

Application No: 16/2010N

Location: LAND OFF OAK GARDENS, BUNBURY, CHESHIRE

Proposal: Outline application for proposed residential development for 15 dwellings with associated works

Applicant: Mr Nicholas Howard, Crabtree Homes

Expiry Date: 12-Aug-2016

SUMMARY

The application site lies entirely within the Open Countryside as determined by the Borough of Crewe and Nantwich Adopted Replacement Local Plan 2011.

Within such locations, there is a presumption against development, unless the development falls into one of a number of categories as detailed by Local Plan Policy H6. The proposed development does not fall within any of the listed categories and as such, it constitutes a “departure” from the development plan and there is a presumption against the proposal unless material considerations indicate otherwise.

The Council’s 5-year housing land supply position is a material consideration. As the Council cannot demonstrate a 5-year supply of housing, the Richborough decision details that its Open Countryside policies (as relevant to this application) are considered as policies which ‘restrict the supply of housing’ and are therefore ‘out of date’. However, importantly these policies are not irrelevant in the determination of the application also as detailed in the Richborough decision.

As such, an assessment of the application in terms of its sustainability needs to be made in order to identify if the adverse impacts of the scheme significantly and demonstrably outweigh the benefits (para.14 of the NPPF).

In this case, the development would bring positive planning benefits such as; the provision of market and affordable dwellings (social), a minor boost to the local economy (Economic) and would be located in a sustainable location (Environmental).

Balanced against these benefits must be the dis-benefits, which in this case relate to the loss of the parcel of open countryside comprising of Best and Most Versatile Agricultural land.

In this instance, it is not considered that the adverse effects of the scheme significantly and demonstrably outweigh the benefits of the application.

Therefore, the application is recommended for approval.

RECOMMENDATION

APPROVE Subject to a S106 Agreement to secure Ecology and Education contributions and on-site affordable housing provision, and Conditions

REASON FOR REFERRAL

The application is referred to Southern Planning Committee as it proposes a positive recommendation of residential development in the Open Countryside which would represent a departure from the Development Plan.

PROPOSAL

This application seeks outline planning permission to erect 15 dwellings. Matters of Access and Layout are sought.

Approval of scale, appearance and landscaping are not sought at this stage and as reserved for subsequent approval.

A revised proposed layout plan has been received during the application process in an attempt to address a number of officer concerns.

A short re-consultation exercise was also undertaken as a result, this expired on the 20th September 2016.

Further minor amendments were made to the scheme following this consultation period. The further changes included;

- The depth of the gardens on the west side of the site has been reduced /shortened so not to be impacted by trees
- Insertion of hedge line around the plots to the west and south of the site
- Specification of parking spaces / integrated garages and bedrooms
- Smaller house type on plot 6

SITE DESCRIPTION

The application site is located to the south of the Bunbury Village, to the west of properties fronting Bunbury Lane. To the north are properties which front onto Wakes Meadow, to the south is agricultural land and properties on Oak Gardens and to the west is a dense copse of woodland that is afforded protection under a Tree Preservation Order.

There are public footpaths which all converge towards the southern boundary of the site. The site is generally flat and linear in shape measuring approximately 0.85 ha in size. The site is outside of the settlement boundary of the village as designated in the Borough of Crewe and Nantwich Adopted Replacement Local Plan 2011.

RELEVANT HISTORY

15/1915T - Works to TPO Trees – Refused 25th June 2015

14/4062N - Outline Application for Residential Development Of 17 Dwellings With Primary Access Off Oak Gardens, With All Other Matters Reserved – Withdrawn 27th November 2014
7/18232 - Outline application for two detached houses and garages – Refused 19th April 1990

LOCAL & NATIONAL POLICY

National Policy

The National Planning Policy Framework establishes a presumption in favour of sustainable development.

Of particular relevance are paragraphs:

- 14. Presumption in favour of sustainable development.
- 50. Wide choice of quality homes
- 56-68. Requiring good design

Development Plan

The Development Plan for this area is the Borough of Crewe and Nantwich Replacement Local Plan 2011, which allocates the site, under policy NE.2, as open countryside

The relevant Saved Policies are:

NE.2 (Open countryside), NE.5 (Nature Conservation and Habitats), NE.9 (Protected Species), NE.20 (Flood Prevention), BE.1 (Amenity), BE.2 (Design Standards), BE.3 (Access and Parking), BE.4 (Drainage, Utilities and Resources), RES.5 (Housing in the Open Countryside), RES.7 (Affordable Housing), RT.3 (Provision of Recreational Open Space and Children's Playspace in New Housing Developments), RT.9 (Footpaths and Bridleways), TRAN.3 (Pedestrians), TRAN.5 (Cycling)

The saved Local Plan policies are consistent with the NPPF and should be given full weight.

Bunbury Neighbourhood Plan

The Bunbury Neighbourhood Plan 2015 – 2030 was made on 29th March 2016 under 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 and now forms part of the Development Plan for Cheshire East. The relevant Policies in the Neighbourhood Plan are:

H1 (Settlement Boundary), H2 (Scale of Housing Development), H3 (Design), LC1 (Built Environment), LC2 (Landscape), ENV3 (Environmental Sustainability of Buildings), ENV4 (Landscape Quality, Countryside and Open Views), BIO1 (Biodiversity), T1 (Public Rights of Way)

Cheshire East Local Plan Strategy – Submission Version (CELP)

The following are considered relevant material considerations as indications of the emerging strategy:

PG2 (Settlement Hierarchy), PG5 (Open Countryside), PG6 (Spatial Distribution of Development), SC4 (Residential Mix), SC5 (Affordable Homes), SD1 (Sustainable Development in Cheshire East), SD2 (Sustainable Development Principles), SE3 (Biodiversity and Geodiversity), SE5 (Trees, Hedgerows and Woodland), SE1 (Design), SE 2 (Efficient Use of Land), SE 4 (The Landscape), SE 5 (Trees, Hedgerows and Woodland), SE 3 (Biodiversity and Geodiversity), SE 13 (Flood Risk and Water Management), SE 6 (Green Infrastructure), IN1 (Infrastructure) and IN2 (Developer Contributions)

CONSULTATIONS

Head of Strategic Infrastructure (HSI) – No objections, subject to a condition that that prior to commencement of development, the increased width of Oak Gardens and the footway as shown on the indicative plan shall be constructed

Environmental Protection – No objections, subject to a number of conditions including; the prior submission of a piling method statement; the prior submission of an Environmental Management Plan; the provision of electric vehicle infrastructure; the prior submission of a dust mitigation scheme; the prior submission of a Phase 1 contaminated land report; the prior submission of verification of any soils or soil forming material being brought onto site and works to stop if contamination identified;
In addition, informatives relating to hours of construction and contaminated land are also sought.

PROW Officer – No objections, subject to condition

Housing (Cheshire East Council) – No objections, 30% on-site affordable housing requirement proposed

Education (Cheshire East Council) – No objections, subject to the provision of £32,265 towards secondary school

United Utilities – No objections, subject to a number of conditions including; that all foul and surface water shall be drained on separate systems; the prior submission of a surface water drainage scheme and the prior submission of a sustainable drainage management and maintenance plan

Flood Risk Manager – No objections, subject to conditions

Bunbury Parish Council – Object to the proposal on the following grounds;

- That the application is contrary to the Bunbury Neighbourhood Plan, Policy H2, more specifically H2a when read in conjunction with the 6 houses already in Oak Gardens

REPRESENTATIONS

Neighbour notification letters were sent to all adjacent occupants and a site notice was erected. To date, approximately 56 letters of representation have been received from local residents. The main objections raised include;

- Principle of development
- Loss of / intrusion into Open Countryside
- Lack of local facilities to sustain dwellings
- Impact upon local facilities e.g. – Schools, doctors
- Cumulative impact of housing schemes
- Drainage
- Flooding
- Need for executive housing
- Loss of footpath
- Loss of agricultural land
- Highway and pedestrian safety, parking / footpath conflict, refuse / fuel vehicle access, disability access
- Amenity – Loss of privacy, loss of outlook, visual intrusion
- Design – loss of character, impact of change in levels, density, height of proposed dwellings, contrary to Build For Life 12 principles,
- Impact upon trees
- Impact upon ecology/protected species
- Contrary to Neighbourhood Plan – Co-location
- Impact upon infrastructure – Highways network

Following a re-consultation exercise, a further 13 letters of objection were received. The main areas of concern are;

- Impact upon local facilities e.g. – Schools, doctors
- Contrary to Neighbourhood Plan, incl - Co-location
- Re-iteration of original concerns
- Impact upon landscape
- Highways safety – traffic volume, safety of roads, access for emergency vehicles
- Amenity – Loss of light, air pollution
- Impact upon wildlife, habitat and protected species
- Impact upon footpaths across the site
- No need for the size of houses proposed

APPRAISAL

The key issues are:

- The principle of the development
- The sustainability of the proposal, including its; Environmental, Economic and Social role
- Planning balance

Principle of Development

Housing Land Supply (HLS)

The Council cannot currently demonstrate a five year supply of deliverable housing land for the purposes of determining planning applications.

Previous application reports have noted the progress that is being made with the Local Plan Strategy and how, through that process, the Council is seeking to establish a 5 year housing land supply. Six weeks of examination hearings took place during September and October 2016 which included the consideration of both the overall housing supply across the remainder of the Plan period and 5 year housing supply. The Council's position at the examination hearings was that, through the Plan, a 5 year housing supply can be achieved. However, in the absence of any indication yet by the Inspector as to whether he supports the Council's position, this cannot be given material weight in application decision-making.

The Council's ability to argue that it has a five year supply in the context of the emerging Local Plan Strategy is predicated on two things which differentiates it from the approach towards calculating five year supply for the purposes of current application decision making. Firstly the Council contended, taking proper account of the Plan strategy, that the shortfall in housing delivery since the start of the Plan period should be met, and justifiably so, over an eight year period rather than the five year period, which national planning guidance advocates where possible and, secondly, that the Local Plan Strategy 5 year housing supply can also, justifiably, include a contribution from proposed housing allocations that will form part of the adopted plan. These include sites proposed to be removed from the Green Belt around towns in the north of the Borough.

Looking ahead, if the Inspector does find that a 5 year supply has been demonstrated through the Local Plan Strategy, this will be material to the determination of relevant applications. Any such change in material circumstances will be reflected in relevant application reports. However, until that point, it remains the case that the Council cannot demonstrate a five year housing supply. This means that paragraphs 49 and 14 of the Framework are engaged.

The site lies largely in the Open Countryside as designated by the Borough of Crewe and Nantwich Replacement Local Plan 2011, where policy NE.2 states that only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. Residential development will be restricted to agricultural workers dwellings, affordable housing and limited infilling within built up frontages.

The proposed development would not fall within any of the categories of exception to the restrictive policy relating to development within the open countryside. As a result, it constitutes a "departure" from the development plan and there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004 which states that planning applications and appeals must be determined "*in accordance with the plan unless material considerations indicate otherwise*".

The issue in question is whether there are other material considerations associated with this proposal, which are a sufficient material consideration to outweigh the policy objection.

Bunbury Neighbourhood Plan

The Bunbury Neighbourhood Plan was made on 29th March 2016 and makes up part of the Development Plan.

Policy H1 (Settlement Boundary) within the Bunbury NP states that planning permission will be granted for a minimum of 80 homes in Bunbury between April 2010 and March 2030 with developments focused on sites within or immediately adjacent to the village.

This issue is considered by assessing the spatial distribution of residential development in Bunbury.

For Bunbury - there were 21 (net) completions recorded from 1st April 2010 until 30th March 2016. In addition, there are further commitments amounting to 33 dwellings at the time of writing. This includes recent decisions for application s14/3167N (14 dwellings) at The Grange, Wyche Lane and 15/1666N (11 dwellings) at land off Bowes Gate Road.

As a result, this proposed development would go towards meeting the housing needs set out in the Bunbury NP under policy H1 as the identified need has not been exceeded.

The scale of development is considered by Policy H2 (Scale of Housing Development) from the Bunbury NP. Policy H2 states that development will be supported provided that it is small scale and in character with the settlement.

In terms of green field development as proposed by the application, Policy H2 (a) states that development shall be limited a maximum of 15 houses on any site, and that such developments should not be co-located with other new housing developments unless there are demonstrable sustainable benefits of doing so. The glossary to the Bunbury NP then goes on to elaborate on what this means and states that *'the separation between developments may be maintained by a significant distance, geographic features or visual segregation or a combination of these elements. A new development should not share an access road with another new development'*.

As the application is for 15 new dwellings immediately adjacent to the village, it adheres with the first aspect of policy H2(a).

With regards to the second aspect, specifically, co-location with other new housing developments, concerns were originally raised as an appeal for 52 dwellings (ref: 14/5255N) on an adjoining site was still being considered. If this was allowed, the proposed development would be contrary to this NP co-location aspect of Policy H2(a). However, this appeal has subsequently been dismissed, eliminating this co-location issue.

A number of residents have also advised that the co-location policy should apply to the 6 dwellings already built on Oak Gardens.

In response, there is no definition of what constitutes as 'new housing' within the Bunbury NP. However, as this adjacent development was granted planning permission on the 17th December 2009, the pre-commencement conditions discharged on the 8th February 2010 (over 6 ½ years ago), it is not considered that this nearby development can be considered to be 'new housing' for the purposes of this policy. Furthermore, the Bunbury NP ranges from the dates 2015-2030. As such, this adjacent housing was granted well in advance this 'made' policy and plan period.

As such, it is considered that the proposal adheres with Policy H2(a) of the Local Plan and would be acceptable in principle.

Notwithstanding this conclusion, in the absence of a 5 year housing land supply (as explained below), policies H1 and H2 of the Neighbourhood Plan are considered to be policies for the supply of housing and are therefore out of date; it is advised that they should only be afforded limited weight and the presumption in favour of sustainable development applies.

Sustainability

The National Planning Policy Framework definition of sustainable development is:

“Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations. Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate. Sustainable development is about change for the better, and not only in our built environment”

The NPPF determines that sustainable development includes three dimensions:- economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being;

an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy

These roles should not be undertaken in isolation, because they are mutually dependent.

The issue in question is whether the development represents sustainable development and whether there are other material considerations associated with this proposal, which are a sufficient material consideration to outweigh the policy objection. These are considered below.

Environmental role

Locational Sustainability

Accessibility is a key factor of sustainability that can be measured. One methodology for the assessment of walking distance is that of the North West Sustainability Checklist, backed by the

Department for Communities and Local Government (DCLG) and World Wide Fund for Nature (WWF). The Checklist has been specifically designed for this region and can be used by both developers and architects to review good practice and demonstrate the sustainability performance of their proposed developments. Planners can also use it to assess a planning application and, through forward planning, compare the sustainability of different development site options.

The criteria contained within the North West Sustainability Checklist are also being used during the Sustainability Appraisal of the Cheshire East Local Plan. With respect to accessibility, the toolkit advises on the desired distances to local facilities which developments should aspire to achieve. The performance against these measures is used as a “Rule of Thumb” as to whether the development is addressing sustainability issues pertinent to a particular type of site and issue. It is NOT expected that this will be interrogated in order to provide the answer to all questions.

This assessment has not been completed as part of this application. However, as part of a recently dismissed appeal for a scheme adjoining the site to the south for 52 dwellings, the Officer concluded that;

‘...The application site is located in close proximity to a number of facilities including a local primary school, convenience store, public house and post office which are all readily accessible by foot. These sites on the whole can be accessed via well lit public footpaths. Given the factors above, designated of Bunbury as a local service centre, it is therefore considered to be locationally sustainable.’

There is no reason why the same conclusion would not be made on the application site.

Landscape Impact

The application site is agricultural land bound to the north by the rear of properties located along Wakes Meadow, to the east by properties located along Bunbury lane, as well as a number of properties located along Oak gardens, a short cul-de-sac. The northern and southern boundaries of the application site are formed by hedgerows, these hedgerows contain a number of hedgerow trees, many of which have Tree Preservation orders. The western boundary is marked by a watercourse, to the west of which is a block of woodland, which is subject to a group TPO. Two footpaths cross the application site; Footpath 14 Bunbury enters the site from Bunbury lane, along a passage way between The Croft and The Willows then crosses the eastern part of the site before following a southerly route into the wider agricultural landscape to the south of the site. The junction of the field boundary and Footpath 14 Bunbury is the point where Footpath 15 Bunbury originates, which follows the southern boundary before crossing the watercourse and woodland, and leading to into the wider agricultural landscape to the west.

The Planning Statement includes two paragraphs under the heading Landscape Impact, (5.18 and 5.19). This identifies that there are no national landscape designations on the site and also indicates that the application site lies within the area identified in the Cheshire Landscape Character Assessment as being within the East lowland Landscape Type. In fact the site is located within an area identified as being Landscape Type 7: East Lowland Plain, and specifically the ELP1: Ravensmoor Character Area, a character type characterised as

having a fairly flat topography, small to medium sized fields with hawthorn hedges and hedgerow trees. The Council's Principal Landscape Architect has advised that application site and surrounding area is clearly representative of this character type and area.

The Planning Statement indicates that the proposed development would be seen in the context of existing development and would be screened by existing vegetation to the west, resulting in a visual impact that would not be adverse.

The Council's Principal Landscape Officer originally objected to the proposed development.

His original concerns were that the proposal showed a development that extended to the western boundary, an area marked by a watercourse and covered by a group TPO. With the exception of a break in development to accommodate T25, a mature Ash tree, also subject to a TPO, the layout did not appear to consider the character and appearance of the countryside or the amenity and visual impact for users of footpaths crossing the site.

These concerns were addressed with the submission of the amended layout (Drawing Ref: B050-160331-7022), this layout shows an offset with the stream and group TPO area to the west, as well as an improved layout that provides a more positive transition with the adjacent open countryside and users of footpaths leading to the wider countryside and a solution which the Council's Landscape Officer felt was more in line with the Bunbury Neighbourhood Plan, which seeks to maintain views into and out of settlements, as well as minimising the impacts of development upon existing woodlands.

As such, and in contrast to the adjoining site for 52 dwellings (ref: 14/5255N), the landscape impacts of this proposed development are considered to be acceptable.

Design

Layout is sought for approval as part of this application.

The most recent revised layout plan submitted (ref: B050-160831-7022), received by the Local Planning Authority on the 3rd October 2016 shows the provision of 15 new dwellings.

The site would be accessed via an extension of the Oak Gardens' cul-de-sac which would extend in a westerly direction and would change direction turning south where it would end in a new cul-de-sac.

All of the new units proposed would front onto the new road, therefore in either a north-south direction or east-west direction. This orientation would largely reflect the orientation of the dwellings either on Bunbury Lane or Oak Gardens.

In its wider context, this parcel of Bunbury predominantly comprises of a mixture of development patterns. Ribbon development is common along Bunbury Lane. However, there are also cul-de-sac developments within close proximity of the site (e.g. Wakes Meadow).

The proposed layout forms a cul-de-sac arrangement and is therefore considered to be acceptable in design terms.

Matters of scale and appearance are reserved for subsequent approval.

Access

Matters of Access are sought for approval.

Currently the site is agricultural/grass land to the south of the village with no vehicle trips associated with it and is located off Oak Gardens, which itself is accessed from Bunbury Lane.

A previous proposal was submitted in 2014 (application 14/4062N) and whilst accepted in principle from a Highways perspective, the access was substandard for the number of units proposed and the application was therefore recommended for refusal. The application was then withdrawn.

To address the Highways comments, several amendments to the access have been proposed. It has been proposed to increase the width of Oak Gardens from 4.1m to 4.8m and to include a new footway of 1.5m width to run alongside Oak Gardens and connect with existing footway on Bunbury Lane.

The Council's Head of Strategic Infrastructure (HSI) has advised that the new carriageway width of 4.8m would be wide enough for a car and an HGV to pass each other and reflects national guidelines and Council standards for this size of development. The new footway would connect to the existing footway on Bunbury Lane providing pedestrian access to the wider Bunbury area.

It is further advised that there is enough room for a refuge vehicle to enter/exist in a forward gear.

As with the previous application, visibility splays on exiting Oak Gardens onto Bunbury Lane have been provided and, in line with national guidelines, the HSI has advised are considered acceptable for this type of road. There have been no recorded traffic accidents on this section of Bunbury Lane over the last 5 years indicating no existing safety concerns. Also, as with the previous application, vertical deflection has been proposed as a traffic management measure to enable a design speed of 20mph.

For a development of this size and location, approximately 10 two-way vehicle trips would be generated in a peak hour. The HSI Officer has concluded that the traffic impact of the development is therefore considered negligible.

As a result of the above reasons, no objections are raised on highway safety grounds, subject to a condition that the increased width of Bunbury gardens and the new footpath shown on the proposed plan be implemented, prior to first occupation of the development.

Agricultural Land Classification

Paragraph 26 of the Natural Environment NPPG advises that Local Planning Authorities should seek to use areas of poorer quality land in preference of higher quality land for development.

The Agricultural Land Classification system classifies land into five grades, with Grade 3 subdivided into Sub-grades 3a and 3b. The best and most versatile land is defined as Grades 1, 2 and 3a and is the land which is most flexible, productive and efficient in response to inputs and which can best deliver food and non food crops for future generations.

The applicant has undertaken Agricultural Land Classification report. This has concluded that the site comprises of Grade 2 land.

Grade 2 means that the land is 'very good agricultural land'.

Although Policy NE12 (Agricultural Land) of the Local Plan advises that development on such land quality shall not be permitted unless; the need for the development is supported by the Local Plan, it can be demonstrated that the development proposed cannot be accommodated on land of lower agricultural quality or, other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land.

This policy is largely reflective of the NPPF policy on the subject.

These explanations have not been provided. As such, the loss of this best and most versatile land is a material consideration weighing against the proposal.

Trees and Hedgerows

The application is accompanied by a Arboricultural Report (RSK dated April 2016) which the Council's Principal Forestry Officer advises generally accords with the requirements of BS5837:2012 *Trees in Relation to Design, Demolition and Construction – Recommendations* and identifies 26 individual trees, 4 groups of trees and 4 hedgerows within the application site.

The Cheshire East Borough Council (Bunbury - Land to the West of Oak Gardens) Tree Preservation Order was made in 2014 and protects individual trees and an area woodland within and immediately adjacent to the application site. The Order was subsequently confirmed by South Area Planning Committee on 25th February 2015.

A Veteran Ash tree (T3 of the TPO, T25 of the submitted report) was identified in 2014 which is located within the field enclosure to the south of Wakes Meadow.

A number of mature Oak trees were also identified as having potential Veteran status in the Arboricultural Survey supporting the previous planning application.

TPO trees are considered material to this application and NPPF (para 118) is relevant in respect of the loss aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss.

The retention of the Veteran Ash tree within an area of open space between Plots 5 and 6 provides for its sustainable long term retention as an amenity feature and to conserve a recognised habitat. In this regard the retention of the Ash recognises requirements to conserve and enhance biodiversity in accordance with para 118 of the NPPF.

Concerns with regards to shading from trees was raised as an issue on the original layout plan submitted as it would lead to future pressures for significant pruning and felling. Issues in relation to the creation of a turning head over a root protection zone was also identified.

The preliminary Ecological Appraisal has identified hedgerows along the northern and southern boundaries of the site. The hedgerow to the north forms the boundary of existing residential gardens to Wakes Meadow and by virtue of this cannot be deemed Important under the Hedgerow Regulations 1997. The hedgerow to the southern boundary has not been classed as Important under the Regulations does not contain sufficient diversity of woody species under the ecological criteria, although no assessment has been carried out under the historic value criteria.

In response, the application submitted an updated layout plan. In response, the Council's Tree Officer has advised that the amended layout/details adequately address the tree constraints within the site and comply with the design requirements of BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations and the requirement to preserve existing trees and hedgerows as cited in the Bunbury NP.

Should outline consent be granted, the Council's Tree Officer has recommended a condition requiring the prior submission/approval of an Arboricultural Impact Assessment in support of any subsequent reserved matters application which shall include an Arboricultural Method Statement and Tree Protection Plan in accordance with Section 5.5 and 6.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations.

Ecology

Woodland

The woodland on the sites eastern boundary appears on the national inventory of Priority Woodland habitats. Habitats of this type are a material consideration. The woodland edge extends into the site beyond the existing fence line boundary.

The revised layout plan shows the retention of the woodland edge habitats and so the Council's Nature Conservation Officer advises that based upon the illustrative layout plan submitted with the application, the proposed development would not be likely to have a significant adverse impact upon the adjacent woodland.

The Council's Nature Conservation Officer has advised that if outline planning permission is granted a condition would be required to ensure the woodland edge habitats on the site are retained as part of any detailed design produced at the reserved matters stage.

Reptiles

A number of juvenile grass snakes were recorded on site during the submitted survey. The proposed development would result in the loss of an area of suitable habitat for this species and pose the risk of killing or injuring any reptiles present on site during the construction phase.

To mitigate the risk of killing and injuring during the construction phase the applicant's ecological consultant recommends the removal and exclusion of reptiles from the footprint of the proposed development. The loss of habitat associated with the scheme would be

reduced/compensated for through the retention of an area of rough grassland on the western edge of the site and the creation of a new pond (to provide habitat for prey species), the provision of compost heaps (to provide egg laying sites) and habitat mounds (to provide suitable places for shelter).

The Council's Nature Conservation Officer has advised that the outline reptile mitigation strategy is acceptable.

Veteran Tree

An Ash tree which is located in the centre of the site is clearly of veteran status and as such, the Council's Conservation Officer has advised that this should be retained in accordance with the submitted illustrative masterplan by way of condition.

Barn Owls

The applicant's ecological consultant has confirmed that no evidence of roosting/nesting barn owls was recorded during the various surveys on site.

Bats

A high number of bat species were recorded as being active on this site. The only roosting activity on site however related to a minor roost within the veteran ash tree that would be retained as part of the proposed development. Therefore based on the current pattern of bat activity, the Council's Nature Conservation Officer has advised that the proposed development would be unlikely to have a direct impact upon roosting bats.

Most bat activity around the site was associated with the sites northern and western boundary hedgerows and trees. The western boundary, the woodland edge, would be retained as part of the submitted illustrative layout. There may potentially be some impacts associated with the northern boundary habitats but the Council's Nature Conservation Officer advises that this would be compensated through the proposed planting on the southern boundary and the proposed pond.

Great Crested Newts

Great Crested Newts have been recorded at ponds within 250 metres of the proposed development. In the absence of mitigation, the Council's Nature Conservation Officer has advised that the proposed development would have a LOW magnitude adverse impact upon this species as a result of the loss of terrestrial habitat and the risk of individual animals being killed or injured during the construction phase.

To mitigate the risk of great crested newts being killed or injured during the construction phase the applicant's consultant is proposing to remove and exclude newts from the development footprint using standard best practice methodologies under the terms of a Natural England license. The loss of habitat would be compensated for through the provision of habitat mounds and the creation of a small additional pond.

EC Habitats Directive

Conservation of Habitats and Species Regulations 2010

ODPM Circular 06/2005

The UK implemented the EC Directive in the Conservation (natural habitats etc) regulations which contain two layers of protection:

- A licensing system administered by Natural England which repeats the above tests
- A requirement on local planning authorities (“lpas”) to have regard to the directive’s requirements.

The Habitat Regulations 2010 require local authorities to have regard to three tests when considering applications that affect a European Protected Species. In broad terms the tests are that:

- The proposed development is in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment
- There is no satisfactory alternative
- There is no detriment to the maintenance of the species population at favourable conservation status in its natural range.

Current case law instructs that if it is considered clear or very likely that the requirements of the directive cannot be met because there is a satisfactory alternative, or because there are no conceivable “other imperative reasons of overriding public interest”, then planning permission should be refused. Conversely, if it seems that the requirements are likely to be met, then there would be no impediment to planning permission be granted. If it is unclear whether the requirements would be met or not, a balanced view taking into account the particular circumstances of the application should be taken.

Overriding Public Interest

The provision of mitigation would assist with the continued presence of Great Crested Newts.

Alternatives

There is an alternative scenario that needs to be assessed, this are:

- No Development On The Site

The Council’s Nature Conservation Officer has advised that the proposed mitigation and compensation is acceptable and is likely to maintain the favourable conservation status of the local newt population.

‘Other’ Protected Species

An ‘other protected species’ sett has been identified just off site. It does however appear feasible that provided a suitable stand off from the woodland edge is agreed that the sett could be retained during the proposed development. Alternatively it may be necessary to

either permanently or temporarily close the sett to avoid any disturbance of the resident animals. The precise impacts of the scheme would however depend upon the level of badger activity taking place at the time development commenced and the final design proposed at the reserved matters stage. In any event, the Council's Nature Conservation Officer has advised that it is likely that a suitable badger mitigation strategy could be agreed. An updated badger survey and mitigation strategy would however be required in support of any future reserved matters application.

Common Toad

This priority species is also present in the locality of the proposed development. The Council's Nature Conservation Officer advises that the proposed great crested newt and reptile mitigation would also assist with mitigating impacts on this species.

Protected species and Neighbourhood Plan

The oak gardens site is identified in the Biodiversity section of the Bunbury Neighbourhood plan as being of 'medium' distinctiveness. This broadly seems to represent habitats that fall below the threshold of what would be considered to be Priority habitats, but which still have some nature conservation value. The neighbourhood plan appears to seek some compensation for the loss of habitat of this kind. The Council's Nature Conservation Officer recommended the payment of a commuted sum in respect of the earlier application at this site to compensate for the loss of grassland habitats. This approach could be considered suitable compensation as required by the Neighbourhood Plan.

The Council's Nature Conservation Officer suggests the following method of calculating an appropriate commuted sum. This is based on the Defra report 'Costing potential actions to offset the impact of development on biodiversity – Final Report 3rd March 2011'):

The loss of habitat (Semi improved grassland) amounting to roughly 0.8ha.

- Cost of creation of Lowland Grassland 0.8ha x £11,293.00 (cost per ha) = £9034.40
(Source UK BAP habitat creation/restoration costing + admin costs)

The above calculation would be for the creation of species rich UK BAP grassland, however the habitat lost is species poor and so the impacts of this loss are obviously less, the Council's Nature Conservation Officer suggests half of this figure would be appropriate meaning that we would seek a figure of £4517.20.

The application site also falls within an indicative wildlife corridor, shown in the neighbourhood plan, associated with the adjacent stream corridor. The neighbourhood plan recommends a 15 metre non-developable buffer zone adjacent to the wildlife corridor. This seems to be appropriate and may in fact be included with the proposals.

The Council's Nature Conservation Officer has concluded that he raises no ecology objections to the proposed development, subject to a number of conditions including;

- Any future reserved matters application to be supported by an updated protected species impact assessment and mitigation and compensation strategy. The updated

strategy to be informed by the outline badger, reptile and great crested newt mitigation strategies prepared by The Sustainable Development Company and submitted in support of the outline application.

- Any future reserved matters application to be supported by a habitat management plan.
- Reserved matters application to include a buffer of undeveloped habitat adjacent to the woodland on the sites western boundary. Proposals for the safeguarding of this buffer during the construction phase are to be submitted with any future reserved matters application.
- Retention of the veteran Ash Tree.

Flood Risk and Drainage

The application is supported by a Flood Risk Assessment.

The site is located in Flood Zone 1 and there are two ponds south to the site.

The Council's Flood Risk Manager has reviewed the proposal and advised that he has no objections to the development on flood risk grounds, subject to a number of conditions including; that the mitigation within the FRA be implemented and the prior submission/approval of a detailed drainage strategy/design with appropriate surface water drainage.

With regards to drainage, United Utilities have advised that they have no objections, subject to a number of conditions including; that all foul and surface water shall be drained on separate systems; the prior submission of a surface water drainage scheme and the prior submission of a sustainable drainage management and maintenance plan

Environmental Conclusion

The proposal would result in the loss of a parcel of Open Countryside and the loss of a parcel of Best and Most Versatile (BMV) agricultural land.

Other environmental considerations such as; landscape, protected species, highway safety, flooding and drainage are considered to be acceptable or neutral subject to conditions / mitigation.

As a result of the above reasons, it is considered that the proposal would be environmentally un-sustainable.

Economic Role

It is accepted that the construction of a housing development of this size would bring the usual economic benefit to the closest facilities in Bunbury for the duration of the construction, and would potentially provide local employment opportunities in construction and the wider economic benefits to the construction industry supply chain. There would be some economic and social benefit by virtue of new resident's spending money in the area and using local services.

As such, it is considered that the proposed development would be marginally economically sustainable, predominantly during the construction phase.

Social Role

The proposed development would provide open market housing which in itself, would be a significant social benefit given the Council's 5-year housing land supply position.

Affordable Housing

This is a proposed development of 15 dwellings therefore in order to meet the Council's Policy on Affordable Housing there is a requirement for 4 dwellings to be provided as affordable dwellings. The SHMA 2013 shows the majority of the demand in Bunbury sub area over the next 5 years is for 18 x1 bedroom and 1x 4 bedroom dwellings Per Year. The majority of the demand on Cheshire Homechoice is for 5x 1 bedroom, 3x 2 bedroom, 3x 2 bedroom and 1 x 4 bedroom dwellings.

There has also been a recent Rural Housing Needs Survey carried out in Bunbury completed in March 2013 which showed there were 27 households in housing need who would consider affordable housing, with the majority of these requiring housing within the next 2 years.

Therefore the Council's Housing Officer has advised that 1, 2, 3 and 4 bedroom dwellings on this site would be acceptable. It is advised that 3 units should be provided as Affordable rent and 1 unit as Intermediate tenure.

As the Affordable 30% is shown to be provided, the Council's Housing Officer raises no objections, as long as the rented dwellings are provided as per the Interim Policy Statement.

The Affordable Housing IPS requires that the affordable units should be tenure blind and pepper potted within the development, the external design, comprising elevation, detail and materials should be compatible with the open market homes on the development thus achieving full visual integration and also that the affordable housing should be provided no later than occupation of 50% of the open market dwellings.

The affordable housing should meet the Government's Nationally Described Space Standards which were published in April this year.

The affordable housing shall be secured by way of a S106 agreement, which:

- requires them to transfer any rented affordable units to a Registered Provider
- provide details of when the affordable housing is required
- Includes provisions that require the affordable homes to be let or sold to people who are in housing need and have a local connection. The local connection criteria used in the agreement should match the Councils allocations policy.
- Includes the requirement for an affordable housing scheme to be submitted prior to commencement of the development that includes full details of the affordable housing on site.

Amenity

Policy BE.1 of the Local Plan advises that development shall only be permitted when the proposal would not have a detrimental impact upon neighbouring amenity in terms of overlooking, overshadowing, visual intrusion or environmental disturbance.

According to the submitted revised layout plan, the closest neighbouring properties to the application site would be the occupiers of the properties on Oak Gardens to the south, Bunbury Lane to the east and Wakes Meadow to the north.

The Development on Backland and Gardens SPD states within paragraph 3.9 that as a general indication, there should ideally be a distance of 21m between principal elevations and 13.5m between a principal elevation with windows to habitable rooms and blank elevations.

It is advised that if these standards are adhered to, there should be sufficient space to ensure that the privacy and amenity of neighbouring properties are not detrimentally affected.

The principal elevations of the properties on Oak Gardens to the south would be approximately 20.1 metres away from the principal elevations closest of the proposed dwellings to the north. Although this is short of the 21 metre guide, given the presence of 2 roads and a footpath between the properties and because the shortfall is not significant, it is not considered that these dwellings would be detrimentally impacted by the proposal with regards to loss of privacy light and visual intrusion.

The closest proposed property to the dwellings on Bunbury Lane would be the dwelling proposed on Plot 1. The side elevation of this dwelling would be over approximately 30 metres from the rear elevation of the closest neighbouring property to the east, eliminating any significant amenity issues to this side.

The most impacted neighbours on Wakes Meadow to the scheme would be No's 5 to 10. Due to a combination of the offset relationships between these dwellings with the dwellings proposed on the northern parcel of the site, in combination with the distances between the units and the proposed boundary treatment planting, it is not considered that the occupiers of these neighbouring units shall be detrimentally impacted by the proposed development in terms of loss of privacy, light and visual intrusion.

Sufficient distance is provided between the units themselves and sufficient private amenity space also appears to be provided.

The Council's Environmental Protection Team have advised that they have no objections, subject to a number of conditions including; the prior submission of a piling method statement; the prior submission of an Environmental Management Plan; the provision of electric vehicle infrastructure; the prior submission of a dust mitigation scheme; the prior submission of a Phase 1 contaminated land report; the prior submission of verification of any soils or soil forming material being brought onto site and works to stop if contamination identified;

In addition, informatives relating to hours of construction and contaminated land are also sought.

As such, subject to the above conditions, it is considered that the proposed development would adhere with Policy BE.1 of the Local Plan.

Education

Not including the current planning application registered off Oak Gardens (16/2010N), there are 15 further registered and undetermined planning applications in the Nantwich planning areas generating an additional 103 primary children and 80 secondary children.

The development of 15 dwellings is expected to generate:

3 primary children (20 x 0.19)
2 secondary children (20 x 0.15)
0 SEN children (20 x 0.51 x 0.023%)

The development is expected to impact secondary school places in the immediate locality. Contributions which have been negotiated on other developments are factored into the forecasts both in terms of the increased pupil numbers and the increased capacity at primary schools in the area as a result of agreed financial contributions. The analysis undertaken has identified that a shortfall of school places still remains.

To alleviate forecast pressures, the following contributions would be required:

2 x £17,959 x 0.91 = £32,685 (secondary)
Total education contribution: £32,685

This figure would be secured via a S106 contribution.

Open Space

The development is not of a scale which triggers the provision of an Open Space provision.

Public Right of Way

Public Footpaths No. 14 & 15 as recorded on the Definitive Map and Statement, the legal record of Public Rights of Way, would be affected by the proposed development. However, during the application process, the Rights of Way Committee gave approval for an Order to be made under s257 TCPA, diverting Footpath No.14 (pt) Bunbury and Extinguishing an unrecorded footpath between FP14 and FP15 Bunbury. Implementation of this Order hasn't been made yet as they are awaiting the planning decision.

However, as a result of this approval the Council's PROW Officer has advised that she raises no objection to the proposed development, subject to a condition seeking the prior approval of a PROW scheme of management.

Social Conclusion

As a result of the provision of market housing and the policy compliant provision of on-site affordable housing, it is considered that the proposed development would be socially sustainable.

Levy (CIL) Regulations

In order to comply with the Community Infrastructure Levy (CIL) Regulations 2010 it is now necessary for planning applications with legal agreements to consider the issue of whether the requirements within the S106 satisfy the following:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

The Ecology contribution would account for the loss of grassland habitat.

The education contribution is necessary having regard to the oversubscription of local secondary schools and the demand that this proposal would add.

The proposal is of a scale that hits the trigger for affordable housing for which there is a recognised need.

The above requirements are considered to be necessary, fair and reasonable in relation to the development. The S106 recommendation is compliant with the CIL Regulations 2010.

Planning Balance

The application site lies entirely within the Open Countryside as determined by the Borough of Crewe and Nantwich Adopted Replacement Local Plan 2011.

Within such locations, there is a presumption against development, unless the development falls into one of a number of categories as detailed by Local Plan Policy H6. The proposed development does not fall within any of the listed categories and as such, it constitutes a “departure” from the development plan and there is a presumption against the proposal unless material considerations indicate otherwise.

The Council’s 5-year housing land supply position is a material consideration. As the Council cannot demonstrate a 5-year supply of housing, the Richborough decision details that its Open Countryside policies (as relevant to this application) are considered as policies which ‘restrict the supply of housing’ and are therefore ‘out of date’. However, importantly these policies are not irrelevant in the determination of the application also as detailed in the Richborough decision.

As such, an assessment of the application in terms of its sustainability needs to be made in order to identify if the adverse impacts of the scheme significantly and demonstrably outweigh the benefits (para.14 of the NPPF).

In this case, the development would bring positive planning benefits such as; the provision of market and affordable dwellings (social), a minor boost to the local economy (Economic) and would be located in a sustainable location (Environmental).

Balanced against these benefits must be the adverse impacts, which in this case relate to the loss of the parcel of open countryside comprising of Best and Most Versatile Agricultural land.

In this instance, it is not considered that the adverse effects of the scheme significantly and demonstrably outweigh the benefits of the application.

Therefore, the application is recommended for approval.

RECOMMENDATION

APPROVE subject to a S106 Agreement to secure;

- 1. £4517.20 towards off-site grassland habitat improvements**
- 2. £32,685.00 towards secondary school provision**
- 3. 30% on-site affordable housing provision**

And conditions;

- 1. Time – 3 years of within 2 of last Reserved Matter approval**
- 2. Reserved Matters within 3 years**
- 3. Scale, Appearance and Landscaping Matters to be submitted and approved**
- 4. Plans**
- 5. Prior to first occupation of the development, the increase in width of Oak Gardens and the new footway as shown on indicative plan 'Site Access and Visibility Splay', should be constructed**
- 6. Prior submission/approval of an Arboricultural Impact Assessment in support of any subsequent reserved matters application which shall include an Arboricultural Method Statement and Tree Protection Plan in accordance with Section 5.5 and 6.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations**
- 7. Any future reserved matters application to be supported by an updated protected species impact assessment and mitigation and compensation strategy.**
- 8. Any future reserved matters application to be supported by a habitat management plan.**
- 9. Reserved matters application to include a buffer of undeveloped habitat adjacent to the woodland on the sites western boundary. Proposals for the safeguarding of this buffer during the construction phase are to be submitted with any future reserved matters application.**
- 10. Retention of the veteran Ash Tree**
- 11. Implementation of mitigation within Flood Risk Assessment**
- 12. Prior submission/approval of a detailed drainage strategy/design with appropriate surface water drainage**
- 13. All foul and surface water shall be drained on separate systems**
- 14. Prior submission/approval of a surface water drainage scheme**
- 15. Prior submission/approval of a sustainable drainage management and maintenance plan**

- 16. Prior submission/approval of a piling method statement**
- 17. Prior submission/approval of an Environmental Management Plan**
- 18. The provision of electric vehicle infrastructure**
- 19. Prior submission of a dust mitigation scheme**
- 20. Prior submission of a Phase 1 contaminated land report**
- 21. Prior submission of verification of any soils or soil forming material being brought onto site**
- 22. works to stop if contamination identified**
- 23. Prior submission/approval of a PROW management scheme**
- 24. Prior submission/approval of existing and proposed levels**
- 25. Removal of PD Rights – Part 1, Classes A-E**

In order to give proper effect to the Committee's intentions and without changing the substance of the decision, authority is delegated to the Head of Planning (Regulation) in consultation with the Chair (or in there absence the Vice Chair) of the Southern Planning Committee, 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, Committee authority is sought to secure the following Heads of Terms as part of any S106 Agreement:

- 1. £4517.20 towards off-site grassland habitat improvements**
- 2. £32,685.00 towards secondary school provision**
- 3. 30% on-site affordable housing provision**

