

**STRATEGIC PLANNING BOARD UPDATES**  
**28 May 2014**

**APPLICATION NO:** 14/0007M

**PROPOSAL:** Erection of 204 dwellings including demolition of outbuildings, public open space, highways works, entry statement signs and associated infrastructure.

**LOCATION:** Land at Adlington Road, Wilmslow

**DESCRIPTION OF DEVELOPMENT**

By way of clarification, the original report referred to the proposal being for 193 dwellings. The correct description for the proposed development is:

**Erection of 204 dwellings including demolition of outbuildings, public open space, highways works, entry statement signs and associated infrastructure.**

A revised site layout was received on 16 May, which proposed the 204 dwellings. The reason for the increase was to provide 30% affordable housing and to provide a number of bungalows to meet an identified local need. Given the extent of full (3 week) consultation already carried out on the proposals for 203 dwellings (January 2014) and 193 dwellings (April / May 2014) and the relative scale of the amendments, local residents were notified of the plan and given until Friday 23 May to comment. The original report refers to the plan for 204 dwellings.

**VIEWS OF WILMSLOW TOWN COUNCIL**

15 May

Recommend refusal as the application is premature being put forward at a time when school, medical and road facilities are inadequate to facilitate such a development and at a time when the adoption of new Cheshire East Local Plan could be some way off. The timing brings into question the legality of the Planning Authority considering this application, as recently highlighted by Mr David Manley QC acting on behalf of the Residents of Wilmslow Group.

The application fails to demonstrate any regard for the CEC policy of prioritising brownfield space first for development, is presented before an adequate case has been put forward to support the need for these houses and contravenes GC7 of the existing Local Plan in presuming development on a safeguarded site. The application fails to acknowledge the proposed Woodford development in its traffic survey.

The Planning Committee feel that the application represents a significant overdevelopment of the site which is out of keeping with surrounding

properties and that the resultant proximity to existing boundaries is overbearing in many cases. Any future application should tackle this issue by considering layout and housing type in tackling this overbearing issue with regard to neighbouring properties.

The application fails to tackle effectively the issues of access to and from the site and express significant concerns as to the capacity of Adlington Road in particular in being able to adequately handle further traffic flow.

### 21 May

Disappointed to learn on 16 May that the application it had considered at a high profile public meeting on 12 May had been superseded. WTC express great concerns that an increase of 11 dwellings and a reconfiguring of a high profile site is considered to be relatively minor by the planning authority.

The impact on certain individual residents of adjoining properties is significantly changed by the amended site plan and WTC express concerns that the process being followed by Cheshire East Council in dealing with this significant alteration is inappropriate.

The views expressed by WTC of 15 May remain unchanged. The revised site plan is unhelpful and does not address their concerns.

## **OTHER REPRESENTATIONS**

Since the original report approximately 20 further representations have been received objecting to the proposal on the following new grounds:

- Increase in numbers emphasises all previous objections
- Deadline for receiving comments on the revised plans is unacceptable
- Amendments are not relatively minor
- No regard to proper planning process and consultation
- Housing now closer to properties on Browns Lane
- Notification letter states “it is not considered it will raise any new issues” – it will.
- Breach of Cheshire East Council’s Equality and Inclusion Policy (2012) and its statutory duty under the Equalities Act 2010 as it is not possible for all interested parties to respond due to holiday or work commitments, and by limiting comments to “the online form” it is limiting response to those with internet access.

## **APPLICANTS SUBMISSION**

Legal advice has been submitted on behalf of the applicants in two documents which respond to the advice obtained by the Residents of Wilmslow group (contained in the main report):

### **Counsel opinion (1)**

- Mr Manley’s first advice does not refer to the appeals at Coppice Way on safeguarded land.

- A live issue at that appeal was whether policy GC7 was an up to date policy or not. The Inspector noted:
  - (i) that the local plan period had expired in 2011;
  - (ii) that settlement boundaries were established to facilitate needs up to 2011;
  - (iii) that whilst ordinarily safeguarded land would only be released on a review, the expectation would have been that the green belt would have been long ago reviewed as part of a local plan review. However no such review has as yet taken place;
  - (iv) that in order to meet development needs the Council is promoting green belt release (e.g. at Handforth) and accordingly that safeguarded land has not done its job;
  - (v) the designation of that area of land as safeguarded land in such circumstances is not consistent with the framework, since the policy is now out of date:
- There was no challenge to that decision in the High Court, and the logic of that decision must apply with equal rigour to other areas of Safeguarded land within the former Macclesfield Local Plan area.
- Mr Manley's analysis is flawed since he only considers the principle of safeguarded land as a policy, and ignores both the temporal component of the policy as well as its application in the context of Cheshire East.
- It follows that if the only relevant development plan policy of relevance is out of date that the second part of §14 of NPPF is engaged *irrespective of whether or not a five year land supply can be demonstrated*
- Paragraph 47 of the NPPF requires local authorities to demonstrate a 5 year housing land supply.
- Paragraph 49 presumes that any policies for the supply of housing are to be presumed to be out of date if it cannot demonstrate a 5 year supply, which can in turn engage the second part of paragraph 14 of NPPF and therefore the presumption in favour of sustainable development.
- Mr Manley is correct in my view to conclude that GC7 is a policy which is relevant to the supply of housing and therefore would be presumed to be out of date (irrespective of the foregoing discussion) if a five year supply of housing cannot be demonstrated.
- Subsequent to the resolution of the SPB in February the proposition that Cheshire East Council was able to demonstrate a five year housing land supply was challenged in a number of appeal decisions. The first of those decisions was in respect of land at Elworth Hall Farm, where the Inspector concluded that Cheshire East could not in fact demonstrate a deliverable five year supply of housing.
- It follows that in addition to GC7 being rendered out of date as a result of the application of paragraph 49, the absence of a 5 year supply means that substantial weight must be afforded to the contribution that the development of the Site would make to meeting that deficit is substantial.
- The consistent identification of the Site as appropriate for development within the various iterations of the development plan is self evidently a

material consideration that weighs in the planning balance in favour of the proposed development.

- Whilst it is correct to observe that the weight to be afforded to such an identification is lessened by the existence of undetermined objections to the proposals the weight is enhanced as the local plan progresses further along the ultimate route to examination and ultimately adoption.
- Moreover the repeated identification of the Site as appropriate for development in the teeth of such objections means that Council has considered the planning and technical objections to the Site and has nonetheless considered it to be an appropriate one in land use terms without any in principle objections to it.
- The Council disagrees with Mr Manley's point that there are sufficient non-greenfield sites to meet Wilmslow's identified requirement of 400 houses since it has promoted the Site as an allocation in the latest iteration of the Core Strategy, and the merits of the site have already been determined by its identification for long term development needs under GC7.
- Mr Manley's second point about the proposal being a substantial proportion of the 400 and consideration of its merits ought to be undertaken through the local plan process, it is assumed that this was written without the benefit of his attention being drawn to other appeal decisions in Cheshire East in which developments of comparable size in settlements of comparable population have been allowed notwithstanding arguments of prematurity being unsuccessfully raised against them by the Council.

#### Counsel opinion (2)

- Mr Manley's second advice considers the Coppice Way Inspector's conclusions may have been wrong in law.
- Courts have repeatedly noted that consistency of decision making is an important material consideration when forming a planning determination.
- The most relevant development plan policy is out of date and the second part of paragraph 14 of the NPPF is engaged irrespective of whether or not a five year land supply can be demonstrated.
- In his second advice Mr Manley places significant reliance upon a Court case which upheld a decision to dismiss an appeal for a housing proposal within a protected policy area designated as a green wedge. The Inspector concluded that such a policy was not a "policy for the supply of housing" within the meaning of paragraph 49 of the NPPF and thus the trigger in that policy was not activated.
- However that case must be seen in the light of three other cases which have a more general application and which were considered by the Inspector to have been policies for the supply of housing.
- Ouseley J. addressed the apparent inconsistency between the outcome in the William Davis case and the others by drawing a distinction between general policies such as settlement policies or countryside policies and a policy such as that in the William Davis case where the objective of the policy was to keep the land open for more

specific reasons relating to a particular function over and above more general policies..

- There is a spectrum of such policies with countryside and settlement policies at one end and green wedge at the other.
- GC7 is at the opposite end to that referred to in the case cited by Mr Manley.
- Mr Manley's first advice which concludes that GC7 is a policy which is engaged by paragraph 49 is the correct analysis.
- In terms of CEC proposing to challenge the Elworth Hall Farm decision, three points are made:
  1. Administrative decisions are presumed to be lawful unless and until they are quashed by the Court
  2. Cheshire East have a growing record of unsuccessfully seeking to quash politically unpopular decisions in the High Court
  3. it is important to note that national guidance in paragraph 47 of NPPF is to boost housing land supply – to which end the requirement for a 5 year supply is a minimum requirement and not a ceiling
- It follows that in addition to GC7 being rendered out of date as a result of the application of paragraph 49, the absence of a 5 year supply means that substantial weight must be afforded to the contribution that the development of the Site would make to meeting that deficit is substantial.

In addition a further revised plan has been received to address concerns raised by officers relating to on site trees.

## **KEY ISSUES**

### **Principle of development**

The legal advice provided on behalf of the applicant is noted and clearly provides an alternative opinion on the development to that submitted on behalf of Residents of Wilmslow.

The view of officers on the matters raised is covered within the original report, but are summarised below.

Policy GC7 of the Local Plan is considered to be out of date in light of the Inspector's decision at Coppice Way, and as such the presumption in favour of sustainable development in paragraph 14 of the Framework is triggered.

Notwithstanding the above view the site has been safeguarded for development for many years and throughout various versions of the emerging local plan the Council has continued to identify the site for development despite the many objections to it.

The Cheshire Local Plan Strategy has now been submitted for assessment and therefore is afforded weight by virtue of its progress towards the Examination in Public later in the year.

The Council is considered to have a five year supply of housing land and relies on this deliverable site for part of that supply. This would be the case whether GC7 has expired or not.

It is accepted that windfall sites will come forward, however the housing figures within the local plan are not capped.

Taking account of the two differing opinions it is officers view that balancing the site considerations and taking account of the relative weight to be afforded that the principle of development can be accepted.

This would also reflect similar decisions that the Council has made in respect of sites within the countryside that have been approved because appropriate consideration has been given to matters of weight and balancing existing and emerging policies of the Development Plan.

### **Trees / landscape**

A number of the trees on the site are covered Tree Preservation Orders - MBC (Wilmslow - Wilmslow Park No.2) TPO 1974 and MBC (Wilmslow - Adlington Road East) TPO 2008

The arboricultural officer has raised a number of issues associated with the proposed site layout:

Plot 197 – Concerns relating to social proximity to the adjacent protected Oak (T5 of the 1974 TPO). The rear corner of the plot extends within the root protection area and canopy of this tree which has an open spreading habit.

The latest revised site layout has moved the bungalow further away from the tree to improve the relationship. There is still some encroachment in the root protection area of the tree. The section of building that encroaches into the root protection area can be installed using “no-dig” construction methods in accordance with section 5 of BS5837, which can be dealt with by condition.

Plots 01- 02; 186-188 and 189-193 - New hardstanding for access driveways is proposed between protected trees along the Adlington Road frontage (part G2 of the 2008 TPO and G24 off 1974 TPO). Details of the engineer designed construction specification and method statement as stated in para 9.6 of the submitted Arboricultural Statement are required, which again can be dealt with by condition.

Plots 01, 187-188, 189-191 and to a lesser degree Plots 192-193 - The front elevation of these plots face south presenting a less than ideal relationship to protected trees along the Adlington Road frontage. The shading will affect the front elevations only as opposed to the rear outdoor amenity space, and some limited pruning could help to reduce the shading issues.

Plot 108 - The rear corner of this Plot extends within the Root Protection Area of the easternmost Oak within the group. The Arboricultural Statement recommends that this trees is removed, however the applicants do wish to

keep it. There is very limited encroachment in the root protection area, and it is considered that an appropriate construction method will avoid harm to this tree.

Plots 10 and 11- Although east facing, the gardens of these two Plots will be dominated by the group of protected Silver Birch (G29). However, it is noted that Silver birch are relatively light crowned trees and do not generally cast deep shade. Selective pruning could improve conditions at the rear of the two properties. In addition the properties have now been moved 1m further from the trees.

Plot 08 - The protected Oak (T12 of the 1974 TPO) is close to the rear elevation of this plot raising some concern about the social proximity to the house and position within the relatively small garden. The house has been moved a further metre away from the tree, which given the size of the tree and the extent of garden that is unaffected is now considered to be acceptable.

Plots 12-16 and 48.- The position of these plots will require the loss of a dense area of Willow around an existing pond. The trees are not protected by existing TPOs and confer limited amenity value to the wider area, although have some habitat value. Most specimens have failed or partially failed. Their removal is not considered significant in visual amenity terms.

Plot 74 - Position of Plot will require the removal of a protected Crack Willow to the north (part G51 of the 1974 TPO). The tree exhibits decay in the stem and shows signs of dieback. The trees removal is considered acceptable in the context of its current condition. The north elevation of the plot interfaces with the root protection area of an adjacent protected Oak (part G51 of TPO). Some pruning of the tree will be required to accommodate the new build (the Arboricultural statement suggests pruning to achieve a 1.5 metre clearance from the building). Good design should allow for adequate accommodation of the new build to avoid existing and future conflicts with trees. The current position of the house will only increase future requests for further pruning as the tree grows. Further modifications are required to ensure adequate clearances without the need for pruning. The house has been moved 2 metres away from the tree which is considered to adequately address these concerns.

Plot 180 - Rear of building conflicts with the Root Protection Area of protected Oak (T14 of 2008 TPO). Whilst the Arboricultural Statement indicates that the intrusion can be engineer designed, no such detail has been provided to demonstrate feasibility. South facing garden aspect will also be extensively shaded by this tree. Future requests to severely prune or fell the tree are anticipated. The rear garden of Plot 178 will also be affected to a slightly lesser degree. Again, good design should allow for adequate accommodation of the new build without the need for future pruning/ engineer designed solutions unless all reasonable avenues have been considered.

The house type at plot 180 has been changed to one with a smaller footprint and moved slightly forward away from the tree, which moves the footprint

outside of the RPA and increases the amount of garden unaffected by the tree. Further selective pruning could also be undertaken to improve relationships with plots 180 and 178.

The submitted hedgerow assessment identifies a number of important hedgerows within the site. Part of hedgerows 8, 9 and 23 will be removed. The historical landscape field pattern will be retained and as such there is not considered to be a significant impact upon important hedgerows.

As noted in the original report, the overall wider landscape impact is not considered to be significant given the enclosure provided to the site by existing residential properties. Landscaping throughout the site can be dealt with by condition.

### **Other considerations**

The most recent notification of the revised plans provided a 6 day period for interested parties to comment. Given the relatively limited scale of the amendments and the extent of consultation on previous versions of the proposal this was considered by officers to be acceptable.

It is acknowledged that the amendments bring the housing closer to properties on Browns Lane, but the tree issues have since pushed them back. The nearest property is a bungalow to the rear of Fermaine Cottage, the boundary of which is over 3 metres away, and as noted in the original report the buildings comply with the distance guidelines set out in policy DC38.

No new issues have therefore been raised to the revised plans.

### **Conclusion**

As in the original report a **recommendation of approval** is made subject to the conditions and heads of terms set out in the original report and the following additional conditions:

- 1. Tree retention**
- 2. Tree Protection**
- 3. Construction Specification / Method Statement**
- 4. Tree Pruning / Felling Specification**



**APPLICATION NO:** 14/0132C

**PROPOSAL:** Development of residential scheme comprising up to 100 dwellings, amenity areas, landscaping and associated infrastructure

**LOCATION:** SALTERSFORD FARM, MACCLESFIELD ROAD,  
HOLMES CHAPEL, CW4 8AL

#### **FURTHER INFORMATION**

National Health Service England (NHSE) have confirmed that there will be material impacts upon the delivery of health care within Holmes Chapel and have requested a commuted sum of £96,907 for the provision of health care within Holmes Chapel Medical Centre. In order for the NHSE to programme their improvements to cater for the needs of the new residents attributable to the development, this payment should be made upon commencement of development.

#### **APPLICANTS FURTHER INFORMATION**

The Applicant confirms that they accept the Strategic Housing Manager's requirements for affordable housing. There is no need to alter the Heads of Terms, which already addressed this matter.

#### **RECOMMENDATION**

The recommendation remains unchanged but the wording of the Heads of Terms needs to be amended to incorporate the financial contribution required by NHSE -

- **Affordable housing:**
  - **30% of all dwellings to be affordable (65% social or affordable rented and 35% intermediate tenure)**
  - **A mix of 2 , 3 bedroom and other sized properties to be determined at reserved matters**
  - **units to be tenure blind and pepper potted within the development, the external design, comprising elevation, detail and materials should be compatible with the open market homes on the development thus achieving full visual integration.**
  - **constructed in accordance with the Homes and Communities Agency Design and Quality Standards (2007) and should achieve at least Level 3 of the Code for Sustainable Homes (2007).**
  - **no more than 50% of the open market dwellings are to be occupied unless all the affordable housing has been provided, with the exception that the percentage of open market dwellings that can be occupied can be increased to 80% if the affordable housing has a high degree of pepper-potting and the development is phased.**
  - **developer undertakes to provide the social or affordable rented units through a Registered Provider who are registered with the Homes and Communities Agency to provide social housing.**

- **Provision of minimum of 2,380 sqm of shared recreational open space and the provision of on site children's play space to include a NEAP with 8 pieces of equipment**
- **Private residents management company to maintain all on-site play space, open space, including footpaths, hedgerows and green spaces in perpetuity**
- **The payment of £96,907 for the provision of health care within Holmes Chapel Medical Centre – upon commencement of development**