

## **STRATEGIC PLANNING BOARD UPDATE – 17<sup>th</sup> November 2010**

**APPLICATION NO:** 10/3471C

**PROPOSAL:** Proposed Residential Development of up to 280 Dwellings, Landscaping, Open Space, Highways & Associated Works

**ADDRESS:** Land south of Middlewich Road and east of Abbey Road, Sandbach

**APPLICANT:** Fox Strategic Land & Property

### **Consultation Responses**

**Cheshire Brine Board:** The Board has considered the application and is of the opinion that the site is in an area which has previously been affected by brine subsidence, and the possibility of minor future movements cannot be completely discounted. The Board recommends therefore the incorporation of structural precautions to minimise the effects of any settlement which does occur, such as raft foundations or ring beams in the subsidence hollows and heavily reinforced strip foundations outside the subsidence hollows area. The subsidence hollows are as identified in the technical reports submitted with the application such as the "Phase 1 Site Investigation Report", ref. JS608-15/AES/HB/GP and dated 27 August 2010, prepared by Johnson Poole and Bloomer

**Education:** The proposed development of 280 dwellings would generate approximately 51 pupils (pupil yield factor of 0.182) of primary school age. Whilst the Elworth Hall Primary School has some surplus places if this development is approved there would be a shortfall of primary school places. A Section 106 Developer Contribution is requested as follows:

- £513,773.11 (280 dwellings X pupil yield factor of 0.182=50.96 X school extension cost multiplier £11,079 X regional weighting 0.91)

**Environment Agency:** In the absence of an acceptable Flood Risk Assessment (FRA) the Environment Agency **OBJECT** to the grant of planning permission and recommend refusal on this basis for the following reasons:

- Paragraph 2.5.5 (page 5) of the submitted FRA states that "A CCTV survey of the culvert beneath the Wheelock Rail Trail has been commissioned and will be provided with further comment regarding its condition and diameter etc in due course".

However, the results of this survey will need to be included within the FRA to ensure that the proposed development does not make any flooding situation worse.

- The FRA submitted with this application does not comply with the requirements set out in Annex E, paragraph E3 of Planning Policy Statement 25: Development and Flood Risk (PPS25). The submitted FRA does not therefore; provide a suitable basis for assessment to be made of the flood risks arising from the proposed development. In particular, the submitted FRA fails to:

- *Determine the suitability of culverts within the site. Specifically, the existing watercourse, at the south-eastern corner of the site, enters into a culvert within the site and then enters another culvert under the dismantled railway (Wheelock Rail Trail).*

- At the planning stage, an appropriate FRA is required to demonstrate how flood risk from all sources of flooding to the development itself and flood risk to others will be managed now and taking climate changes into account.
- An examination of the suitability of these culverts is required to meet the principles of PPS25 to understand potential and existing flooding problems and to ensure that the proposed development does not make any flooding situation worse.

**Natural England:** Natural England note the assurances made by UU plc and as they state that waste from the proposed development (and others) can be treated in accordance with the Environment Agency consent for Sandbach it is acceptable to remove the holding objection relating this matter. Please note however that our advice concerning Use of Agricultural Lane, Protected Species, Landscape, Geodiversity, Sustainable Design and Green Infrastructure still stands.

## **Representations**

An additional 4 letters of objection have been received. These do not raise any additional points of objection which have been covered in the original Committee Report.

## **Additional Supporting Information**

A supporting letter has been received from the applicant which states the following;

- This is a sustainable development and the Government will be introducing a national presumption in favour of such schemes. The Council cannot demonstrate a 5 year supply of deliverable housing land and consequently the planning application should be considered favourably in accordance with paragraph 71 of PPS3.
- The proposals will secure the Council in the region of £2.4 million of New Homes Bonus in addition to other benefits including affordable housing, new homes, infrastructure, community and recreational facilities
- The approach advocated by the Council of releasing Greenfield sites around Crewe is the wrong response to deal with the shortage of housing land. It is fundamentally misguided, not based on evidence and will result in an inconsistent planning policy regime in the authority. The correct and only approach that the Council should be considering is that set out in paragraph 71 of PPS3. This will not prevent the Council from releasing housing sites on the edge of Crewe if it so wishes
- There is absolutely no evidence presented that this proposal will prejudice the delivery of brownfield housing sites around Sandbach
- There are no technical issues which cannot be overcome by planning condition or S106 obligation. Thus there is not any justifiable reason for withholding permission.

An e-mail written by United Utilities has been submitted by the applicant. This e-mail states that;

- United Utilities (UU) are aware of the predicted development growth within the Sandbach area which currently drains to the Sandbach wastewater treatment works. United Utilities have revised the proposed development and are comfortable that the predicted growth in both population equivalent and wastewater flows emanating from those sites can be treated in accordance with the Environment Agency consent applicable to Sandbach wastewater treatment works

A supporting letter and indicative access plans have been received from Ashley Helme Associates raising the following points;

- The concerns of the Strategic Highways Manager (SHM) over trip rates are not clear. There is negligible difference between 0.59 and 0.60
- A comparison shows general consistency between the Middlewich Road (MR) and Hind Heath Road (HHR) AM trip rates with the MR TA rates being slightly higher in the AM peak hour and slightly lower in the PM peak hour.
- It is considered that the changes at each of the study junctions would be fairly minor and it is not expected that these small changes would materially alter the results/conclusions of the modelling. It is therefore considered that the modelling work presented in the MR TA report (ref 1224/2/A) robustly assesses the traffic impact of the proposed development. Consequently, there is no strong reason to undertake any further junction modelling adopting the HHR PM peak hour trip rates as the modelling results are unlikely to alter significantly.
- Given that the HHR scheme is predicted to generate about 60 extra vehicles at the four junctions (Middlewich Road/Old Mill Road/Crewe Road, Old Mill Road/A534, Old Mill Road/A534/The Hill, Old Mill Road/Congleton Road), and the SHM did not seem concerned about this level of increase in traffic. Ashley Helme Associates are somewhat surprised about the comments on trip rates which have been demonstrated make very little difference to traffic levels at these junctions.
- There is no mention of the committed developments in the HHR TA report. This is an important point as the SHM comment on the performance of the study junction in the consultation response. All of the modelling results in the MR TA (ref 1224/2/A) include committed development traffic and it is this traffic that has far more effect on junction performance compared to the traffic generated by the proposed MR development
- It is relevant to compare the package of sustainable transport measures promoted by both the MR and HHR development proposals, it is understood that the HHR measures are agreed with CEC. It is concluded that both development proposals offer a similar level of enhancement. Some of the HHR enhancements, for example the provision of new footway on Hind Heath Road simply cure a deficiency that does not exist at/around Middlewich Road/Abbey Road as a comprehensive network of footway routes is already present.
- It is noted that there is now emerging local policy to seek capital sum contributions toward comprehensive improvement at M6 J17. The developers of the HHR site have agreed to a sum of £60k. As the MR scheme is of a similar size and is predicted to generate similar levels of additional traffic at M6 J17, then the applicant is agreeable to the same level of contribution and this is to replace the highway scheme presented in the MR TA report ref (1224/2/A).

Two letters written by FPCR have been provided by the applicants which raise the following points;

- Page 37 of the Committee report refers to great crested newts being absent from a pond to the south of the site and refers to the fact that no survey of the pond at 180 Middlewich Road was undertaken but states that no reason for not surveying this pond is provided. This pond is outside the applicants ownership and access could not be gained for survey. The applicant has attempted to contact the owners of 180 Middlewich Road to request access to the pond
- The committee report goes on to say in the fourth reason for refusal that Great Crested Newts have been recorded within the curtilage of a nearby residential

property. The survey carried out on the property to the south of the site found Great Crested Newts to be absent. The only other nearby residential pond linked to the site marked on the OS plan for the area is the one at 180 Middlewich Road, which there was no access to survey. Cheshire Biological Records Centre (rECOrd) did not provide any records for great crested newts within 1km of the site. From this information it would seem that this reference is a mistake unless last minute information has been provided by a local resident.

- The pond at 180 Middlewich Road is not linked to any other pond as those to the north of Middlewich Road are not accessible because Middlewich Road forms a significant barrier to movement and the only other pond within 500m, which lies to the south does not support Great Crested Newts.
- At the time of survey no internal or external evidence of a roost was observed within 170 or 172 Middlewich Road but occasional potential access points were identified beneath gaps under ridge/roof tiles and occasional gaps at soffits. Underfelt was present beneath the tiles on 170 which could potentially obscure any evidence of bats roosting between the tiles and the underfelt.
- Whilst no underfelt was present within 172 and the void was heavily cobwebbed, potential access points were identified under roof/ridge and hanging tiles and under the soffits. As no bat droppings were identified during the survey and no indicators that the potential access points had been recently used were identified, in the event that a bat roost is present in either of the buildings the roost is only likely to be occasionally used by small numbers of bats.
- To confirm the presence / absence of a roost in the buildings scheduled for demolition, a nocturnal emergence survey is recommended. During the nocturnal survey bat workers should be positioned such that all aspect of the buildings can be monitored. The emergence survey should be carried out from 30 minutes prior to and at least 70 minutes following sunset. In the event that bats are observed emerging from the buildings, the number and species and activity will be recorded. General activity within the site should also be recorded during the survey. Ultrasonic bat detectors should be used to confirm the species identification of the bat observed during the survey. The survey should be undertaken between May and September (inclusive).
- In the event a bat roost is identified within either of the buildings further survey work during the period May to September will be necessary and a licence from Natural England may be required to legitimise demolition of the buildings and loss of the roost. If a licence is necessary further nocturnal survey would be required to inform the licence application but the mitigation package proposed above will be adequate to compensate for loss of any bat roost found within the buildings.

## **Officer Comments**

### Regional Spatial Strategy

Regional Spatial Strategies (RSS) were revoked by the Secretary of State for Communities and Local Government on 9 July 2010 under Section 79 (6) of the Local Democracy, Economic Development and Construction act 2009.

However, the Regional Spatial Strategy for the North West has been reinstated (pro tem) as part of the statutory Development Plan by virtue of the High Court decision in the case of Cala Homes (South) Limited and the Secretary of State for Communities and Local Government and Winchester City Council on 10<sup>th</sup> November 2010.

The application falls to be determined in accordance with the Development Plan (RSS and the adopted Congleton Borough Local Plan) unless material planning considerations dictate otherwise.

One material consideration will be the intention of the Secretary of State to abolish Regional Spatial Strategies in the forthcoming Localism Bill which is due to be published later this month.

The major implication of the reinstatement of RSS will be the need to reference those policies in RSS which would be relevant to this application.

These policies are:

DP4 – Make best use of resources and infrastructure

Development is required to accord with the following sequential approach: first, using existing buildings (including conversion) within settlements, and previously developed land within settlements; second, using other suitable infill opportunities within settlements, where compatible with other RSS policies; third, the development of other land where this is well-located in relation to housing, jobs, other services and infrastructure and which complies with the other principles in DP1-9.

*The application would fall in the third category of the policy. As indicated in the report there is a considerable supply of housing in Sandbach with planning permission (but as yet unbuilt) which is on previously developed land*

DP5 – Managing travel demand

Development should be located in where there are alternatives to the use of the car for travel.

*The application site is relatively well sited in terms of access to public transport and journeys by foot and cycle to local facilities.*

DP7 – Promote environmental quality

Development should respect the environment, natural resources and biodiversity

*The report already raises issues regarding protected species and impact on trees, therefore conflict with this policy.*

DP9 – Reduce emissions and adapt to climate change

Development should assist in reducing carbon emissions, promoting the use of renewable energy and shaping sustainable communities that are resilient to future climate change.

*The application appears to accord with this policy*

RDF1 – Spatial Priorities

Sets out priorities for growth in the region. Priority 1 is Manchester and Liverpool centres, Priority 2 is inner areas of Manchester and Liverpool, Priority 3 is larger towns such as Crewe and Macclesfield and Priority 4 is towns in Furness and West Cumbria. Should be read in conjunction with sub regional policies (see MCR3 below)

*This is a core policy of RSS. Crewe and Macclesfield are the priorities for development and this is reflected in the Council's draft Interim Policy for the release of housing land. Sandbach is not identified as a priority area for growth. Application is in conflict with this policy.*

#### L4 – Regional Housing Provision

Provides an annual average figure for the net provision of new homes of 1150 for Cheshire East (an amalgam of figures for the former Crewe and Nantwich, Congleton and Macclesfield districts). 80% of this provision should be on previously developed land.

*This is already dealt with in the report as the Council had already agreed to continue using the RSS figures of 1150 per annum for the calculation of its five year housing land supply*

EM1 - Integrated Enhancement and Protection of the Region's Environmental Assets  
Where proposals and schemes affect the region's landscape, natural or historic environment or woodland assets, prospective developers and/or local authorities should first avoid loss of or damage to the assets, then mitigate any unavoidable damage and compensate for loss or damage through offsetting actions with a foundation of no net loss in resources as a minimum requirement.

*The report identifies issues relating to protected species and the loss of protected trees which are of local landscape importance, therefore conflict with this policy*

#### EM18 – Decentralised Energy Supply

In advance of local targets being set, new non residential developments above a threshold of 1,000m<sup>2</sup> and all residential developments comprising 10 or more units should secure at least 10% of their predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable.

*This requirement could be dealt with by way of condition in the event of the application being approved*

#### MCR3 - Southern Part of the Manchester City Region

The policy allows for residential development to support local regeneration strategies and to meet identified local needs (particularly for affordable housing), in sustainable locations which are well served by public transport;

*The application would not support local regeneration strategies and could work against the development of previously developed land on the west of Sandbach which would have major regeneration benefits.*

Reasons for refusal could refer also to conflict with RSS Policies DP4, DP7, EM1 and MCR3 of RSS

#### New Homes Bonus

The Government has published a consultation document which seeks views on the implementation of the 'New Homes Bonus' which will provide financial incentives to local authorities to deliver new homes.

There is some doubt as to whether the New Homes Bonus is a material planning consideration to be taken into account in the determination of planning applications. It is difficult to see how such a system of financial incentives can be reconciled with the need to make decisions on planning applications in the interests of the proper planning of an area. Nevertheless it has been established in case law that

Government consultation documents can be a material planning consideration. The weight to be attached to such documents, however, is a matter for the local planning authority to determine.

The New Homes Bonus is part of a framework that the Government expects will encourage local authorities and communities to increase housing and economic growth by returning the benefits of this growth. The scheme is intended to incentivise local authorities to increase housing supply by rewarding them with a payment equal to the national average for the council tax band on each additional dwelling and paid for the following six years as a grant which is not ring fenced.

The Council is clearly committed to housing growth as demonstrated by the sub regional economic strategy to which it has signed up and the Sustainable Community Strategy. The New Homes Bonus, whilst welcome, should not divert the planning authorities attention away from ensuring that new housing development takes place in the right areas and does not jeopardise the regeneration of older industrial areas in towns such as Sandbach.

The applicant states that the Council will miss out on the substantial benefit of the New Homes Bonus because homes built after 2016 will not qualify. This is incorrect. Paragraph 3.2 of the Consultation document states that “the scheme is intended to be a permanent feature of local government funding and will therefore continue beyond the six year cycle”. The Council fully expects that the housing on the brownfield sites with planning permission in Sandbach will begin to come forward during the next five years. Even if that did not occur, development on these sites after that period would still generate the New Homes Bonus for the authority.

The New Homes Bonus, if implemented as currently proposed, should not divert the Council from guiding new housing development to locations where the benefits will be greatest and should not justify releasing Greenfield sites in Sandbach where the delivery of housing on brownfield sites is the priority.

#### Sandbach Flashes Site of Special Scientific Interest (SSSI)

Following the receipt of additional information Natural England have removed their objection in relation to the impact upon the SSSI. It is therefore considered that reason for refusal number 7 should be removed from the recommendation.

#### Protected Species

The applicants have stated that they have approached the land owner of 180 Middlewich Road but could not gain access to the site.

A similar pond within the residential curtilage of a property on Rowan Close has recently been found to contain Great Crested Newts. It is therefore considered that there is a reasonable likelihood that Great Crested Newts could be within the pond at 180 Middlewich Road. Given that no Great Crested Newt mitigation measures have been received the impact of the development upon the conservation status of Great Crested Newts can not be fully considered. As a result the proposal is contrary to Policy NR.2, Policies EM1 and DP7 of the RSS, Circular 06/2005 and PPS9.

In terms of the impact upon bats the additional survey recommends an additional nocturnal emergence survey. Without this survey it is not possible to fully assess the presence or otherwise of protected species, and the extent that they may be affected

by the proposed development. As a result the proposal is contrary to Policy NR.2, Policies EM1 and DP7 of the RSS, Circular 06/2005 and PPS9.

### Land Conditions

A consultation response has now been received from the Cheshire Brine Board this recommends the incorporation of structural precautions to minimise the effects of any settlement which does occur, such as raft foundations or ring beams in the subsidence hollows and heavily reinforced strip foundations outside the subsidence hollows area.

### Infrastructure

A consultation response has now been received from the Educational Department this identifies a commuted payment which would be required for educational provision in Sandbach should this application be approved.

### Flooding

The submitted Flood Risk Assessment does not include an examination of the suitability of the culverts which is required to meet the principles of PPS25. This is to understand potential and existing flooding problems and to ensure that the proposed development does not make any flooding situation worse.

An appropriate FRA is required to demonstrate how flood risk from all sources of flooding to the development itself and flood risk to others will be managed now and taking climate changes into account.

As there is an objection from Environment Agency regarding the adequacy of the submitted Flood Risk Assessment this issue will form a reason for refusal.

### **Conclusions**

Reason for refusal 7 is removed from the original recommendation and an additional reason for refusal is added in terms of the inadequacy of the submitted FRA. For clarity and including the recommendations contained within this report the reasons for refusal are now as follows;

**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 and Policies RDF1 and MCR3 of the North West of England Plan Regional Spatial Strategy to 2021, which articulate 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.

2. Release of this site would prejudice the development of the significant number of brownfield sites within Sandbach with extant planning permission, which would provide significant regeneration benefits, and would be sufficient to address housing requirements within the Sandbach area. The proposals are therefore contrary to Policy advice within PPS.3 which gives priority to the development of previously developed land, the provisions of Policy H2 of the adopted Congleton Borough Local Plan First Review, and Policies DP4 and DP7 of the North West of England Plan Regional Spatial Strategy to 2021.

3. The proposal would involve the loss of best and most versatile agricultural land. PPS7 states that where significant development of agricultural land is unavoidable, local planning authorities should seek to use areas of poorer quality. In this case it is considered that the development of the site is avoidable as there are no overriding reasons for allowing the development. For the reasons stated above, in this case there are not considered to be any overriding reasons for allowing the development and the proposal is therefore contrary to PPS7.

4. There is a pond to the north of the application site within the curtilage of 180 Middlewich Road. Great Crested Newts have been found in a pond within the residential curtilage of a nearby residential property and Great Crested Newts are reasonably likely to be present within the pond at 180 Middlewich Road. No Protected Species Survey has been submitted as part of this application to identify whether or not Great Crested Newts are present in this pond or any mitigation measures to protect this species during the construction works. In the absence of this information, to allow this development would be contrary to Policy NR.2 (Statutory Sites) of the adopted Congleton Borough Local Plan First Review, Circular 6/2005 and PPS9.

5. The submitted plans show that 172 Middlewich Road would be demolished as part of the proposed development. The dwelling is pre 1960's and is within 200 metres of water and as a result could offer a potential habitat for bats in accordance with the Councils Guidance on Biodiversity and Geodiversity Conservation Statements. No Protected Species Survey has been submitted as part of this application to identify whether or not Bats are present within the fabric of the building or any mitigation measures to protect this species during the construction works. In the absence of this information, to allow this development would be contrary to Policy NR.2 (Statutory Sites) of the adopted Congleton Borough Local Plan First Review, Circular 6/2005, PPS9 and Policies EM1 and DP7 of the North West of England Plan Regional Spatial Strategy to 2021.

6. Although access is a reserved matter, vehicular access to the site could only be provided through 3 possible access points (two onto Abbey Road and one onto Middlewich Road). The provision of vehicular access at any of these points would have an adverse effect on existing healthy trees of amenity value. As a result the proposed development would be contrary to the provisions of Policy NR.1 (Trees and Woodlands) of the adopted Congleton Borough Local Plan First Review and Policies EM1 and DP7 of the North West of England Plan Regional Spatial Strategy to 2021

**7. The Flood Risk Assessment which has been submitted with this application fails to assess the impact of the development upon a culvert beneath the Wheelock Rail Trail. In the absence of this information the FRA does not provide a suitable basis for assessment to be made of the flood risks arising from the proposed development. As a result the proposed development would be contrary to Policy GR21 (Flood Prevention) of the Adopted Congleton Borough Local Plan First Review and PPS25.**