

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD – UPDATE REPORT

Planning Reference No:	10/12608C
Application Address:	Land East of Marriot Road, Anvil Close, Forge Fields and South of Hind Heath Road, Sandbach
Proposal:	Erection of up to 269 dwellings, provision of public open space, highway works and associated works.
Applicant:	Richborough Estates
Application Type:	Outline
Grid Reference:	374493 359551
Ward:	Sandbach
Consultation Expiry Date:	16 th September 2010
Date for determination:	4 th November 2010

ADDITIONAL INFORMATION

Letter From Agent & Counsel's Opinion

The Applicant has obtained Counsels' opinion in respect of the Council's Interim Policy. The main points contained within that advice are as follows.

- If the Council were to place any reliance on the Interim Policy document it would undoubtedly be in direct conflict with national policy. The Client and all other interested parties have a legitimate expectation that the Council will follow the key elements of national planning policy. Through the use of this document, the Council is very obviously seeking to circumvent the relevant procedures.
- National policy requires that the approach to be adopted by the Council in managing the release of land for housing should set out in local (Development Plan Documents) DPD (paragraph 61 PPS3). There are very important procedures to be followed in respect of the production of local DPD, which are set out in detail in PPS12.
- The Interim Policy document is very obviously a document which seeks to manage the release of land for housing in the Borough. It has not been through the procedure required of a DPD. Indeed it appears to have been through no procedure at all.
- In paragraph 2.15 of the Interim Policy document reference is made to work undertaken on developing the 'Crewe Vision'. But all this appears to relate to is a draft economic strategy document, upon which there also appears to have been no consultation.

- In seeking to manage the release of land for housing in the Borough by means other than a local DPD, the Interim Policy document is in complete and direct conflict with national planning policy.
- Any decision by the Council to adopt the Interim Policy document should be subject to a Judicial Review if the Applicant feels their interests have been prejudiced.
- Any planning permission granted by the Council in which reliance is placed on the Interim Policy document should also be the subject of a Judicial Review, until such time as the matter is resolved. It is not reasonable to place reliance on such a document.
- Although it has not done so thus far, the Council may try to argue that the document is a Supplementary Planning Document (SPD). As made abundantly clear in paragraph 6.1, SPDs should not be prepared with the aim of avoiding the need for examination of the policy. As decisions on managing the release of land are a fundamental part of the Development Plan, the objective of the Interim Policy document most certainly should be the subject to independent examination.
- Even if the Council tried to argue the Interim Policy document should be viewed as an SPD, in my opinion it is nothing of the kind. It has not been through any of the consultation or sustainability appraisal work that would be necessary to afford the document even this status.
- The Interim Policy document reminds me of the various Interim Planning Policy Statements ("IPPS") introduced by Council's throughout the North West in the period after the publication of PPS3 in March 2000. These IPPS sought to prevent the release of housing in each borough and district, no matter how appropriate the site. These were given very little weight by Planning Inspectors. What the Inspectors focused on instead was the weight to be given the RSS, which has now been abolished. Furthermore, both PPG3 and PPG12 have been replaced by documents which are radically different. The current version of PPS12 in particular makes clear that the adoption of such draft Interim Policy statements is completely inappropriate.
- The changes in national policy, especially PPS12, were a product, in part of the obvious concern over the inappropriateness of the use of the IPPS documents by local planning authorities in the North West.
- The very clear contents of PPS12 make the adoption of a document such as the Interim Policy very susceptible to a successful Judicial Review. Both the intention to rely upon it as a material consideration in the determination of planning applications, and the suggestion that it should be given significant weight are amenable to such a Review.

OFFICER COMMENT

It needs to be made clear that the Interim Policy is neither a Development Plan Document nor A Supplementary Planning Document. As such it enjoys limited weight and must not be afforded any status akin to those documents

Paragraph 64 of PPS 12 cautions against the use of such interim statements as an SPD is the preferred route in such circumstances. However this route is not open to the Council at present since the current development plans do not provide a planning framework for the whole Borough. This is especially so with the unexpected demise of the Regional Spatial Strategy which PPS12 never envisaged. It is recognised in the preceding paragraph that County Councils *may* provide such guidance to “facilitate development” where this encompasses a number of districts. This situation is not unlike that faced by the Unitary Authority and its inheritance of three district plans.

The thrust of PPS12 is that Councils should promote a spatial vision for their area and that a plan led approach is a means of achieving that. This is the approach which the Interim Statement expounds. However the detailed guidance clearly envisages that this would be achieved via policies within a DPD or SPD.

In our view the advice of PPS12, which addresses a system of Development Plans that has been severely modified, must be set against other relevant guidance. In particular PPS 3 ‘Housing’ requires that Councils must maintain a flexible and responsive supply of land. In doing so it is anticipated that this is done in a planned and managed way.

Whilst the Interim Policy as a stand alone document has limited weight, it reflects the Spatial priorities for Cheshire East as they exist at present – and that the arguments in favour of development in Crewe are well founded and clearly derived from within the evidence base of the Core Strategy.

The Committee should therefore be careful not to attribute undue weight to the draft policy. To reflect this it is recommended that the wording of reason for refusal 1 be amended to ensure appropriate weight is given to the Interim Policy

E-mail from Agent

An e-mail has been received from the applicants Agent making the following points:

- In the analysis you have attributed a 50 unit per annum requirement to Sandbach based on 1150 and the former distributions under Policy H2 our calculations are that this would give an annual requirement of 75 units - (25% of 300) ...

- On affordable housing - to be clear we would provide the revised tenure split referenced in the report if permission were granted by the Authority - we reserved the right to revert to the original mix if not....
- We obviously dispute various aspects of your interpretation of National Planning Policy Guidance, your stated position on housing land supply (quantum and the distribution of the requirement within Cheshire East) and your stated justifications (spatial strategy) for rejecting this scale of development at Hind Heath Road.
- If the authority were minded to grant planning permission the applicant would be willing to increase the percentage of affordable housing being offered.

OFFICER COMMENT

- Whilst the applicant's comments are noted, they are not considered to be of sufficient magnitude to outweigh the presumption against new residential development within the Open Countryside

RECOMMENDATION

That the first Reason for Refusal be amended to read:

- 1. The proposed residential development within the open countryside would be contrary to the provisions of Policies PS8 and H6 of the adopted Congleton Borough Local Plan First Review. Whilst it is acknowledged that the Council does not currently have a five year housing land supply and that, accordingly, in the light of the advice contained in PPS3 it should consider favourably suitable planning applications for housing, the current proposal is not considered to be "suitable" as it is located on the periphery of Sandbach, rather than Crewe. It would undermine the spatial vision for the area and wider policy objectives as it would be contrary to the general thrust of the Core Strategy Issues and Options which directs the majority of new development towards Crewe, as well as the Council's Draft Interim Planning Policy on the Release of Housing Land, which articulates the same spatial vision. This would be contrary to advice in PPS.3 and PPS1, which states these emerging policies are material considerations. For these reasons the Housing Land Supply arguments advanced by the applicants are considered to be insufficient to outweigh the general presumption against new residential development within the Open Countryside as set out in the adopted development plan.**

STRATEGIC PLANNING BOARD 27 OCTOBER 2010

UPDATE TO AGENDA

APPLICATION NO: 10/1323M

LOCATION: LAND NORTH OF BOLLINGTON LANE AND
WEST OF, CONGLETON ROAD, NETHER
ALDERLEY, MACCLESFIELD

UPDATE PREPARED 25 October 2010

REPRESENTATION FROM THE APPLICANT

A letter has been received from the new Agent, Mr Holmes, representing the Applicant which seeks to advise upon the reasons why the Applicant considers the proposal should be granted permission and the circumstances surrounding the Applicant's move to Somerford Booths in 2006, as a Landscaping Design Company.

The Agent considers that the failure of the applicant to make a material start of the original Matthews scheme to not be relevant to this determination. He considers this application should be determined on its merits

The Agent confirms that the Landscaping element of the Matthews business moved to Somerford Booths and the Garden Centre element of the Matthews operation was put into abeyance until the Applicant was ready to occupy the current application site. No clarification is given about when the applicant will be ready to occupy the site.

The Agent further states that there is no agreement between the Applicant and Dobbies and the Agent considers that speculation relating to the Dobbies application is not relevant to this application.

The very special circumstances are cited as being the same as previously considered in 03/3214P, and the operation from Somerford Booths is a short term expediency. The moved to Somerford is not considered by the Agent to materially change the applicants' circumstances. He considers that the special circumstances that justified the original permission still apply and that the net impact upon openness in the green belt remains. The applicant would be willing to accept a S106 Agreement to link the closure of the low key Landscape Design business at Somerford Booths to any permission at Nether Alderley.

With respect to the Great Crested Newt issue, it is put forward that the applicant would accept a S106 to the effect that no works would be done

including any preliminary works until a translocation scheme is completed in accordance with English Nature licence. The alternative would be to defer the application until April-June 2011 when the necessary surveys could now be undertaken. The Agent states that a refusal at this stage would undermine his clients business plan.

CONSIDERATION

With respect to the changed circumstances of the Applicant and the submitted justification does not materially impact upon the planning merits of this case at this time. The Applicants new offer to enter into a S106 Agreement to link the cessation of the Landscaping business at Somerford Booths, on land which is not green belt but is designated as Open Countryside in the Congleton Borough Plan is not reasonably related to the application site and is not of any material benefit.

The recommendation with regard to the circumstances in the Report remains unchanged.

In considering the application the Council must have regard to the Habitats Directive. It must consider whether the derogation requirements are likely to be met.

The current guidance on the Conservation of Habitats and Species Regulations 2010 acknowledges that mitigation site/species interests can be safeguarded through a Section 106 Agreement.

If the Directive's requirements are not met because there is a satisfactory alternative or no other imperative reason in the public interest then consideration must be given to refusal. If the Council is unsure whether the requirements are met or not it just have to take a view whether, in all the circumstances, it should affect the grant.

However, there are no reasons that the development would meet the 3 tests of the Directive

Equally, it can be argued, since the only information available is that the Great Crested Newt is present at the site, albeit the size of population is unknown, it would certainly be premature to grant permission even if conditional on the S.106 Agreement. Such a course of action would be contrary to established case law.

CONCLUSION

The recommendation remains unchanged.

STRETEGIC PLANNING BOARD – 27 October 2010

UPDATE TO AGENDA

APPLICATION NO.

10/3139M

LOCATION

Land at Tytherington Business Park, Manchester Road, Tytherington, Macclesfield

UPDATE PREPARED

26 October 2010

CONSULTATIONS

The Nature Conservation Officer has reviewed the updated ecological survey which was submitted in respect of this application that confirms that in general terms the ecological value of the site has not changed substantially since the 2006 survey.

Evidence of badger activity in the form of two setts has been recorded on site and a number of trees have been identified as having potential to support roosting bats. As development is likely to take place within close proximity to the badger setts an impact assessment and mitigation proposals are required.

With regards to the trees identified as having potential to support roosting bats it is apparent that some of these will be retained as part of the proposed development, however there are other trees with bat roost potential and it is not clear if these will be retained or not. It is advised that further bat surveys are required if there is to be the loss of any tree identified as having bat roost potential.

Under the 2007 permission the requirement for further surveys for both bats and badgers and the submission of badger mitigation was left to a condition. It is now apparent from recent case law that it is not possible to condition such surveys and therefore it is recommended that this further information is submitted to the LPA prior to the determination of the application.

REPRESENTATIONS

A further letter of objection has been received on behalf of the Dumbah Association. The letter is available on the application file and is summarised as follows: -

This letter explains how the Dumbah Association has requested details of application 07/1041P in order to ascertain whether the Councillors who

considered that application took into account the deliberations of an Inspector from a previous scheme on the Business Park in relation to the height and permitted locations of 2/3 storey buildings. The writer also states that he requested a copy of plan which was tabled at the Public Inquiry, however, this has not been found.

The writer reiterates that that the Dumbah Association does not consider that all the buildings should be 3 storey and submit that Councillors were not properly informed of all the facts in the previous scheme. The writer considers that the Inspectors conditions on the previous appeal in relation to the heights of buildings were ignored. The plan which was tabled at the Public Inquiry stated that: - "A maximum development of two storeys in height shall be constructed around the periphery of the site with three-storey developments being located within central parts of the site only", and, "the maximum height of buildings shall be 10 meters for 2 storey and 13-metres for 3 storeys". The writer believes that the previous senior management created a precedent in breaking an orange no go zone by allowing all the development to be over 2 storey high.

The writer refers to previously raised matters (which were summarised in the report on the main agenda), where the writer pointed out that residents, at the southern end of Tytherington Lane, were genuinely expecting a road re-configuration that would, according to the *Development Brief*, include a landscape area. Instead, they now get a gigantic 3-storey hotel. This hotel is over twice the size of the existing Orbit hotel at the northern entrance to the Business Park. There previous letter, also informed Members that: a) MBC had ownership of this parcel of land; b) sold it for significant profit; c) could have retained this land for the purposes of reconfiguration; c) or, alternatively, could have placed a codicil to ensure the purposes of reconfiguration.

OFFICER APPRAISAL

It is considered that the issues raised in the Dumbah Associations letter in relation to the heights and locations of buildings have been considered previously in relation to the Planning Brief for the site and the Inspectors Decision In relation to applications 83319P and 97/0237P. The relevant sections of the report for application 07/1041P (attached as Appendix 1 to the main Agenda report), which was considered by Macclesfield Borough Councillors on 28th August 2007 is highlighted below: -

"In principle there is no reason why another developer should comply with the same design principles which have been adopted for the remainder of the business park which has to date been built by Orbit Developments. Any scheme has to comply with prevailing planning policies as set out in the Development Plan, the Development Brief and other planning criteria. That the design and layout is different from the Orbit part of the site is in itself insufficient reason to reject the application.

A number of local concerns have been raised about issues of site layout, site planning and density. In terms of the footprint and development density the proposed footprint is substantially below the maximum set out in the original

outline planning permission for the site. The scheme is a substantial reduction in density from the two most recent planning applications. The erection of a larger number of smaller buildings than previous schemes provides the opportunity for a landscape setting to be achieved between the buildings. On this occasion, it is considered that the layout and position of office and hotel building in relation to adjacent properties is an acceptable one by reason of a combination of the distances, opportunities for landscaping and design of the buildings.

The site also lies close to residential properties, except to the east where it adjoins the business park. It is evident that local residents and groups representing them are very concerned about the relationship between the two. In principle there is no reason why another developer should comply with the same design principles which have been adopted for the remainder of the business park which has to date been built by Orbit Developments. Any scheme has to comply with prevailing planning policies as set out in the Development Plan, the Development Brief and other planning criteria. That the design and layout is different from the Orbit part of the site is in itself insufficient reason to reject the application. A number of local concerns have been raised about issues of site layout, site planning and density. In terms of the footprint and development density the proposed footprint is substantially below the maximum set out in the original outline planning permission for the site. The scheme is a substantial reduction in density from the two most recent planning applications. The erection of a larger number of smaller buildings than previous schemes provides the opportunity for a landscape setting to be achieved between the buildings. On this occasion, it is considered that the layout and position of office and hotel building in relation to adjacent properties is an acceptable one by reason of a combination of the distances, opportunities for landscaping and design of the buildings.

DESIGN

The design is a modern one and therefore includes use of modern materials including curtain walling, reconstituted stone, buff brickwork, and white render. The office buildings are numbered A-G and are sited to the rear of the site with the hotel building along the frontage to Manchester Road. The office buildings are predominantly 3 storeys in height at between 10.25 and 13.5 metres with taller buildings away from residential properties. The original outline permission required that any buildings should not exceed 14 metres. The buildings are of modern design with flat roofs and in terms of impact on the character and appearance of the area given the distances to the nearest residential properties, it is considered to be similar to a more traditional two storey building with pitched roof. The hotel proposal is part 2 storey and part 3 storey. The northern end of the hotel is 32.5 meters from 17 Tytherington Lane. This part of the hotel is below the height limit set in the Development Brief for development adjacent to existing dwellings.”

CONCLUSION

The comments from the Dumbah Association are noted, however, it is evident that the scheme which was approved under application 07/1041P was

considered to be acceptable on its merits and that full consideration to the heights and location of buildings was given.

The Nature Conservation Officers comments are also noted. On the basis that further surveys for both bats and badgers are required, it is recommended that this application is deferred so as to allow the applicant the opportunity to submit the required information for consideration.

Currently, due to the requirement for further ecological surveys to be carried out, it is concluded that there is not sufficient information to assess whether there have been any material changes in circumstances since the 2007 permission was granted, as a result it is recommended that this application be deferred.