

## Southern Planning Committee 26<sup>th</sup> April 2017

### UPDATE TO AGENDA

#### **APPLICATION No.**

**17/0145N** – Proposed housing development (21 homes), children's play area, nature reserve, access and external works

#### **LOCATION**

Land Off, Newtown Road, Sound, Nantwich, Cheshire

#### **UPDATE PREPARED**

24th April 2017

#### **CONSULTATIONS**

**Natural England** - Advise insufficient information has been received in order to demonstrate that the development would not have a detrimental impact upon the Sound SSSI

**Sound and District Parish Council** - Object to the proposed development on the following grounds

- 1. Both accesses to the houses are on to very narrow roads, where two cars passing is difficult and such extra traffic will make this situation dangerous and unworkable*
- 2. The area of Sound has very limited facilities and such a large application is completely unsustainable.*
- 3. An application for 21 houses is completely overbearing on the surrounding area and the percentage increase on existing properties is overwhelming with the scale of the proposed development not in keeping with existing dwellings.*
- 4. The increase generated in sewage from this number of properties allays great concern in the capability of the current infrastructure to adequately deal with this.*
- 5. The Parish Council are very concerned over the very close proximity of the area of SSSI and the impact this could have on this sensitive area.*
- 6. Children's Play Area – concern was expressed over the close proximity to existing houses, and also the creation of a pond in the same area of the site which will be hazard to both children and wildlife.*

#### **REPRESENTATIONS**

The re-consultation period in response to the updated plans received expired on the 20th April 2017. Following the drafting of the Council's Committee Report, 21 further letters of representation have been received. In addition to the issues already referred to in the Committee Report, the following further concerns have been raised.

- Insufficient / inappropriate affordable housing provision
- Concerns about proposed planting plans
- Insufficient information in order to adequately assess the impact of the proposals e.g. borehole studies undertaken, SSSI impacts
- Procedural matters - Still inaccuracies within the submitted statement/s, plans

## **APPRAISAL**

### **Sustainability - Environmental role (Updated from main report)**

#### Ecology

##### *Sound Common SSSI/Local Nature reserve*

The application site falls within Natural England's SSSI impact risk zone (Sound Common) for rural residential development of over 10 units.

In response, Natural England advised that insufficient information had been submitted in order to effectively assess the impact of the proposal upon the SSSI. More specifically, there was insufficient information in relation to; Hydrological investigations and homeowner packs.

In response, further information was provided by way of homeowners packs, but not hydrological investigations.

Natural England have subsequently advised that insufficient information has been received to effectively assess the impact of the development upon the SSSI. More specifically in relation to the hydrological investigation of the spring requested and its connectivity with the local groundwater and the predicted impacts of the developments on the spring.

##### *Woodland*

There is an area of woodland within the application site which appears on the UK BAP inventory of priority habitats. Habitats of this type are a material consideration during the determination of this application. The woodland on site which forms part of a larger woodland network is also likely to meet the criteria for selection as a Local Wildlife Site. This woodland is also subject to a Tree Preservation order (TPO).

Under the revised proposals, much of the existing woodland would be retained as part of the proposed development. There would still however, be a loss of

roughly one third of this woodland and in addition no buffer is provided between the retained area of the woodland and the proposed development.

The Council's Nature Conservation Officer has advised that the loss of this area of priority habitat would have an adverse impact upon biodiversity.

#### *Great Crested Newts*

A small population of great crested newts has been identified at ponds within 250 metres of the proposed development and a great crested newt was observed on site during the reptile survey.

In the absence of mitigation the proposed development would have an adverse impact on this protected species as a result of the loss of terrestrial habitat and the risk of animals being killed or injured during the construction phase.

#### *EC Habitats Directive*

##### *Conservation of Habitats and Species Regulations 2010*

##### *ODPM Circular 06/2005*

The UK implemented the EC Directive in the Conservation (natural habitats etc) regulations which contain two layers of protection:

- A licensing system administered by Natural England which repeats the above tests
- A requirement on local planning authorities ("Ipas") to have regard to the directive's requirements.

The Habitat Regulations 2010 require local authorities to have regard to three tests when considering applications that affect a European Protected Species. In broad terms the tests are that:

- The proposed development is in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment
- There is no satisfactory alternative
- There is no detriment to the maintenance of the species population at favourable conservation status in its natural range.

Current case law instructs that if it is considered clear or very likely that the requirements of the directive cannot be met because there is a satisfactory alternative, or because there are no conceivable "other imperative reasons of overriding public interest", then planning permission should be refused. Conversely, if it seems that the requirements are likely to be met, then there would be no impediment to planning permission be granted. If it is unclear whether the requirements would be met or not, a balanced view taking into account the particular circumstances of the application should be taken.

#### *Overriding Public Interest*

The provision of mitigation would assist with the continued presence of Great Crested Newts.

### *Alternatives*

There is an alternative scenario that needs to be assessed, this are:

- No Development On The Site

Without any development, specialist mitigation for Great Crested Newts would not be provided which would be of benefit to the species.

To mitigate the risk that great crested newts would be killed or injured during the construction phase, the applicant is proposing to remove and exclude newts from the footprint of the proposed development using standard best practice methodologies under the terms of a Natural England license.

To compensate for the loss of terrestrial habitat to the scheme a new pond, an area of wildflower grassland and hibernacula is proposed. The Council's Nature Conservation Officer advises that the proposed additional ponds will be of benefit for great crested newts.

Footpaths are however currently proposed through the great crested newt mitigation area and this area also appears to be proposed for use as an amenity/play area. The Council's Nature Conservation Officer advises that public access into this area would significantly increase the risk of interference with ponds, including the introduction of undesirable fish and the spread non-native plant species which is already present in this broad locality. The effects of this would potentially significantly reduce the viability of the pond as great crested newt habitat.

### *Grass snakes*

Grass snakes were recorded as being present on site. The Nature's Conservation Officer advises that insufficient information is available to asses the significant of the population present, however it does appear that there is a good population of this species in Sound. The Council's Nature Conservation Officer advises that the proposed development would result in the loss of an area of suitable habitat for this species and also pose the risk of killing or injuring any animals present. The submitted ecological report includes an outline mitigation method statement to address the potential impacts of the proposed development upon this species. The Council's Nature Conservation Officer advises that this is acceptable.

If planning consent is granted, the Council's Nature Conservation Officer has advised that a condition is required to secure the submission of a detailed reptile mitigation method statement prior to the commencement of development.

### *Hedgerows*

Hedgerows are a priority habitat and hence a material consideration. The proposed development will result in the loss of a number of sections of hedgerow to facilitate the site access. Additional native species hedgerows are proposed as part of the landscaping scheme for the site.

#### *Nesting Birds*

In the event that planning permission is granted, the Council's Nature Conservation Officer has advised that standard conditions will be required to safeguard nesting birds.

#### *Habitat management plan*

If planning consent is granted, the Council's Nature Conservation Officer recommends that the submission and implementation of a habitat management plan be secured as part of the permission. Management should be undertaken in perpetuity.

#### *Assessment of residual loss of biodiversity*

The Council's Nature Conservation Officer advises that the habitats on site (with the exception of the woodland and hedgerows and their potential to support protected/priority species as discussed above), are of low value and do not present a significant constraint upon development.

The Council's Nature Conservation Officer has advised that the loss of these habitats however, may still result in an overall loss of biodiversity. The applicants ecological consultant has recommended that an assessment of the residual ecological impacts of the proposed development be undertaken 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 locally, possible within Sound Common Local Nature Reserve.

However, the Council's Nature Conservation Officer has recommended that such an assessment be undertaken prior to the grant of planning permission. This work has not yet been done.

#### Environmental Conclusion

The proposal would result in the loss of a parcel of countryside and would have an adverse impact upon the visual character of the area. There would also be a loss of Best and Most Versatile (BMV) agricultural land.

The proposed development would also result in a number of ecological issues including; the loss of this area of priority habitat (woodland) which would have an adverse impact upon biodiversity. The proposed great crested new mitigation would potentially be unviable due to public access passing through the mitigation area. Furthermore, insufficient information has been provided to effectively demonstrate the residual loss of biodiversity and subsequently any mitigated sum to offset this impact. Insufficient information has also been received in relation to the potential impact upon the SSSI and Local Nature Reserve.

Other environmental considerations such as; highway safety, design, flooding and drainage are considered to be acceptable or neutral subject to conditions / mitigation. The application site is considered to be a sustainable location.

However, it is considered that the environmental impacts created would result in the development being environmentally un-sustainable.

### **Other Matters**

Since the drafting of the committee report, a further 21 letters of objection have been received. The vast majority of the issues raised within these representations either repeat or re-affirm the concerns raised by objectors in relation to matters that were considered as part of the original committee report, or relate to matters addressed within this update.

### **Planning Balance / Conclusion**

The proposed development sought would be contrary to Policy NE.2 and the development would result in a loss of Open Countryside. However as Cheshire East cannot demonstrate a 5 year supply of deliverable housing sites then the presumption in favour of sustainable development applies at paragraph 14. LPA's should grant permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits from it, when assessed against the Framework as a whole; or specific policies in the Framework indicate development should be restricted.

The benefits in this case are:

- The development would help in the Council's delivery of 5-year housing land supply.
- The development would provide economic benefits through the provision of employment during the construction phase, new homes and benefits for local businesses in the area

The development would have a neutral impact upon the following subject to mitigation:

- The impact upon education infrastructure would be neutral as the additional impact would be mitigated by the provision of a commuted sum

The adverse impacts of the development would be:

- The loss of Open Countryside
- The isolated location of the proposed dwellings
- Insufficient information has been provided to demonstrate that the land to be lost to development would not be 'Best and Most Versatile' (Grades 1, 2 or 3a). As such, it is considered that the proposed development would be contrary to the NPPF.
- The on-site Children's play space provision is both un-functional and is positioned in a location where natural surveillance is limited
- The proposed affordable housing provision does not meet local need with regards to the bedroom numbers provided and the form of dwellings not being suitable for the elderly
- The loss of and impact upon protected trees
- The density, layout and appearance of the development (design)
- Insufficient information has been provided to demonstrate that safe and suitable access can be provided to and from the site
- The loss of this area of priority habitat (woodland) which would have an adverse impact upon biodiversity
- The proposed great crested newt mitigation would potentially be unviable due to public access passing through the mitigation area.
- Insufficient information has been provided to effectively demonstrate the residual loss of biodiversity and subsequently any mitigated sum to offset this impact
- Insufficient information has also been received in relation to the potential impact upon the SSSI and Local Nature Reserve

The development is contrary to both the Borough of Crewe and Nantwich Local Plan and the emerging Cheshire East Local Plan Strategy with regards to Open Countryside policies. However, these policies are considered to be out of date, a presumption in favour 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. Further factors that weigh against the scheme are detailed above.

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 for the following reasons;**

- 1. The proposed residential development is unacceptable because it is located within the Open Countryside, contrary to Policies; NE.2 (Open**

Countryside) and RES.5 (Housing in Open Countryside) of the Borough of Crewe and Nantwich Adopted Replacement Local Plan 2011; Policy PG5 (Open Countryside) of the emerging Cheshire East Local Plan Strategy and the principles of the National Planning Policy Framework and create 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 proposal would be contrary to the spatial strategy for the future development of the Borough due to the scale of the proposed development having regard to Policies PG2 (Settlement Hierarchy) and PG6 (Spatial Distribution of Development) in the emerging Cheshire East Local Plan Strategy Version
3. Insufficient information has been provided to demonstrate that the land to be lost to development would not be 'Best and Most Versatile' (Grades 1, 2 or 3a). As such, it is considered that the proposed development would be contrary to Policy NE12 (Agricultural Land Quality) of the Borough of Crewe and Nantwich Adopted Replacement Local Plan, Policy SE2 (Efficient Use of Land) of the emerging Cheshire East Local Plan, and the NPPF.
4. The proposed development would result in the unacceptable loss of protected trees, a threat to protected trees and would create amenity concerns resulting in future pressures to fell protected trees due to the social proximity of the proposed dwellings to protected trees. The application is therefore considered to be contrary to Policies NE.5 (Nature Conservation), BE.1 (Amenity) and BE.2 (Design Standards) of the Borough of Crewe and Nantwich Adopted Replacement Local Plan First Review 2011, Policy SE.5 (Trees, Hedgerows and Woodland) of the emerging Cheshire East Local Plan Strategy (CELP) and the NPPF.
5. The proposed development by reason of its high density, urban design and layout would be harmful to the character and appearance of this rural area. As a result the proposed development would be contrary to Policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Adopted Replacement Local Plan, Policy SE.1 (Design) of the emerging Cheshire East Local Plan Strategy (CELP) and the NPPF.
6. Insufficient information has been provided to demonstrate that safe and suitable access will be provided. As such, it is considered that the proposed development would be contrary to Policy BE.3 (Access and Parking) of the Borough of Crewe and Nantwich Adopted Replacement Local Plan, Policy SD1 (Sustainable Development in Cheshire East) of the emerging Cheshire East Local Plan, and the NPPF.
7. Insufficient information has been provided to demonstrate that the policy required affordable housing provision required to account for local need triggered by the application proposal shall be provided. Furthermore, the proposed 2-bedroom units would not be suitable for

the elderly where the need for 2-bedroom property lies. The development would therefore be contrary to Policy SC5 (Affordable Homes) of the emerging Cheshire East Local Plan Strategy.

8. The location and design of the proposed open space will result in a provision that would create both functional and natural surveillance issues with regards to the included Children's Play Space. The development is therefore considered to be contrary to Policy RT.3 (Provision of Recreational Open Space and Children's Playspace in New Housing Developments) of the Borough of Crewe and Nantwich Adopted Replacement Local Plan and Policy SC3 (Health and Well-being) of the emerging Cheshire East Local Plan Strategy.
9. The proposed development would result in the loss of an area of priority habitat (woodland) which would have an adverse impact upon biodiversity. In addition, the proposed great crested newt mitigation is considered to be unacceptable resulting in a detrimental impact upon protected species. Furthermore, the application fails to provide sufficient information to effectively assess the impact of the development upon a Local Nature Reserve. As such, it is considered that the proposed development would be contrary to Policies NR2 (Wildlife and Conservation – Statutory Statutory Sites), NR3 (Wildlife and Conservation – Habitats) and NR4 (Wildlife and Conservation – Non-Statutory Sites) of the Congleton Borough Local Plan First Review 2005, Policy SE3 (Biodiversity and Geodiversity) of the emerging Cheshire East Local Plan Strategy and the NPPF.
10. The application fails to provide sufficient information to effectively assess the impact of the development upon the Sound Common SSSI in accordance with Policy NR2 (Wildlife and Conservation – Statutory Sites) of the Congleton Borough Local Plan First Review 2005, Policy SE3 (Biodiversity and Geodiversity) of the emerging Cheshire East Local Plan Strategy and the NPPF.

In order to give proper effect to the 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 his 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.
2. A management plan for the maintenance of the on-site Open Space and Children's Play facility by either a private management company or the Council for a fee to be agreed.

- 3. £57,578 towards secondary school provision (£49,028) and school transport (£8,550)**
- 4. Biodiversity Offsetting Contribution (amount to be confirmed)**