

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 30th May 2012

Report of: Steve Irvine – Development Management and Building Control Manager

Title: Rope Lane, Shavington

1.0 Purpose of Report

- 1.1 To consider the withdrawal of a reason for refusal relating to outline planning application 11/4549N for up to 80 dwellings including access at land off Rope Lane, Shavington.

2.0 Decision Required

- 2.1 To agree to withdraw the reason for refusal in respect of contaminated land and to instruct the Development Management and Building Control Manager not to contest the issue at the forthcoming Appeal Hearing.

3.0 Background

- 3.1 Members may recall that on the 21st March 2012, Strategic Planning Board considered an application for outline planning permission for up to 80 dwellings including access at land of Rope Lane, Shavington. (Application 11/4549N refers)
- 3.2 Committee resolved to refuse the application, for four reasons which were as follows:
- *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 would undermine the spatial vision for the area, wider policy objectives and the strategic function of the Green Gap in that it would result in the erosion of the physical gap between the built up areas of Shavington and Crewe. The proposal is therefore contrary to Policies NE.2 and NE.4 of the Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within PPS3 and the Council’s Interim Housing Planning Policy On The Release Of Housing Land.*
 - *The proposed residential development, which is located within the Open Countryside and Green Gap, is considered to be an unsuitable location for development by virtue of the adverse impact that the proposals would have on the visual character of the landscape and*

the erosion of the physical gaps between built up areas. The proposed development would therefore be contrary to Policies NE.2 and NE.4 of the Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within PPS1, PPS3 and PPS7.

- The application is an outline application for new residential properties which are a sensitive end use and could be affected by any ground contamination present on site. No Phase I desk study and walkover survey have been submitted with the application and the applicant has therefore failed to demonstrate that the site is not constrained by contamination. The application therefore fails to comply with Policy BE.6 of the of the Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within PPS23.*
- Insufficient archaeological or historical information has been submitted to determine whether the hedgerow to be removed is of significance according to the criteria set out in the Hedgerow Regulations, contrary to policies Policy NE.5 (Nature Conservation and Habitats) of the Crewe and Nantwich Replacement Local Plan 2011, Policy DP7 (Promote Environmental Quality) of the North West of England Plan Regional Spatial Strategy to 2021 and the provisions of PPS9 Biodiversity and Geological Conservation.*

4.0 Contaminated Land

- 4.1 Since the Strategic Planning Board meeting, there have been on-going negotiations in respect of the contaminated land issue, and the Council's Environmental Health officers have now withdrawn their objection to the scheme, subject to appropriate conditions, including those relating to mitigation of the contaminated land impact.
- 4.2 However, during the intervening period, the applicant has lodged an Appeal against the refusal of the application and the Planning Inspectorate has determined that the application should be dealt with at a Hearing. In the light of the consensus that has been reached between the applicant and the Environmental Health Officer, it is considered that the contaminated land reason for refusal on application 11/4549N would no longer be sustainable at the Appeal.
- 4.3 In the event that the appeal was successful and the Inspector was of the view that development in the Green Gap was acceptable, conditions could be imposed to address the contaminated land issue.

5.0 Hedgerow

- 5.1 In order to address the fourth reason for refusal, the applicant has submitted a letter from the Shared Services Archivist which states that:
- The hedgerow does not form part of a boundary between two historic townships or parishes

- There is no evidence to suggest that it forms a boundary of a pre1600 estate or manor
- There is evidence to suggest that the hedgerow in question forms an integral part of a fields system predating the Enclosure Acts subject to the comment below.
- There appears to be a slight discrepancy between the course of the eastern part of the hedgerow (corresponding to the southern boundary of plot 148 on the 1876 Ordnance Survey plan) and the line shown on the 2012 Ordnance Survey plans. It is possible that this section of the hedgerow has been replanted during the last fifty years in which case the third point above would not apply to this specific portion.

- 5.2 However, the portion of hedgerow referred to in the fourth bullet point above, is unaffected by the proposed development. The hedgerow to be removed is situated on the Rope Lane frontage, where removal will be required to allow the access and a new footway to be created. It is therefore concluded from the above, that this length of hedgerow is “Important” when assessed against the criteria in the Hedgerow Regulations 1997 because it forms an integral part of a field system pre-dating the Enclosure Acts. Its protection is therefore a material consideration in the determination of the application.
- 5.3 Policy NE5 of the Crewe and Nantwich Local Plan states that the local planning authority will protect, conserve and enhance the natural conservation resources and proposals for development will only be permitted where natural features such as hedgerows are, wherever possible, integrated into landscaping schemes on development sites.
- 5.4 Clearly, in this case a natural feature which has been identified as being historically important will not be retained and integrated into the development. As a result, the requirements of this policy will not be met.
- 5.5 However, in this case it is the historic line of the hedgerow which is considered to be important rather than the species within it or the habitat which it creates. It is acknowledged that only sections of the hedgerow need to be removed and that, as its line follows that of the road, it could still be traced in the landscape following the implementation of the development. Notwithstanding this point, there are no overriding reasons for allowing the development and it is considered that there are suitable alternatives for accommodating the necessary housing supply. Therefore, the development fails to comply with the requirements of Policy NE.5.
- 5.6 However, without prejudice to the arguments put forward in respect of the other reasons for refusal, if the Inspector were minded to allow the proposal on the basis that the need for further housing development in order to meet the 5 year supply requirement outweighed the general presumption against development in the Green Gap, as well as the wider harm to the landscape resulting from the proposal, then it is considered that this would be a material consideration to outweigh the provisions of Policy NE.5. In summary, if the Green Gap reason for refusal were to fall, it is considered that the hedgerow reason for refusal would fall with it.

- 5.7 Members may recall that a similar issue arose in respect of the recent application for residential development at Hind Heath Road and the subsequent appeal was contested on a similar basis.

6.0 Conclusion

- 6.1 On the basis of the above, it is considered that the Council should withdraw the contaminated land reason for refusal and agree with the appellant not to contest the issue at appeal.
- 6.2 However, it is considered that the hedgerow reason should be maintained and contested on the basis that the proposal would involve the removal of an “important” hedgerow as defined in the Hedgerow Regulations 1997. Policy NE5 of the Crewe and Nantwich Local Plan states that the local planning authority will protect, conserve and enhance natural conservation resources and proposals for development will only be permitted where natural features such as hedgerows are, wherever possible, integrated into landscaping schemes on development sites. In this case, there are not considered to be any overriding reasons for allowing the development and the proposal is therefore contrary to Policy NE.5 of the Borough of Crewe and Nantwich Replacement Local Plan 2011. However, if the Green Gap reason for refusal were to fall, the hedgerow reason for refusal would fall with it.

7.0 Recommendation

- 7.1 That the Committee resolve to withdraw the reason for refusal in respect of contaminated land and to instruct the Development Management and Building Control Manager not to contest the issue at the forthcoming hearing.

8.0 Risk Assessment and Financial Implications

- 8.1 There is a risk that, if the Council continues to pursue the contaminated land reason for refusal at Appeal when the issue can be adequately dealt with via conditions, a successful claim for appeal costs could be made against the Council on the grounds of unreasonable behaviour.
- 8.2 There would be an implication in terms of the Council’s own costs in defending the reason for refusal.
- 8.3 There are no risks associated with not pursuing the reason for refusal at Appeal.

9.0 Consultations

Environmental Health

- 9.1 The Environmental Health Section have confirmed that in the light of the information now received, the contaminated land issues can be adequately dealt with by means of condition.

10.0 Reasons for Recommendation

- 10.1 To ensure that an approved scheme for essential affordable housing within the rural area is delivered.

For further information:

Portfolio Holder: Councillor Rachel Bailey
Officer: Ben Haywood – Principal Planning Officer
Tel No: 01270 537089
Email: ben.haywood@cheshireeast.gov.uk

Background Documents:

Applications 11/4549N