

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE

Date of meeting: 22nd April 2015
Report of: David Malcolm – Head of Planning (Regulation)
Title: Land at School Lane, Bunbury

1.0 Purpose of Report

- 1.1 To consider the part withdrawal of the reason for refusal relating to planning application 14/2204N for the erection of 34 dwellings, a school car park with associated access road and new landscaping.

2.0 Decision Required

- 2.1 To agree to the part withdrawal of the reason for refusal in respect of housing land supply and to instruct the Head of Planning (Regulation) not to contest the issues at the forthcoming Appeal as detailed.

3.0 Background

- 3.1 On the 27th August 2014, Southern Planning Committee considered an application for the erection of 34 dwellings, a school car park with associated access road and new landscaping.
- 3.2 The application was refused for the following reason:
- 1. The proposed residential development is unsustainable 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 Replacement Local Plan, Policy PG 5 of the Cheshire East Local Plan Strategy – Submission Version and the principles of the National Planning Policy Framework and create harm to interests of acknowledged importance. The Local Planning Authority can demonstrate a 5 year supply of housing land supply in accordance with the National Planning Policy Framework. As such the application is also contrary to the emerging Development Strategy. Consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan.***

- 3.3 The application is now the subject of an Appeal. However, since that time the Local Plan Inspectors interim report has been received which warrants the reconsideration of the reason for refusal.

Housing Land Supply

- 3.3 Paragraph 47 of the National Planning Policy Framework requires that Council's identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements
- 3.4 This calculation of Five Year Housing supply has two components – the housing requirement – and then the supply of housing suites that will help meet it. In the absence of an adopted Local Plan the National Planning Practice Guidance indicates that information provided in the latest full assessment of housing needs should be considered as the benchmark for the housing requirement.
- 3.5 The current Housing Supply Position Statement prepared by the Council employs the figure of 1180 homes per year as the housing requirement, being the calculation of Objectively Assessed Housing Need used in the Cheshire East Local Plan Submission Draft
- 3.6 The Local Plan Inspector has now published his interim views based on the first three weeks of Examination. He has concluded that the council's calculation of objectively assessed housing need is too low. He has also concluded that following six years of not meeting housing targets a 20% buffer should also be applied.
- 3.7 Given the Inspector's Interim view that the assessment of 1180 homes per year is too low, we no longer recommend that this figure be used in housing supply calculations. The Inspector has not provided any definitive steer as to the correct figure to employ, but has recommended that further work on housing need be carried out. The Council is currently considering its response to these interim views
- 3.8 Any substantive increase of housing need above the figure of 1180 homes per year is likely to place the housing land supply calculation at or below five years. Consequently, at the present time, the Council is unable to robustly demonstrate a five year supply of housing land.
- 3.9 On the basis of the above, the Council at this time cannot reasonably continue to rely upon the part of the reason for refusal for this appeal which relates to housing land supply.

Open Countryside

- 3.10 The site is located within the open countryside. At the recent appeal decision at Audlem Road, Broad Lane and Peter Destapleigh Way, Stapeley (12/3747N) the Secretary of State disagreed with the inspectors recommendation and stated that he did not consider that the

appeal site is one of the most appropriate sites to take forward and that is should not be assumed at this stage that the development of this site within the open countryside should proceed on a piecemeal basis and that the development does not constitute sustainable development.

- 3.11 It is considered that these comments would apply to the current application site and as such the appeal will still be defended on the basis of the harm to the character and appearance of the open countryside.

4.0 Planning Balance and Conclusion.

- 4.1 The proposal is contrary to development plan policies NE2 (Open Countryside) and RES5 (Housing in the Open Countryside) and therefore the statutory presumption is against the proposal unless material considerations indicate otherwise.
- 4.2 The most important material consideration in this case is the NPPF which states at paragraph 49 that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 4.3 The development plan is not “absent” or “silent”. The relevant policies are not out of date because they are not time expired and they are consistent with the “framework” and the emerging local plan. Policy NE.2, whilst not principally a policy for the supply of housing, (its primary purpose is protection of intrinsic character and beauty of the countryside,) it is acknowledged has the effect of restricting the supply of housing. Therefore, where a 5 year supply cannot be demonstrated, Policy NE.2 can be considered to be out of date in terms of its geographical extent and the boundaries of the area which it covers will need to “flex” in some locations in order to provide for housing land requirements. Consequently the application must be considered in the context of paragraph 14 of the Framework, which states:

At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.....For decision taking means:

- *approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - n any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
 - n specific policies in the Framework indicate development should be restricted.”*

- 4.4 It is therefore necessary to consider whether the proposal constitutes “sustainable development” in order to establish whether it benefits from the presumption under paragraph 14. The cases of Davis and Dartford have established that that “*it would be contrary to the fundamental principles of the NPPF if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development*”. In order to do this, the decision maker must reach an overall conclusion, having evaluated the three aspects of sustainable development described by the framework (economic, social and environmental) as to whether the positive attributes of the development outweighed the negative in order to reach an eventual judgment on the sustainability of the development proposal. However, the Dartford case makes clear that this should be done simultaneously with the consideration of whether “*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole*” as required by paragraph 14 itself and not on a sequential basis or as a form of preliminary assessment.
- 4.5 In this case, the development would provide market and affordable housing to meet an acknowledged shortfall. The proposal would also have some economic benefits in terms of jobs in construction, spending within the construction industry supply chain and spending by future residents in local shops.
- 4.6 Balanced against these benefits must be the negative effects of this incursion into Open Countryside by built development. It is considered that the negative aspects of the scheme in relation to the harm to the open countryside would be sufficient to outweigh the benefits in terms of housing land supply in the overall planning balance.
- 4.7 On the basis of the above, it is considered that the Council should withdraw that part of the reason for refusal which relates to housing land supply and to contest the issue at Appeal on open countryside grounds only.

5.0 Recommendation

- 5.1 To agree to the part withdrawal of the reason for refusal in respect of housing land supply and to instruct the Head of Planning (Regulation) not to contest the issues at the forthcoming Appeal. The appeal will still be contested on open countryside grounds. The appeal will be defended on the following grounds:

The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policies NE2 (Open Countryside) and RES5 (Housing in the Open Countryside) of the Crewe and Nantwich Replacement Local Plan , Policy PG5 of the emerging Cheshire East Local Plan Strategy – Submission

Version and the principles of the National Planning Policy Framework which seek to ensure development is directed to the right location and open countryside is protected from inappropriate development and maintained for future generations enjoyment and use. As such it and creates harm to interests of acknowledged importance.

6.0 Risk Assessment and Financial Implications

- 6.1 There is a risk that if the Council continues to pursue the Appeal on housing land supply grounds, in the light of the Local Plan Inspectors Interim findings, a successful claim for appeal costs could be made against the Council on the grounds of unreasonable behaviour.
- 6.2 There would also be an implication in terms of the Council's own costs in defending the reasons for refusal.

7.0 Consultations

- 7.1 None.

8.0 Reasons for Recommendation

- 8.1 To avoid the costs incurred in pursuing an unsustainable reasons for refusal at Appeal

For further information:

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Background Documents:

Application: 14/2204N