

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of Report: 2 June 2015
Report of: David Malcolm – Head of Planning Regulation
Title: 14/1326N - Land to the north of Wistaston Green Road,
Wistaston

1.0 Purpose of Report

- 1.1 To consider the part withdrawal of the reasons for refusal relating to outline planning application 14/1326N for up to 150 residential dwellings to include access. All other matters reserved for future consideration Subject to an Environmental Impact Assessment.
- 1.2 The report has been brought as a late item due to the need for a speedy decision to ensure that proofs of evidence are submitted within the set deadlines.

2.0 Decision Required

- 2.1 To agree to the part withdrawal of the reasons for refusal in respect of housing land supply, ecology and highways and to instruct the Head of Planning Regulation not to contest the issues at the forthcoming Appeal.

3.0 Background

- 3.1 On the 15th October 2014, Strategic Planning Board considered an outline application for Construction of up to 150 dwellings including details of access.
.
- 3.2 The Applicant appealed on grounds of non-determination prior to the formal issue of the Decision Notice. The Minutes of the Committee state that the application was resolved to be refused for the following reasons:

- 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.

2. In the opinion of the Local Planning Authority, the proposed development would cause a significant erosion of the Green Gap between the built up areas of Nantwich and Crewe, in an area that is also designated as being within the designated Green Belt within the Local Plan Strategy Submission Version and would adversely affect the visual character of the landscape which would significantly and demonstrably outweigh the benefits of the scheme notwithstanding a shortfall in housing land supply. The development is therefore contrary to Policy NE4 (Green Gaps) of the Borough of Crewe and Nantwich Replacement Local Plan 2011, Policy PG3 (Green Belt) of the Local Plan Strategy Submission Version and guidance contained within the NPPF.

3. In the absence detailed site survey information the applicant has failed to demonstrate that the proposal will not result in loss of the best and most versatile agricultural land and given that the Authority can demonstrate a housing land supply in excess of 5 years, the applicant has also failed to demonstrate that there is a need for the development, which could not be accommodated elsewhere. The use of the best and most versatile agricultural land is unsustainable and contrary to Policy NE.12 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and the provisions of the National Planning Policy Framework.

4. Insufficient information has been submitted with the application to determine the impact of the proposal on barn owls. As the Local Planning Authority can demonstrate a 5 year supply of housing land there are overriding reasons for allowing the development. Therefore the scheme is contrary to Policy NE.5 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within the NPPF.

5. The proposed development will have an adverse impact on highway safety by virtue of the increase in traffic from the development contrary to Policy BE3 of the Crewe & Nantwich Local Plan.'

3.3 The application is now the subject of an Appeal. However, since that time further information has been received concerning agricultural land and ecology in addition to the Local Plan Inspectors interim report has been received which warrants the reconsideration of the resolution.

3.4 In addition, negotiations have been on-going between the Appellant and the Ecologist, who has reconsidered his position in the light of the

additional information has been received in respect of Barn Owls and ditches on the site.

Housing Land Supply

- 3.5 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
- 3.6 This calculation of Five Year Housing supply has two components – the housing requirement – and then the supply of housing sites 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.
- 3.7 Following the suspension of the Examination into the Local Plan Strategy and the Inspectors interim views that the previous objectively assessed need (OAN) was 'too low' further evidential work has now taken place and a fresh calculation made.
- 3.8 Taking account of the suggested rate of economic growth and following the methodology of the NPPG, the new calculation suggests that need for housing stands at 36,000 homes over the period 2010 – 2030. Although yet to be fully examined this equates to some 1800 dwellings per year.
- 3.9 The 5 year supply target would amount to 9,000 dwellings without the addition of any buffer or allowance for backlog. The scale of the shortfall at this level will reinforce the suggestion that the Council should employ a buffer of 20% in its calculations – to take account 'persistent under delivery' of housing plus an allowance for the backlog.
- 3.10 While the definitive methodology for buffers and backlog will be resolved via the development plan process this would amount to an identified deliverable supply of around 11,300 dwellings
- 3.11 This total exceeds the total deliverable supply that the Council is currently able to identify – and accordingly it remains unable to demonstrate a 5 year supply of housing land.

Open Countryside

- 3.12 The site is located within the open countryside. At the recent appeal decision at Audlem Road, Broad Lane and Peter Destaplegh 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 it 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.

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

Green Gap

- 3.14 Recent Appeal Decisions by the Secretary of State at Gresty Oaks and Church Lane, Wistaston have confirmed that Green Gap policies are not policies for the supply of housing, and are therefore up-to-date even where the Local Planning Authority cannot demonstrate a five year supply of housing. The development of areas protected by Green Gap policy was not found to be sustainable. This position has been supported by the Courts in the Barwood case and the recent challenge at Moorfields, Wistaston, within Cheshire East.

- 3.15 As such the appeal can still be defended on Green Gap grounds.

Loss Of Agricultural Land

- 3.16 This reason for refusal refers to a lack of information concerning agricultural land. Since the resolution to refuse an Agricultural Land Appraisal has been submitted to the Council. In summary, the report concludes the following:

Grade 2 - 1.45ha
Grade 3A - 3.63ha*
Grade 3B - 2.08ha
Grade 4 - 0.35ha

* The Applicant considers the areas alongside the brook are undevelopable and not farmed due to slope gradient and flooding equate to 1.23ha, therefore reducing the loss of Grade 3A from 3.63ha to 2.4ha across the site. However, this 1.23ha of land could still be utilised for agriculture (eg grazing) and is therefore still considered to form best and most versatile Agricultural land.

- 3.17 It is clear from the information now submitted that the loss of Best and Most Versatile agricultural land covers 5.05ha comprises 67% of the site.

- 3.18 The applicant has addressed the resolved reason for refusal in terms of the lack of information about the quality of the agricultural land, however, in the context of the other adverse impacts of the proposal, when considering the overall planning balance, the loss of BMV agricultural land still weighs against the proposal in the overall planning balance.

- 3.19 The reason for refusal should be updated to –

The site comprises 5.05ha (67%) best and most versatile agricultural land, the loss of which weighs against the proposal in the overall planning balance, and when taken cumulatively with the other factors referred to above renders the development unsustainable and the harm caused would significantly and demonstrably outweigh the benefits and is contrary to Policy NE.12 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and the provisions of the National Planning Policy Framework.

Ecology

- 3.20 The fourth reason refers to a lack of information concerning Barn Owls. Since the Committee resolution the trees on site have been subject to a further survey which confirms that no roosting opportunities for barn owls are present on site. The Council's ecologist is now satisfied that no features likely to be used for roosting or breeding by barn owls would be adversely affected by the proposed development.
- 3.21 On this basis, this reason for refusal can be withdrawn

Highways

- 3.22 At the forthcoming appeal, to defend the highways reason for refusal it will need to be demonstrated in technical terms that the development traffic cannot be mitigated by the applicant and that there is a severe impact as a result. The NPPF is clear that impacts have to be severe to merit refusal.
- 3.23 In assessing the traffic impact of the development the only capacity issue that arose on the road network that would be directly affected by the development was the junction at Middlewich Road/Wistaston Green Road and this problem is being mitigated by the applicant. Whilst there are congestion issues on Middlewich Road at the Alvaston roundabout the development will add only some 15 trips to the junction in the peak hour once the traffic is distributed on the road network. It is clear that the development would only result in a very small percentage increase on existing traffic flows and is not a technical argument in the expert opinion of the Strategic Highways Manager that can be considered to constitute a severe impact in terms of the NPPF requirement. The SHM has also confirmed that in the light of his original advice, he can not defend this reason in the forthcoming appeal.
- 3.24 On the basis of Leading Counsel advice, it is recommended that the highway reason for refusal to the application be withdrawn.

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 Policy NE4 (Green Gap). 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.
- 4.4 Previous Appeal decisions and case law have established that Green Gap Policy (NE4) is not a policy for the supply of housing.
- 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 and Green Gap by built development and the loss of Best and Most Versatile Agricultural land. It is considered that the negative aspects of the scheme in relation to the harm to the open countryside, Green Gap and loss of best and most versatile agricultural land would be sufficient to outweigh the benefits in terms of housing land supply in the overall planning balance.
- 4.7 Previous Appeal Decisions (including Secretary of State decisions) and Court Rulings have established that development within Green Gaps is not sustainable development.
- 4.8 The outstanding information relating to Barn Owls has been received and confirms this species are not present on site.
- 4.9 On the basis of the above, it is considered that the Council should withdraw part of the reason for refusal which relates to housing land supply, highways and barn owls and to contest the issue at Appeal on open countryside/ loss of agricultural land and green gap grounds only.

5.0 Recommendation

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

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 application is also contrary to the emerging Development Strategy.*
2. *In the opinion of the Local Planning Authority, the proposed development would cause a significant erosion of the Green Gap between the built up areas of Shavington and Crewe and would adversely affect the visual character of the landscape which would significantly and demonstrably outweigh the benefits of the scheme notwithstanding a shortfall in housing land supply. The development is therefore contrary to Policy NE4 (Green Gaps) of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within the NPPF.*
3. *The site comprises 5.05ha (67%) best and most versatile agricultural land, the loss of which weighs against the proposal in the overall planning balance, and when taken cumulatively with the other factors referred to in 1 and 2 above renders the development unsustainable and the harm caused would significantly and demonstrably outweigh the benefits and is contrary to Policy NE.12 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and the provisions of the National Planning Policy Framework.*

Also resolve to enter into a planning agreement in accordance with the S106 Town and Country Planning Act to secure the Heads of Terms for a S106 Agreement.

S106 Heads of Terms:

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 to include pepper potting*
 - *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 POS and a LEAP with 5 pieces of equipment and a scheme of management in perpetuity*

3. *Commuted Sum payment in lieu of primary education provision*

£292,850

4. *Commuted Sum payment of £2000 in lieu of ecological mitigation for loss of grassland*

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, lack of information grounds in terms of Barn Owls and Agricultural Land Appraisal and highways grounds in the light of the Local Plan Inspectors Interim findings and the further information now received, together with the advise of the Strategic Highways Manager; 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. In terms of the highways reason, external consultants would need to be retained at very short notice to provide evidence (proofs are due to be submitted on 23 June 2015)

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:

Portfolio Holder: Councillor Ainsley Arnold

Officer: David Malcolm – Head of Planning Regulation

Tel No: 01625 383702

Email: sue.orrell@cheshireeast.gov.uk

Background Documents:

Applications 14/1326N