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## Appeal Decision

Hearing held and Site Visit made on 6 May 2015

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 June 2015

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**Appeal Ref: APP/R0660/W/15/3002860**

**Land to the North of 24 Church Lane, Sandbach, Cheshire CW11 2LQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Chelmere Home Limited against the decision of Cheshire East Council.
  - The application Ref 14/3624C, dated 25 July 2014, was refused by notice dated 24 October 2014.
  - The development proposed is the erection of 13 dwellings.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. At the hearing an application for costs was made by Chelmere Home Limited against Cheshire East Council. This application is the subject of a separate Decision.
3. At the hearing an unsigned S106 Unilateral Undertaking (UU) was submitted and discussed. Immediately after the hearing a certified copy of the signed UU was submitted.

### Main Issues

4. The effect on: (i) the living conditions of prospective residents with particular reference to outlook, sunlight, daylight and noise and (ii) the character and appearance of the area.

### Reasons

5. The development plan for the area comprises the Congleton Borough Local Plan First Review (LP). The relevant policies are PS8, H6, GR1 and GR2. Whilst the only reason for refusal the local planning authority (lpa) chose to defend refers to Policy GR6, the lpa acknowledged that this policy did not apply to a development of this type. Reference is also made to the emerging Cheshire East Local Plan – Strategy – Submission Draft March 2014 and the Draft Sandbach Neighbourhood Plan. Although the examination into the emerging Local Plan commenced in 2014, the examination was suspended and will not resume until later this year. The Draft Neighbourhood Plan completed its public consultation stage at the beginning of May 2015, the outcome of which will have to be analysed before it can proceed to independent examination and referendum. Accordingly, I consider that these plans attract only limited weight and are of limited relevance in this case.

6. Paragraph 14 of the National Planning Policy Framework (Framework) indicates that there is a presumption in favour of sustainable development. For the decision-maker this means approving proposals that accord with the development plan without delay and where relevant policies are, amongst other things, out-of-date grant 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. The Framework indicates that there are 3 dimensions to sustainable development; Economic, which includes supporting growth; Social, which includes creating a high quality environment and Environmental, which includes protecting and enhancing the natural and built environment. Framework paragraph 49 indicates that housing applications should be considered in the context of the presumption in favour of sustainable development. However, relevant policies for the supply of housing should not be considered up-to-date if the lpa cannot demonstrate a 5-year supply of deliverable housing sites.
7. Whilst the lpa acknowledges that it cannot demonstrate a 5-year supply of housing sites it submits that LP Policies PS8 and H6 have a dual role relating to the supply of housing and protecting the countryside. Following a number of HC Judgments<sup>1</sup> clarifying the nature of relevant policies for the supply of land for housing, LP Policies PS8 and H6 appear to me to have a dual purpose. These are to contain development within the settlement boundary and protect the open countryside from development that would harm its character and amenity. The implication of the supporting text to LP Policy PS8 appears to me to be protecting the countryside for its own sake.
8. Notwithstanding clarification regarding the dual purposes of LP Policies PS8 and H6, the Framework is a document that has to be read as a whole and paragraph 215 identifies that due weight should be given to relevant development plan policies according to their degree of consistency with the Framework. Whilst the intrinsic character and beauty of the countryside need to be recognised, paragraph 17 of the Framework no longer uses the phraseology of "protecting the countryside for its own sake". Protection is a term now applied to designated areas and other valued landscapes. Thus, outwith the requirements of paragraphs 14 and 49 of the Framework, LP Policies RS8 and H6 are, in my view, inconsistent with the Framework and as such attract reduced weight.

#### Living Conditions

9. LP Policy GR1 indicates that a proposal will only be permitted where, amongst other things, it would not have an unacceptable effect on amenity. At the hearing, the appellant accepted that whether the proposal would result in such an impact was a matter of professional judgement.

#### Outlook

10. The site is roughly triangular; the eastern boundary with the M6 motorway is formed by a dense, mature deciduous hedge that for the most part is some 3m high. The hedge returns on the western boundary and in the north-

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<sup>1</sup> (1) William Davis Limited (2) Jelson Limited and (1) Secretary of State for Communities and Local Government (2) North West Leicestershire District Council [2013] EWHC 3058 (Admin). South Northamptonshire Council v Secretary of State for Communities and Local Government, Barwood Land and Estates Limited, [2014] EWHC 573 (Admin). Bloor Homes East Midlands Limited and Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council, [2014] EWHC 754 Admin.

western corner has a height of around 4m. Beyond an embankment rises steeply to the road and a bridge over the M6. The proposal includes the erection of a 4m high acoustic screen that would run along the eastern boundary with the M6 and return along the southern and western boundary.

11. In the northern part of the site and within the point of the triangle it is proposed to locate 2 pairs of semi-detached houses, Plots 10 to 13, which are identified as the affordable housing units. The front elevations, which on the ground floor would contain the entrance door and only window to the living room and a single bedroom window on the first-floor, would face towards the north-east and the acoustic screen. The return length of the acoustic screen on the western boundary would run the full depth of the house on Plot 10. At the nearest point, the front elevation of Plot 10 would be some 14m from the fence on the north-eastern boundary and almost adjoin the fence on the north-western boundary. The nearest points on the front elevations of Plots 11, 12 and 13 to the acoustic screen would be 8m, 10m and 4m respectively. The proposed ground floor layouts show the only window serving the living rooms being the closest to the acoustic screen.
12. I consider, given the limited degree of separation and its height, that the acoustic screen would appear overbearing when viewed from the living rooms and front gardens of Plots 10 to 13 and would unacceptably dominate these areas. Moreover, given the front elevation would face north-east and the limited gap to the acoustic screen, the front elevations and gardens of Plots 10 to 13 would experience a reduction in daylight/sunlight and would be in shade for most of the day. The front rooms and garden areas would, for the majority of the time, be gloomy and less pleasant places to use. I have noted the appellant's submission that the rear gardens would face south-west and the amount of daylight and sunlight they would receive. However, given the front elevation serves the living room, the main habitable room, I consider the unacceptable effect resulting from the orientation of these dwellings and the proximity of the acoustic screen would have on the front garden/living room is not outweighed by the position and orientation of the rear kitchen/dining room and garden. Accordingly, I consider the orientation of these 4 dwellings and their proximity to the proposed acoustic screen would result in unacceptable living conditions for prospective residents.

#### Noise

13. Traffic levels on the M6 are generally high for most of the day and ambient noise levels are high. At the hearing it was acknowledged that with the introduction of appropriate noise attenuation measures, which would include an acoustic fence and double glazing, the internal noise criteria referred to in BS 8233:2014<sup>2</sup> could be achieved.
14. For external amenity space, BS 8233:2014 indicates that it is desirable that the external noise level does not exceed 50 dB  $L_{AeqT}$ , with an upper guideline value of 55 dB  $L_{AeqT}$ . BS8233:2014 recognises that these guideline values may not be achievable in all circumstances where development might be desirable. As such it acknowledges that in higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure

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<sup>2</sup> Guidance on Sound Insulation and Noise Reduction for Buildings.

development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited.

15. A noise assessment submitted by the appellant indicates that with the acoustic screen in place external noise levels would be no higher than 57 dB  $L_{AeqT}$ . In my experience whilst an increase of 3 dB is equivalent to a doubling in the noise energy, it does not result in a doubling of loudness. Moreover, it is generally accepted that a change in 3 dB (A) is the minimum perceptible under normal circumstances. Thus, with the acoustic screen in place, I consider that the likely levels of noise experienced by future residents in the rear gardens would not be unacceptable.

#### Conclusion on Living Conditions

16. Notwithstanding my conclusion regarding the effect of road traffic noise on the internal and external living environment of prospective residents, I consider that finding is outweighed by the unacceptable effect the proximity of the acoustic fence and the orientation the properties would have would have on the outlook and the amount of sunlight/daylight received by the front living rooms and gardens of Plots 10 to 13. Accordingly the scheme would conflict with the objectives of LP Policy GR1.

#### Character and Appearance

17. LP Policies GR1 and GR2 seek a high standard of design and that development is sympathetic to the character, appearance and form of the site. Here, the particular concern relates to the effect the proposed 4m high acoustic screen would have on the character and appearance of the site and the development itself. Given the density and maturity of existing screening on the boundaries of the site, there would only be limited glimpses of the fence from vantage points outside the site to the west. From the footpath on the bridge over the M6, from the M6 itself and from Reynolds Lane to the east of the motorway there would be restricted views of the fence limited to about 1m above the top of the existing hedge. It is not unusual for drivers and passengers in vehicles on a motorway to see fencing of various heights along its boundary. Thus, given that pedestrians on the surrounding roads and drivers/passengers would have very limited and fleeting views of the fence, it would not adversely affect the character and appearance of the wider area. In the early days the acoustic fence would be a prominent feature for residents and visitors to the site. However, with appropriate landscaping, the visual impact of the fence could be acceptably mitigated. For these reasons, I conclude on this issue that the proposal would not unacceptably affect the character and appearance of the area contrary to the objectives of the relevant criteria contained in LP Policies GR1 and GR2.

#### Other Considerations

18. Whilst the northern part of the site is crossed by a high pressure oil pipeline, the lpa confirmed that it is not listed as a major hazard and as such the Health and Safety Executive did not need to be consulted. Moreover, the appellant has shown an easement crossing the site in the vicinity of the pipeline and the houses are clear of this line. Accordingly, there is nothing in the evidence before me to conclude that the presence of the pipeline would present an unacceptable risk to prospective residents.

19. The highway authority (HA) has no objection to the proposal on highway safety and traffic generation grounds. Whilst there is no footpath on the eastern side of Church Lane to the south of the site, there would be a footpath provided on either side of the proposed access within the site and there is a footpath on the opposite side of the road that starts opposite the proposed access and runs southwards along Church Lane. In the absence of an objection from the HA, I have no reason to conclude that this development would adversely affect highway and pedestrian safety.

### **Conclusion**

20. Although this site is in a sustainable location, given the unacceptable effect the development would have on the living conditions of the prospective residents of Plots 10 to 13, I consider this scheme would not be consistent with the definition of sustainable development outlined in the Framework. As such and notwithstanding the absence of a 5-year supply of deliverable housing sites, the presumptions contained in Framework paragraph 14 do not apply in this case.
21. The provision of 13 dwellings of which 4 would be affordable units would be a benefit in terms of meeting the need for housing within the local area and the District and as a whole and I attach significant weight to this benefit. However, it is not in the wider public interest to provide housing that would result in a poor internal and external environment for prospective residents. In this case, I have found that the relationship of Plots 10 to 13 to the acoustic screen and their orientation would unacceptably harm the living conditions of prospective residents contrary to the objectives of LP Policy GR1. This is a finding that I attach very significant weight to. On balance, I conclude that the harm to the living conditions of the future residents of Plots 10 to 13 and the conflict with the development plan significantly and demonstrably outweigh the benefits of providing additional housing including affordable housing and the absence of harm to the character and appearance of the area.
22. The appellant has submitted a UU under S106 of the above Act to provide 4 affordable housing units and a financial contribution for off-site green-space and play provision. The nature and level of contributions are not contested by the appellant. However, as I am dismissing this appeal for other reasons, I consider it is unnecessary to consider the obligation in detail and reach a finding as to whether it accords with paragraph 204 of the Framework and CIL Regulation 122.
23. For the above reasons and having regard to all other matters, I dismiss this appeal.

*George Baird*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT

Mrs J D Clark BA (Hons) MCD, DMS, MRTPI.  
Clark Planning Consultants Limited.

Mr G Clark Dip TP, MRTPI.  
Clark Planning Consultants.

Mr D Quin BSc, MIOA.  
Hepworth Acoustics Limited.

### FOR THE LOCAL PLANNING AUTHORITY

Mr D Evans BA, MCD, MRTPI.  
Planning Officer.

Mr C Kearney MSc, BEng (Hons).  
Environmental Protection Department.

### INTERESTED PERSONS

Mrs B Kay.

Cllr S Corcoran.

## **DOCUMENTS SUBMITTED AT THE HEARING**

- Doc 1 - Statement of Common Ground.
- Doc 2 - Page 2-15, Congleton Borough Local Plan First Review (01/05).
- Doc 3 - Pages 170-173, Cheshire East Local Plan Strategy Submission Version: March 2014.
- Doc 4 - Interim Policy Note. Public Open Space Provision for New Residential Development. Congleton Borough Council 2008.
- Doc 5 - Draft S106 Unilateral Undertaking.
- Doc 6 - Application for a partial award of costs submitted by the Appellant.
- Doc 7 - Extract from Cheshire East Local Plan Examination Web Page.
- Doc 8 - Note of Inspector's Announcement 3 October 2014, Examination of Cheshire East Local Plan Strategy.

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

- Doc 9 - Certified copy of a S106 Unilateral Undertaking