

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE

Date of meeting: 2nd September 2015
Report of: David Malcolm – Head of Planning (Regulation)
Title: Land to the east of Hermitage Lane, Goostrey

1.0 Purpose of Report

- 1.1 To consider the withdrawal of the Housing Land Supply (HLS) reason for refusal relating to planning application 14/1964C. This was an outline application for 26 dwellings at land to the east of Hermitage Lane, Goostrey.

2.0 Decision Required

- 2.1 To agree to the part withdrawal of the reason for refusal 1 in respect of HLS and to instruct the Head of Planning (Regulation) not to contest this issue in the forthcoming appeal. The appeal will still be contested on all other grounds detailed below.

3.0 Background

- 1.2 An application for 26 dwellings on Land to the east of Hermitage Lane, Goostrey was refused by the Cheshire East Council's Southern Planning Committee on the 29th October 2014. The application was refused for the following reasons:

- 1. The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policies PS8 and H6 of the Congleton Borough Adopted Local Plan First Review 2005, Policy PG5 of the emerging Cheshire East Local Plan Strategy – Submission Version and the principles of the National Planning Policy Framework. These policies 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 creates harm to interests of acknowledged importance, including the landscape. The Local Planning Authority can demonstrate a 5 year supply of housing land supply in accordance with the National Planning Policy Framework and consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan.*

2. *The proposed development would have an adverse impact upon the efficient operation of the Jodrell Bank Observatory. As such, the proposal is contrary to Policy PS10 of the adopted Congleton Borough Local Plan First Review 2005 and Policy SE14 of the emerging Cheshire East Local Plan Strategy – Submission Version.*

- 3.1 The application is now the subject of an Appeal. However, since the determination of the planning application, the Local Plan Inspectors interim report has been received which warrants the reconsideration of the HLS aspect of the reason for refusal.
- 3.2 The appeal is to be heard by means of Public Inquiry (date to be confirmed).

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 The 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.
- 3.5 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.
- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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 and therefore the housing land supply issue be effectively withdrawn.

Open Countryside

- 3.10 The site is located within the open countryside. As Members will be aware, there have been a number of recent appeal decisions where the open countryside has been lost due to the shortfall of housing land. Officers have recommended decisions accordingly. At the recent appeal decisions 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 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.
- 3.11 Conflict with objectives relating to the protection of the countryside, may properly outweigh the benefits of boosting housing land supply along with the other sustainability credentials of the proposals, as confirmed by the recent Appeal Decision at "The Gables". In that case Inspector Cullingford recognised at paragraph 26 that whilst settlement boundaries were out of date and in need of review:

"that does not mean that the severe restrictions designed to protect the character of the countryside should be wholly discarded, especially where the aims of that policy continue to chime with the advice of the Framework. So, while an outdated policy might not of itself justify protection for this settlement boundary, the clear natural distinction between the character of the western and eastern sides of Back Lane, as well as the enveloping nature of the countryside around this small settlement and its contribution to the character of the place, might well be worth maintaining for sound planning reasons. The proposal would irrevocably alter those features and, for the reasons outlined above, be seen as an intrusive and incongruous element encroaching into the countryside that envelopes the settlement, contrary to several core planning principles set out in the Framework."

- 3.12 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 and the impact upon Jodrell Bank Radio Telescope.

4 Planning Balance and Conclusion

- 4.1 The proposal is contrary to development plan policies PS8 (Open Countryside), H6 (Residential development in the Open Countryside and the Green Belt) and PS10 (Jodrell Bank Radio Telescope Consultation Zone) 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 PS10 of the adopted Congleton Borough Local Plan First Review 2005 relates to Jodrell Bank and is not therefore a policy for the supply of housing.
- 4.4 Policy PS8, 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 PS8 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:*
- *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*
- *specific policies in the Framework indicate development should be restricted.”*

- 4.5 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 outweigh 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.

- 4.6 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.
- 4.7 Balanced against these benefits must be the negative effects of this incursion into Open Countryside by built development and the impact upon the Jodrell Bank Radio Telescope. It is considered that the negative aspects of the scheme in relation to the harm to the open countryside and Jodrell Bank would be sufficient to outweigh the benefits in terms of housing land supply in the overall planning balance.
- 4.8 On the basis of the above, it is considered that the Council should withdraw part of the reason for refusal which relates to HLS and to contest the issue at Appeal on open countryside and Jodrell Bank grounds only.

5.0 Recommendation

- 5.1 To agree to the part withdrawal of the reason for refusal 1 in respect of housing land supply and to instruct the Head of Planning (Regulation) not to contest this issue at the forthcoming Appeal. The appeal will still be contested on open countryside and Jodrell Bank 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 PS8 and H6 of the Congleton Borough Adopted Local Plan First Review 2005, Policy PG5 of the emerging Cheshire East Local Plan Strategy – Submission Version and the principles of the National Planning Policy Framework. These policies 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 creates harm to interests of acknowledged importance, including the landscape and there are no material circumstances to indicate that permission should be granted contrary to the development plan.*
 - 2. *The proposed development would have an adverse impact upon the efficient operation of the Jodrell Bank Observatory. As such, the proposal is contrary to Policy PS10 of the adopted Congleton*

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: 14/1964C