme is the scale and location of the development which extends further away from the village settlement.

Therefore taking a balance of the overall benefits, the current policy position and the scale of harm it is considered that the presumption in favour is outweighed in this case and a recommendation of refusal is made.

RECOMMENDATION:

REFUSE

- 1) **The proposed residential development is unsustainable because it is located within the Open Countryside contrary to Policies PS8 (Open Countryside), GR1 (New Development), GR2 (Design), H6 (Residential Development in the Open Countryside and the Green Belt) of the Congleton Local Plan, Policies PG5 (Open Countryside) and SD1 (Sustainable Development in Cheshire East) of the emerging Cheshire East Local Plan Strategy and the principles of the National Planning Policy Framework, which seek to ensure development is directed to the right location and open countryside is protected from inappropriate development and maintained for future generations enjoyment and use. As such it creates harm to interests of acknowledged importance. Consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan.**

- 2) **The visibility of an existing access opposite the proposed site access has been affected by the revised access plans and the visibility has been reduced to an unacceptable distance, rendering the access unsafe and unsuitable for the existing residents. The reduced carriageway widths and on-street parking on Waggs Road and Fol Hollow are existing issues. However the inadequate infrastructure that provides access to the site is considered not to be of a satisfactory standard to support further major development proposals whose generated traffic will have a direct impact on both Waggs Road and Fol Hollow. As a result the development would have a severe adverse impact on Waggs Road and Fol Hollow, due to the sub-standard nature of these two highway routes. This severe adverse impact would significantly and demonstrably outweigh the benefits of the scheme namely housing land supply. The development is therefore contrary to Policies GR1 (New Development), GR2 (Design), GR3, GR7, GR9 (New Development), GR10 and GR18 (Traffic Generation) of the adopted Congleton Borough Local Plan, Policies SD1 (Sustainable Development in Cheshire East), SD2 (Sustainable Development Principles), SC3 (Health and Well-being), C01 (Sustainable Travel and Transport) of the Emerging Cheshire East Local Plan and the requirements 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 Planning (Regulation) in consultation with the Chair (or in her absence the Vice Chair) of Southern Planning Committee, 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:

1. **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 LAP.
- 3. Primary and Secondary School and SEN Education Contribution of £513,063

