

## **STRATEGIC PLANNING BOARD – 3<sup>rd</sup> June 2015**

**APPLICATION NO:** 14/1189C

**PROPOSAL:** Proposed residential development of up to 165 dwellings, including 'affordable housing', highway and associated works, public open space and green infrastructure.

**ADDRESS:** Land off Abbey Road, Sandbach

**APPLICANT:** Fox Strategic Land & Property Ltd

### **ADDITIONAL INFORMATION**

Following the publication of the committee report the applicant has submitted a Legal Opinion. This is summarised as follows:

- The applicants for this application have objected to the Draft Sandbach Neighbourhood Development Plan (SNDP)
- Reference is made to the Woodcock case (*Woodcock Holdings Limited v Secretary for State for Communities and Local Government*)
- Woodcock clearly shows that in relation to the weight to be attached to emerging plans that it is necessary, in order for the decision-taker properly to take into account paragraph 216 of the NPPF, that all criteria in that paragraph are considered. It also shows equally that, in relation to prematurity, all the key aspects of the policy in the PPG must be considered in order that the policy is properly taken into account. Referring to advice in the PPG that prematurity is seldom justified as a ground of refusal in the case of a draft neighbourhood plan before the end of the local authority publicity period, Holgate J characterised that in terms of whether a draft plan had reached a sufficiently advanced stage by way of an “entry point” for considering prematurity as a possible reason for refusal
- It seems that the Council’s reliance on paragraph 216 of the NPPF to justify its reason for refusal is misplaced. Proper application of the three criteria in paragraph 216 shows that the SNDP could only be accorded very limited weight. The SNDP is at an early stage having only just been subject to pre-submission consultation; there are already (as per Gladman Developments Ltd’s objections) significant unresolved objections to relevant policies; and there are also (as those objections again reveal) serious questions as to the consistency of relevant policies with the NPPF. The officers report does not properly consider these matters. It is also to be noted that, while the officers report considers that the development conflicts with Policy H1 of the SNDP, the officers report does not put forward any such conflict as the basis for refusal but instead fixes on prematurity as the decisive consideration. Presumably the officers report does not seek to rely on conflict with H1 because of the lack of weight of such policy. There is a further problem with this policy and all other policies of the SNDP which are relevant policies for the supply of housing. *Woodcock* clearly holds

that paragraph 49 of the NPPF applies to policies in draft plans (including draft neighbourhood plans). Accordingly, no relevant policies for the supply of housing in the SNDP can be considered up-to-date given the accepted lack of a five year housing supply in Cheshire East. While the weight to be given to out-of-date policies for the supply of housing is a matter for the decision-taker, *“it will normally be less, often considerably less, than the weight due to policies which provide fully for the requisite supply”*: see *Crane v Secretary of State for Communities and Local Government*.

- Turning specifically to prematurity, this is not a justifiable reason for refusal in the light of the clear guidance in the PPG that prematurity is only likely to justify a refusal where an *“emerging plan is at an advanced stage”* and that *“refusal of planning permission on grounds of prematurity will seldom be justified ... in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period.”* That period (the regulation 16 stage under the Regulations) has not yet begun in this case. The SNDP has not yet advanced as far as the “entry point” (as Holgate J referred to it in *Woodcock*) for considering prematurity as a possible reason for refusal. There does not appear to me to be any good reason why this case might be considered one of the seldom occasions when the advice in the PPG need not be followed. The circumstances which apply in Sandbach appear far from exceptional.
- There is a very clear echo in the Fox case of Holgate J’s criticism of the appeal decision in the *Woodcock* case that the point taken there by the Secretary of State on prematurity was devoid of content. The judge indicated that it was clear that the Secretary of State had not applied himself to the key tests in the PPG on prematurity as to whether particular issues should be determined in the examination of a neighbourhood plan rather than in the decision on a planning appeal but had, in fact, determined the relevant issues in the planning appeal in any event. So also in this case the officer report seeks to make the case that the scale, extent and form of development in Sandbach should be considered through the SNDP process yet nevertheless finds, for example, that the site is sustainable, that (with mitigation) there would not be a detrimental impact on the landscape character of the area, that the development would not be unacceptable in terms of the green gap between Elworth and Sandbach, that there would be no impediment to the grant of permission on the basis of impact on infrastructure and that an acceptable design could be secured. It is thus hard to see how the contention in the officer report that the proper planning of the Sandbach area would be threatened by approval of the appeal proposals could be sustained.
- Further, given the acknowledged benefits of the development (not least in terms of the provision of market and much needed affordable housing as well as significant economic benefits), it is also not easy to see how the Council can justify the requirement of the PPG on prematurity that it must be *“clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits”*.

- The proposals could not properly be considered premature.

## **ADDITIONAL CONSULTATIONS**

**Highways:** This development will impact upon the local highway network and the developer has agreed a contribution to a suitable set of measures to offset the transport impact of the development. The Head of Strategic Infrastructure has no objection to this planning application subject to the imposition of conditions and informatives.

## **OFFICER COMMENTS**

It is acknowledged that the Sandbach NP is at an early stage in the adoption process and that comments and objections have been received in respect of the initial consultation period, including comments from Cheshire East Council.

Policy H1 in the Draft Sandbach NP should be considered as a policy for the supply of housing – and accordingly it should be afforded a reduced degree of weight based upon its status, context and the fact that no 5 year supply of housing is in place. However, the approach to housing embodied in policy H1 reflects broader aspects of the Plan, such as its vision, aims and objectives. Accordingly the case rests on the assessment of the weight to be applied to emerging policy (albeit limited) and the scale, context of circumstances of developments in Sandbach.

*Paragraph 216 of the NPPF states. From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:*

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

The PPG provides the further guidance as in the main report and advises on the grounds where prematurity. This further advises that circumstances are only likely to significantly and demonstrably outweigh the presumption in favour of sustainable development, but not exclusively, to be limited to situations where the development is so substantial to undermine the plan making process due to its scale, location of phasing and the emerging plan is at an advanced stage.

The recent Woodcock case confirms that NP should be treated in the same way as any other emerging plan and it is clear that there are some outstanding objections made in respect of the NP. However, in respect of the NP and also the Cheshire East Local Plan Strategy there is consistency with level of development for Sandbach, which aligns with the identification of Sandbach as a key service centre where an accepted level of development would be encouraged.

In terms of the submitted Cheshire East Local Plan Strategy, Sandbach is unusual in that existing commitments (2,754) already markedly outstrip the planned level of development (2,200). Thus whilst generally an uplift in housing numbers might ordinarily be expected as a result of the Inspector's comments on Objectively Assessed Need, the fact that numerous permissions have already been granted in Sandbach correspondingly limits the scale of any likely further uplift in housing numbers in this particular Key Service centre.

In the officer's view it is this contrast between the scale of the development within the current application and the likely scale of any further uplift in housing numbers in Sandbach (if indeed there is any at all) that renders the development unusually significant. Consequently the decision on this application becomes absolutely central to the process of plan making in Sandbach.

In the Officer's view this issue is so substantial to afford sufficient weight to provide a prematurity argument in accordance with the NPPF and PPG and also the recent Woodcock case.

It is acknowledged that this is very much a balanced assessment which ultimately must rest the decision maker.

## **Highways**

The application is supported by a transport Assessment. The document maintains the trip rates for traffic generation which were approved with the Phase 1 TA and refers to the array of local infrastructure improvements which were agreed with the Phase 1 scheme including: local junction improvements, cycleway and pedestrian route improvements and financial contributions to the wider highway network.

The TA relies on traffic flow data from 2010. The 2010 traffic flows have been enhanced by growth factors which are intended to predict future year traffic flows. Generally traffic flows that are five years old would be considered too old to accurately reflect current day traffic flows. However, in this instance it is considered that the data will be reasonably representative of current traffic flows in the immediate vicinity of the site with suitable background traffic growth has been applied and committed development traffic has been added.

The TA includes an assessment of committed development and the list of sites is comprehensive. Traffic flow diagrams including all committed

development flow are provided so that the cumulative impact from these developments is factored into the TA.

The TA also claims that the improvements agreed against the Phase 1 scheme are relevant and applicable to the Phase 2 scheme, which is accepted to a certain degree as they affect the assessment of this Phase 2 scheme. However, it does not follow that the previously agreed improvements necessarily mitigate the impact of this Phase 2 proposal.

### Traffic Impact

The site is sustainable and the improvements to sustainable links agreed against the Phase 1 development will also serve Phase 2. In addition there are further pedestrian links proposed, both through the site and connecting it to the local footway network.

The scope of assessment mirrors the range of network junctions which were assessed for the Phase 1 development and adds the new access proposed on the Abbey Road frontage.

The junctions which will be most impacted upon by this development are:

- Abbey Road/A533 Middlewich Road.
- A533 Middlewich Road/Crewe Road/A533 Old Mill Road – roundabout junction.
- A533 Old Mill Rd/A534 Wheelock by-pass/Brookhouse Road – roundabout junction.
- A533-A534 Old Mill Rd/A533 The Hill/A534 Old Mill Road North – signal junction.

The TA provides a modelling assessment of these junctions using the industry recognised PICADY, ARCADY and LINSIG programs for roundabouts, priority junctions and traffic signal junctions, respectively.

The modelling figures include analysis of these junctions for base traffic flows and future year predictions including development related traffic.

The Head of Strategic Infrastructure is mindful (based upon site observations) that the modelling results presented for these junctions within the TA does not necessarily precisely match the observed traffic conditions which prevail on-street at the current time. However, the TA does recognise that the Old Mill Road corridor and junctions are suffering significant delay at existing traffic levels.

Through consideration of the modelling indicated in the TA, and subsequent discussions with the applicant, it has been agreed that the development will have a significant impact on the Old Mill Road corridor and that mitigation measures are required.

Cheshire East Council has previously developed an improvement scheme on Old Mill Road at the junctions of the A533/A534 (Waitrose roundabout) and the signalled junction of A534/A533/High St/The Hill comprising an increase in highway capacity at and between these two junctions.

A contribution strategy to these measures has been agreed for other developments in Sandbach and, on that basis, contributions have also been agreed with this applicant towards these measures to be secured as part of a Section 106 agreement in order to mitigate the transport impact of this development proposal.

### Sustainable Transport

This site is well supported by sustainable transport options. The site is on recognised bus routes with access to a good number of services and stops close to the site.

The railway station is within walking distance and local facilities and schools are within easy access distance.

The Phase 1 development will provide significant upgrade to local pedestrian and cycle facilities and make appropriate provision for bus stop location in the light of the A533 access proposal to Phase 1.

The Phase 2 development will provide a footway/cycleway link on Abbey Road in the vicinity of the site access to that road.

### Access

The proposal for this Phase 2 development is for a priority junction onto Abbey Road.

The junction design also shows visibility splays in accord with Manual for Streets 2 and speed surveys presented by the applicant to support the use of MfS2 visibility splays and confirm that appropriate splays can be provided at the access.

It is intended that that the Phase 2 development layout will connect through Phase 1 and that both Phases will be able to take access via either access point to the wider highway network.

### **Impact upon the Setting of the Listed Building**

Following the receipt of the amended plans contained within the Design and Access Statement which reduced the number of dwellings proposed and which pulled the development away from the Grade II Listed Building the Councils Built Heritage Officer does not consider that the built development on this site could be further reduced. The Built Heritage Officer has raised concerns in relation to the modified boundary now proposed, concern that the building line will encroach closer than is suggested. As such it is

recommended that the 130 metre separation is secured as a scheme parameter within the submitted information (namely on the plan in the ES Addendum). It is also considered that there should be a specific requirement for a parkland planting scheme to the West and North West of Abbeyfields, between it and the application site, as part of any landscaping condition.

Subject to conditions to secure these amendments it is not considered that the development would have a detrimental impact upon the setting of the Listed Building.

### **Correction to the Main Report**

The main report contains an error within the second reason for refusal as it refers to the Councils being able to demonstrate a 5 year supply of housing. This will be corrected within the updated recommendation below.

### **RECOMMENDATION**

#### **REFUSE for the following reasons:**

- 1. The Local Planning Authority considers that having regard to the context of developments in the Sandbach area and the scale of the proposed development that it would be premature following the publication consultation draft of the Sandbach Neighbourhood plan. As such allowing this development would prejudice the outcome of the neighbourhood plan-making process and would be contrary to guidance contained at Paragraph 216 of the NPPF and guidance contained within the NPPG.**
- 2. Whilst it is acknowledged that there is a presumption in favour of sustainable development in the planning balance, it is considered that the development is unsustainable because of the conflict with the draft Sandbach Neighbourhood plan and because of the unacceptable environmental and economic impact of the scheme in terms of loss of best and most versatile agricultural land and open countryside. These factors significantly and demonstrably outweigh the social benefits in terms of its contribution to boosting housing land supply, including the contribution to affordable housing. As such the proposal is contrary to Policies PS8 and H6 of the adopted Congleton Borough Local Plan First Review 2005 and Policies PG 5 and SE 2 of the Cheshire East Local Plan Strategy – Submission Version and the provisions of the NPPF.**

**In order to give proper effect to the Board's/Committee's intentions and without changing the substance of the decision, authority is delegated to the Head of Strategic & Economic Planning, in consultation with the Chair (or in his absence the Vice Chair) of Strategic Planning Board, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.**

**Should the application be subject to an appeal, the following Heads of Terms should be secured as part of any S106 Agreement:**

**1. A scheme for the provision of 30% affordable housing – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:**

- The numbers, type, tenure and location on the site of the affordable housing provision**
- The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing**
- The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved**
- The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and**
- The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.**

**2. Provision of Public Open Space and a NEAP (8 pieces of equipment) to be maintained by a private management company**

**3. Primary school education contribution of £325,388.70**

**4. Secondary school education contribution of £343,169.49**

**5. PROW Contribution of £25,000**

**6. Highways Contribution of £137,211 towards improvements to the A533/A534 corridor**