

# CHESHIRE EAST COUNCIL

## STRATEGIC PLANNING BOARD – URGENT REPORT

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**Date:** 18<sup>th</sup> May 2016

**Report of:** David Malcolm – Head of Planning (Regulation)

**Title:** Update following the refusal of application 15/1552N – outline planning permission for residential development for up to 99 dwellings (Use Class C3), with public open space, vehicular access and associated infrastructure.

**Site:** Land off East Avenue, Weston

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### 1.0 Purpose of Report

- 1.1 Planning application 15/1552N was determined by the Strategic Planning Board on 29<sup>th</sup> July 2015. This report is to consider an update to the reasons for refusal in advance of the upcoming appeal.
- 1.2 This report has been brought to Strategic Planning Board as an **Urgent Item** as the Inquiry is scheduled to take place from 26 June 2016 with proofs of evidence needed by the end of May 2016.
- 1.3 The minutes from the meeting are as follows:

*That the application 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), NE.12 (Agricultural Land Quality) and RES.5 (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 creates harm to interests of acknowledged importance.*

2. *The proposal would result in loss of the best and most versatile agricultural land. 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.*

3. *The scale of this development would exceed the spatial distribution for Weston and would not respect the scale of Weston which is at the lowest tier of the settlement hierarchy. The development would be contrary to Policies PG2 and PG6 of the Cheshire East Local Plan Strategy - Submission Version.*

4. *The application site is adjacent to a known landfill site and as a result the land has the potential to be contaminated and there may be ground gas being generated on this site. Insufficient information has been submitted with the application in relation to gas risk and as a result it is not possible to determine whether there will be an adverse effect from pollution on the health of the future occupiers of the proposed development. The development is therefore contrary to Paragraph 120 of the NPPF and Policy BE.6 of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

*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 Planning (Regulation), in consultation with the Chairman (or in his absence the Vice Chairman) of the 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 LEAP (5 pieces of equipment) to be maintained by a private management company in perpetuity*

*3. Primary School Education Contribution of £206,079.51.*

*In addition, Members wanted the refusal notice to include an informative expressing their concern about highways issues making it clear that, based on the Highways officer's advice, this was not a reason for refusal.*

- 1.3 Since the refusal of this application an appeal has now been lodged and it is now necessary to consider whether the Council contests the reasons for refusal referred to above. The Inquiry is scheduled to take place from 26 June 2016 with proofs of evidence needed by the end of May 2016.

## **2.0 Decision Required**

- 2.1 To remove and amend the reasons for refusal as listed at the forthcoming appeal.

## **3.0 Background**

- 3.1 The site of the proposed development extends to 5.2 ha and is located to the southern side of East Avenue. The site is within Open Countryside. To the southern boundary of the site is agricultural land. To the north of the site is residential development which forms the village of Weston (fronting Meadow Avenue, Fairview Avenue, Mere Road, West Avenue and East Avenue). A watercourse (Basford Brook) runs to the west of the site and drainage ditches run along the western and part of the southern boundaries of the site.
- 3.2 The land is currently in agricultural use and forms one large field. There are a number of trees and hedgerow to the boundaries of the site. Including some trees which are located within the centre of the site.
- 3.3 Two PROW (Weston FP7 and Weston FP8) cross the north-east corner of the site.

## **4 Proposed Development**

- 4.1 14/3892C is an outline planning application for the erection of up to 99 dwellings. Access is to be determined at this stage with all other matters reserved.
- 4.2 The proposed development includes a single access point onto East Avenue which would be located to the northern boundary of the site.
- 4.3 The indicative plans show that the site would include a country park which would extend to 1.36 hectares.

## **5 Officer Comment**

### Reason for Refusal 3 Spatial Distribution

- 5.1 The issue of spatial distribution has been raised at a number of recent appeal decisions.
- 5.2 Weston is classed as an 'other settlement' however the wording under Policy PG2 has now changed in the latest version of the emerging CEC Local Plan. It previously referred to only '*small scale infill and the change of use or conversion of existing buildings in order to sustain*

*local services’ but it now states that ‘In the interests of sustainable development and the maintenance of local services, growth and investment in the other settlements should be confined to proportionate development at a scale commensurate with the function and character of the settlement and confined to locations well related to the existing built-up extent of the settlement’.*

- 5.3 It is considered that the reason for refusal should be slightly amended to reflect the updated position and wording in the emerging CEC Local Plan Strategy. The suggestion is as detailed below

*“The scale of this development would be disproportionate to the **function and character** of Weston and would not respect the scale of Weston which is at the lowest tier of the settlement hierarchy. The development would be contrary to Policies PG2 and PG6 of the Cheshire East Local Plan Strategy - Submission Version.”*

#### Reason for Refusal 4 Contaminated Land

- 5.4 The applicant has now submitted some further information relating to land contamination, submitted under a more recent application for this site (16/1335N). The Councils Environmental Health department have now had the opportunity to review this information in light of the above application which is due to proceed to a Public Inquiry.
- 5.5 Reports relating to land contamination have been submitted in support of the application – a Phase I Preliminary Risk Assessment and two gas risk assessment reports. The Phase I report identified a potential risk of ground gas migration from an adjacent former landfill to the proposed development; therefore further work was undertaken into this aspect.
- 5.6 Boreholes were installed for the purposes of ground gas monitoring along the western site boundary, and these were monitored initially fortnightly for three months. Significantly elevated concentrations of methane were encountered in a borehole on the south west of the site, and elevated concentrations of carbon dioxide were encountered elsewhere. It was considered likely that the elevated methane concentrations are associated with the location of an infilled pit on site, and not with the adjacent landfill.
- 5.7 Subsequently, further investigation and monitoring was undertaken to more thoroughly assess the gas regime on site. Soil samples were also recovered from the area of infill on the south west. The results of this supplementary investigation concluded that the off-site landfill poses a low risk to the proposed development, but the on site infilled area requires remediation to make the site suitable for its proposed use. It should be noted that according to historical maps, this area extends out of the application boundary to the west and the excavations to date have not encountered the western extent of this feature, therefore we would expect the remedial strategy to take this

into account. Given the concentrations of ground gases encountered in this area, the Councils Contaminated Land Team would require confirmatory monitoring after remediation to demonstrate the remedial works were successful.

- 5.8 An unexplained anomaly was found at borehole location WS02 on the North West of the site. Elevated concentrations of carbon dioxide were encountered at this location consistently throughout the monitoring programme. Due to waterlogged ground, this borehole was not available for further monitoring during the second tranche of investigations. An explanation for the elevated carbon dioxide was provided in the updated gas risk assessment report. However according to the borehole logs this particular borehole was not flooded throughout the monitoring period. The Councils Contaminated Land Team recognise the groundwater levels are high in this area, but elevated concentrations were encountered during the monitoring period, therefore they are not comfortable with the potential risks being discounted. Further consideration and assessment of this area is required.
- 5.9 To date, the Phase II site investigation works have been concentrated on the western area of the site due to the ground gas risks from the adjacent landfill. Further Phase II works are required over the rest of the site, as indicated in the ground gas risk assessment report of August 2015.
- 5.10 The Contaminated Land team now has no objection to the appeal application subject to the imposition of a planning condition to require the submission of a further Phase II ground investigation.

## **6 Conclusion**

- 6.1 On the basis of the above, it is considered that the Council should amend reason for refusal No.3 and remove reason for refusal No.4 as originally listed and continue to defend the other two remaining reasons for refusal.

## **7 Recommendation**

- 2.2 To remove and amend the reasons for refusal as listed at the forthcoming appeal.

## **8 Financial Implications**

- 8.1 There is always a risk that if reasons for refusal cannot be sustained that the Council leaves itself exposed to a risk of costs at appeal.

## **9 Legal Implications**

- 9.1 The Borough Solicitor has been consulted on the proposals and raised no objections.

## **10 Risk Assessment**

10.1 There are no risks associated with this decision.

## **11 Reasons for Recommendation**

11.1 The Council is unable to defend the reasons for refusal attached to this decision.

### ***For further information:***

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### ***Background Documents:***

- *Application 15/1552N*