
Appeal Decision

Inquiry held on 1 and 2 November 2016

Site visits made on 2 and 17 November 2016

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 06 December 2016

Appeal Ref: APP/A0665/W/16/3151068

West Winds, Chester Lane, Winsford, Cheshire, CW7 2NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs D Blackford against the decision of Cheshire West & Chester Council.
 - The application Ref: 15/02708/OUT dated 28 June 2015, was refused by notice dated 26 February 2016.
 - The development proposed is "residential development of 18 No dwellings (including provision of affordable homes) with new access from Chester Lane".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the proposed development from the Council's decision notice. Although it differs from that given on the application form, I consider it more concisely describes the proposal.
3. The application was made in outline with all matters reserved. However the application was accompanied by a Master Plan¹ showing how the site could be developed, which I have treated for illustrative purposes.
4. A completed planning obligation under S106 of the *Town and Country Planning Act 1990* was submitted at the Inquiry, and includes a financial contribution for increased capacity at Over St John's CE Primary School in Winsford. Although the S106 Agreement does not include a mechanism for the provision and delivery of affordable housing, it was suggested that this could be secured through an appropriately worded planning condition. The relevant policy requires provision at a level of 30%, and it was agreed at the Inquiry that 6 No dwellings would be provided (not the 4 No dwellings originally proposed).
5. Due to fading light on the day of the original sight visit I made a further (unaccompanied) site visit in order to view the site from more distant vantage points, including Whitegate Way.

¹ Drawing No: 5282-01 Rev B

Main Issues

6. I consider there are three main issues in this case:

- 1) Would the proposal accord with the intentions of the development plan relating to the location of housing in Winsford, or would it harmfully conflict with and undermine those intentions?
- 2) The effect of the proposed development in terms of landscape impact.
- 3) Whether on balance the proposal would represent sustainable development.

Reasons

7. The application, made in outline, is for a residential development comprising 18 dwellings, including 6 affordable dwellings. Although access is a reserved matter, this would be taken from Chester Lane, and it is likely that formation of the access and associated visibility splays would involve the removal of one mature Scots Pine tree and some frontage vegetation. It is also suggested that a footway could be provided along the frontage to link into the existing footway network along Whitegate Road and Chester Lane to the east. Overall, the highway authority has raised no objections subject to conditions and I find no reason to disagree.
8. The Illustrative Master Plan² accompanying the application shows a single access road opening into an area of open space towards the centre of the site (the 'Green') and a smaller area of open space adjacent to the west boundary to allow views into and through the site from the countryside beyond. This plan shows that existing hedges would be retained with further tree planting and hedgerow reinforcement. A 3m badger run is indicated along the south and west boundaries.

Policy background

9. At the heart of the *National Planning Policy Framework* (the Framework) is a presumption in favour of sustainable development. Paragraph 14 explains how this is to be applied in practice, advising that proposals that accord with the development plan should be approved without delay. Where the development plan is absent, silent or out-of-date it says planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies of the Framework indicate that development should be restricted. Notwithstanding this presumption, Paragraph 2 of the Framework reiterates the statutory position³ that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
10. The development plan comprises the *Cheshire West and Chester Local Plan (Part One)*, *Strategic Policies* (LP) adopted on 29 January 2015, the saved policies of the *Vale Royal Borough Local Plan First Alteration* (VRBLP), and the *Winsford Neighbourhood Plan* (WNP) made on 19 November 2014.
11. The *Cheshire West and Chester Local Plan (Part Two)*, *Land Allocations and Detailed Policies Plan* (LP Part 2) is still at an early stage in its preparation, and it is common ground that it cannot be afforded weight at this time.

² Illustrative Master Plan 5282-01 Revision B dated 21 August 2016

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004

12. LP Policy STRAT1 provides a framework of locally specific sustainability principles which provide the basis not only for policies in the LP Part 1 but also those that will follow through LP Part 2. It says proposals that are in accordance with the relevant policies in the Plan and support the identified sustainable development principles will be approved without delay, unless material considerations indicate otherwise. It also makes it clear that proposals that fundamentally conflict with the sustainable development principles or policies within the Local Plan will be refused.
13. LP Policy STRAT2 sets out a location strategy which indicates that over the plan period 2010-2030, at least 22,000 new dwellings will be delivered, with the majority of new development being located within or on the edge of Chester and the other main towns, including Winsford. To deliver this level of development it says a number of key sites have been identified and further sites will be identified through the LP Part 2 and/or neighbourhood plans. LP Policy STRAT6 concerns Winsford. It says the town will provide a key focus for development in the east of the Borough and that development proposals will help support the continued regeneration of the town. Provision will be made for at least 3,500 dwellings in the town.
14. The housing allocations in the WNP provide slightly less housing than that indicated for Winsford in LP Policy STRAT1. However, as indicated in the explanatory text to LP STRAT9, settlement boundaries for the main settlements (including Winsford) will be identified through the LP Part 2 process and where there is a need to accommodate more development on the edge of a settlement, the boundary will be redrawn to reflect this.

LP Policy STRAT9 and Saved VRBLP Policy GS5

15. The main policy disagreement between the parties concerns the application and interpretation of LP Policy STRAT9 and saved VRBLP Policy GS5. There is no dispute between the parties that the site is outside the settlement boundary of Winsford, and VRBLP Policy GS5 defines open countryside as being, in essence, all parts of the Borough which lie outside settlement boundaries. It states that new buildings will not be allowed in the open countryside unless provided for through other plan policies. LP Policy STRAT9 has similar aims, and says the intrinsic character and beauty of the countryside will be protected by restricting development to that which requires a countryside location and cannot be accommodated within the identified settlements. These include development which has an operational need for a countryside location (such as for agricultural operations) and the re-use of rural buildings. It is not disputed that the appeal proposal does not fall within any of the permitted 'exceptions' in either policy.
16. The Council's position is that STRAT9 is the dominant policy as the appeal site is located in the countryside, by virtue of not being a specific allocated housing site in the WNP, and being outside the settlement boundary defined in the VRBLP.
17. The explanatory text to STRAT9 (paragraph 5.73) says settlement boundaries will be identified through the LP Part 2, and where there is a need for development on the edge of a settlement, the boundary will be drawn to reflect this. It goes on to say that land beyond these settlement boundaries will be classified as countryside and subject to the requirements of STRAT9. It says that until such time as the LP Part 2 has been adopted, the retained policies in

the VRBLP relating to settlement boundaries and development beyond the existing form of built settlements will continue to operate.

18. Although this clearly explains the position, the appellants submit that whilst the explanatory text can be an aid to interpretation, it cannot usurp the function of the wording of the policy or impart language into it which is simply absent. In short, the appellants' view is that 'interpreted properly, STRAT9 can only be understood, and therefore apply, once the LP Part 2 has defined the physical areas of the District which are to be classified as countryside'.
19. The retention of settlement boundaries was included in the LP by the Inspector who examined that Plan (as an amendment through a *Main Modification*). The Inspector confirmed that until the LP Part 2 is adopted, existing policies relating to settlement boundaries and development beyond built up areas will remain (including VRBLP Policy GS5). He stated that the modification was required to provide clarity regarding the definition of built up areas and the countryside, to provide a clear basis for decision taking, and to ensure that the Plan is effective in terms of the approach to the countryside.
20. Therefore, although the definition of countryside has been included within the explanatory text rather than the policy itself, it clearly informs the policy and enables a reasonable interpretation of its intentions. As such, I consider this to be a reasonable starting point for the distinction which needs to be made between countryside and locations within settlements for decision taking, particularly in the context of a recently adopted local plan which has been found to be sound in all respects.
21. The appellants also contend that VRBLP Policy GS5 is out of date 'on its face', as the settlement limits to which it relates only provided for growth in the former Borough up to 2006, and have been undermined by subsequent allocations in the WNP beyond these limits. However, taking the Local Plan as a whole, and in the interim period until the LP Part 2 is adopted, I consider that Policy GS5 should be afforded considerable weight, and Policy STRAT9 must be afforded full weight as part of the development plan.
22. This approach was accepted by the SSCLG⁴ who considered the recovered appeal at Darnhall School Lane, Winsford⁵. That site is also located in countryside outside the settlement boundary of Winsford. The SSCLG agreed with the Inspector that there would be conflict with LP Policy STRAT9 and, to a lesser extent, LP Policy STRAT1. He also agreed that VRBLP Policy GS5 still has considerable weight in the context of Winsford, and that there would also be conflict with WNP Policy H1. Overall, he agreed with the Inspector that the proposal would be contrary to the development plan. I find no reason to take a different view.
23. Nor do I find any reason to disagree with the conclusions reached on STRAT9/GS5 reached by the Inspector who considered the appeals at Fountain Lane, Davenham⁶, Hill Top Farm, Northwich⁷, and Swanlow Lane, Winsford⁸ (which were allowed for other reasons in the overall planning balance), and the

⁴ Secretary of State for Communities and Local Government

⁵ APP/A0665/A.2212671

⁶ Appeal Ref: APP/A0665/A/14/2226994

⁷ APP/A0665/W/14/3000528

⁸ APP/A0665/W/16/3147928

dismissed appeal at Shepherds Fold Drive Winsford⁹. In all these cases the Inspector found that due to the sites being outside the development boundary, the proposals conflicted with STRAT9/ GPS5, and as such were not in accordance with the development plan.

Winsford Neighbourhood Plan

24. The WNP identifies sufficient land in Policy H1 to deliver around 3,362 homes over the plan period on the sites listed in table 5.1 and section 6 of the plan. The appeal site is not one of these sites. Secondly, it permits housing under the aegis of Policy H2, which supports the development of previously developed land. In either case the proposal has to accord with other relevant policies of the WNP and the Local Plan.
25. The appellants submit that as Policy H1 does not specifically state that housing development outside the allocated sites will be refused; it does not automatically follow that other housing developments would conflict with the policy, even if not on previously developed land. It is further argued that the WNP Examining Inspector's interpretation, as endorsed by the SSCLG, relies on an erroneous approach to the construction of planning policy. However, if that is right, Policy H1 would serve no purpose in trying to guide the location of new housing development. To my mind the Plan's strategy for shaping the location and amount of development is clear from the wording of Policy H1, from paragraphs 1.1.3 and 4.1.1, and from the stated aspiration to provide a wide variety of good quality new housing to support Winsford as a whole, to be sited in a sustainable location and well-integrated with the existing town.
26. I accept that the appeal site is included within an area shown on figure 4.3.1 of the WNP as 'a future growth area beyond 2030'. However, this cannot possibly justify development of the appeal site contrary to the Plan's visions at such an early stage in the Plan period.

Conclusion on the development plan

27. I accept that the proposal would comply with a number of relevant policies in the LP, including those relating to transport (STRAT10), affordable housing (SOC1), housing mix (SOC3), health and well-being (SOC5), environment (ENV2, ENV4 and ENV6), and trees and woodland (NE9). I also accept there would be no conflict with LP STRAT 2 and LP STRAT 6, given that the delivery of more dwellings than the minimum figures set out is permissible.
28. However, as explained above, I have found that the appeal proposal would be contrary to the locational requirements of LP Policy STRAT9 and VRBLP Policy GS5, and to their stated purposes which are respectively to protect the intrinsic character and beauty of the Cheshire countryside and to protect the character and appearance of open countryside. It would also conflict with WNP Policy H1 by proposing development in a location not supported by the policy and the Plan's overall vision, and Paragraph 198 of the Framework makes it clear that where there is conflict with a made neighbourhood plan, planning permission should not normally be granted. I accept that the proposal complies with many of the sustainable development principles enshrined in LP Policy STRAT1, and some do not apply. However, insofar as it involves development of a greenfield site, there would also be some conflict with LP STRAT1.

⁹ APP/A0655/W/15/3129628

29. The appellants do not dispute the Council's ability to demonstrate a five-year supply of deliverable housing land and I find no reason to take a contrary view. Indeed, based on the recent Housing Land Monitor Report (2015-2016) the Council can demonstrate a robust 7.8 years supply of housing.
30. Insofar as STRAT9 and GS5 are aimed at preventing new housing outside settlement boundaries, they are relevant policies for the supply of housing as referred to in the Framework. WNP Policy H1 is also a relevant policy concerning the supply of housing. Therefore, in accordance with paragraph 49 of the Framework these policies can be regarded as being up-to-date and be afforded full weight. This in turn means that the fourth bullet point of paragraph 14 of the Framework is not engaged.
31. In view of this it is now necessary for me to consider whether there are any other material considerations that would indicate that planning permission should nonetheless be granted. Such considerations centre on the effect of the proposed development in terms of its landscape impact and the economic, social and environmental dimensions of the proposal.

Effect of the proposed development – landscape impact

32. LP Policy ENV2 seeks to protect and where possible enhance landscape character and local distinctiveness, with development taking full account of the characteristics of the site, its relationship with the surrounding area, and views into, over and out of the site.
33. Approximately a third of the appeal site comprises a well-stocked orchard area to the south of the existing dwelling, with the remaining third being rough pasture which is mown for a hay crop. To the west and north are open fields, and to the east are dwellings fronting Whitegate Lane. Across Chester Lane is an area of newly built housing, and further approved development will extend closer to the site. To the west and north-west, beyond the next field, is a public footpath (Marton FP9) and about 450-500m to the north is Whitegate Way, a well-used 'leisure' footpath. Neither the appeal site nor the adjoining countryside on the 'urban edge' of Winsford is protected through any landscape designation, and neither the *National Character Assessment* or the *Cheshire Landscape Character Assessment* offer a methodology for assessing the sensitivity of the landscape character types and areas identified to change (in this case the 'Rolling Farmland' landscape character area).
34. The *Landscape and Visual Impact Assessment* (LVIA) undertaken by the appellant was reviewed by the Council's Landscape Officer who agreed that the assessment methodology and the conclusions drawn in it were robust. Unsurprisingly, the LVIA concludes that the visual impacts of the proposed development would be most pronounced from the immediate surroundings of the site, and the impact when viewed from the dwellings backing onto the site would be very significant indeed, given that they currently enjoy wide views over open countryside.
35. However, in terms of the wider context, the LVIA (and the Council) agree that the proposed development would only been seen from a small number of public vantage points, notably from the west on the A54 when approaching the town, although the impact would be limited as part of the wider picture. I also agree with the conclusion in the LVIA that landscape impacts from public footpath FP9 and Whitegate Way (pedestrian receptors) would be negligible owing to the

filtration of views by existing vegetation and (in the case of Whitegate Way) the distance from the site.

36. Where development involves the loss of a green field there will inevitably be a degree of harm owing to the magnitude of change this brings about. However, in this case the impact of the proposal upon public vehicular and pedestrian visual receptors has been shown to be restricted, and as a consequence, the amount of weight afforded from harmful impacts on the landscape is limited.
37. Nonetheless, I have some difficulty accepting the appellants' argument that views towards the site when travelling along the A54 will not be significantly different due the proposed mitigation measures, including additional tree and hedge planting and areas of open space, shown in the Master Plan. Nor do I agree that what is described as 'the resultant less linear' nature of the town edge', would necessarily result in a net visual improvement in landscape impact terms, particularly as there is nothing to suggest that current appearance of the site detracts in any way from the surrounding countryside.
38. I do however share some of the Council's concerns that were I to allow the appeal and grant planning permission for housing on an unallocated site outside the settlement boundary, it may be more difficult for them to resist other proposals within the countryside. Although each application is considered on its own merits, additional development in the vicinity of the site would clearly have a cumulative impact, and the degree of harm to the character and appearance of the countryside would then be significantly greater.
39. Overall, on balance, I am satisfied that on this issue that the proposed development would have a limited landscape impact, as such there would be no direct conflict with LP Policy ENV2. Nonetheless, the construction of 18 dwellings on what is currently an open field and orchard would diminish the extent of undeveloped countryside in the locality by extending built development further out into the countryside. In this regard, the proposal would conflict with the stated aim of LP STRAT9 to protect the character of the countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements.

Whether Sustainable Development - Overall Planning Balance

40. The appeal scheme needs to be considered in the context of the presumption in favour of sustainable development set out in paragraph 7 of the Framework as encompassing economic, social and environmental dimensions. Paragraph 8 makes it clear that the three roles are mutually dependent and should not be carried out in isolation.
41. The appellants' primary case here is that the appeal proposal complies with the development plan when taken as a whole, and as such benefits from the presumption in favour of approving proposals that accord with the development plan as set out in the third bullet point of Paragraph 14 of the Framework. However, as I have concluded that the proposal conflicts with LP STRAT9, saved VRBLP Policy GS5, and to a lesser extent LP Policy STRAT1, that the Council has in excess of five years housing supply and therefore these policies are up-to-date, then the fourth bullet point of Paragraph 14 is not engaged.
42. There would be economic benefits arising from the construction and occupation of the dwellings and the appellants suggest that 18 new homes would generate

a direct 'contribution' of £2.08 million to the construction sector, with secondary investment to the local economy being in the region of £6 million. It is also put to me that and the appeal scheme will contribute to the regeneration of Winsford. However, whilst not insignificant as suggested by the Council, given the scale of the proposed development any benefits in this regard are likely to be limited. In any event, there would be some conflict with the economic dimension of sustainability which seeks to ensure, among other things, the delivery of land in the right place.

43. In terms of social benefits, at least 30% of the units would be provided as affordable housing. Given the acknowledged need for such housing in the Borough, that is a benefit of the scheme to which I afford some weight. However, that weight is tempered by the consideration that the policy requirement to provide a 30% proportion of affordable homes applies to all other development that comes forward, and the Council has demonstrated that it has a sufficient supply of housing to meet its needs for the next five years.
44. Part of the appellants' case is that the scheme will deliver 'high quality' housing in line with the objectives of the WNP to increase the provision of such housing and secure improvements to the appearance of one of the main approaches to the town. However, in the context of an outline application I remain unconvinced how this could be secured through any application for approval of reserved matters. Whilst the location of the site and the low density of the development might indicate the type of scheme which might follow, a condition requiring the development to be 'high quality' or follow a particular form would be difficult to enforce. Neither would it be precise or reasonable in all other respects.
45. In terms of the environmental role I have accepted that the impact on the landscape would be limited, and the ecological mitigation proposals offer some potential for management, and possibly enhancement. However, I am not convinced that the potential for enhancement would result in a net nature conservation benefit. Furthermore, the environmental dimension of sustainability is concerned in part with protecting and enhancing the built environment, and even though there would be limited harm to the landscape per se, I have found nothing to suggest that the proposed development would provide such benefits.
46. I have found that there would be conflict with LP STRAT9, saved VRBLP Policy GS5 and some conflict with LP STRAT1 in that the proposal would comprise development of an unallocated greenfield site in the countryside outside the currently defined settlement limit of Winsford. As such it would be contrary to the settlement strategy for the area. Whilst I attach some weight to the economic and social benefits of the scheme, and accept that there would be limited environmental harm, other planning and policy considerations cannot simply be set aside.
47. In order for the LP and WNP to achieve their aspirations for the Borough they must be afforded a reasonable period of time to be effective, and whether or not this proves to be the case further into the Plan period will be ascertained through ongoing monitoring and the LP Part 2 process. Accordingly I conclude that the proposal would not be consistent with the principles of sustainable development as it conflicts with the policies of the development plan and the Framework taken as a whole.

Other Matters

48. The appellants says recent case law has confirmed that the presumption in favour of sustainable development can be legitimately be used to come to a decision that is contrary to the development plan, even if the plan is afforded full weight. Reference is made to the judgement in the case of *Wychavon DC*¹⁰ where the appeal judge confirmed that that the Inspector had been fully entitled to approve a scheme that was contrary to the development plan, despite the plan being up to date, because the presumption in favour of sustainable development '*is the golden thread running through the Framework*'. However, in that case the relevant local plan policies against which the appeal was considered included settlement boundaries and housing allocations drawn up to assess housing need up to 2011, and thus would not have been formulated in line with the Framework's presumption in favour of sustainable development. Therefore, the facts of that case are materially different from those pertaining here as the LP Part One and the WNP were both adopted post-framework and were found to be sound in accordance with its presumption in favour of sustainable development.
49. In any event, the remarks in the *Wychavon* case are *obiter* and there is no requirement to follow them. The Court of Appeal confirmed in *Suffolk Coastal DC v Hopkins Homes* and *Richborough Estates v Cheshire East BC*¹¹ that 'Paragraph 14 of the Framework explains how the presumption in favour of sustainable development is to be applied' (in paragraph 12 of the judgement). It follows from this that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date, and the adverse impacts do not significantly outweigh the benefits. This is supported by the approach advocated in *Cheshire East BC v SSCLG*¹² and is the approach that I have followed in this case.
50. In support of their case the appellants also refer to other appeal decisions for housing development outside settlement limits within Chester and Cheshire West which have been allowed, and which I have made reference to in my reasoning. I am not aware of the full circumstances in these appeals, although the Swanlow Lane site is indicated in the WNP as being within the housing area of the town, and described by the Inspector as 'being, overgrown with no special amenity value', and 'being surrounded by other structures it does not appear as part of the open countryside'. This is in marked contrast to site characteristics of the site before me. However, the various decisions indicate the finely balanced nature of the cases, and it is clear that each needs to be judged on its own merits.

Section 106 Agreement

51. The Council and appellants agree that the education contribution contained in the Section 106 Agreement would be necessary in the event that planning permission were to be granted, and I note that this accords with LP Policy SOC6. Paragraph 204 of the Framework says planning obligations must be necessary to make the development acceptable in planning terms, and fairly

¹⁰ *Wychavon DC v SSCLG and Crown House Developments* (2016) EWHC 592 (Admin)

¹¹ *Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC, SSCLG* (2016) EWAC Civ 168

¹² *Cheshire East BC v SSCLG* (2016) EWHC 571 (admin)

and reasonably related to it in scale and kind. As the development is also chargeable development, the S106 needs to satisfy the corresponding tests in Regulation 122 of the Community infrastructure Regulations 2012 (CIL). It was also agreed that the affordable housing element could be secured by means of a planning condition.

52. Having regard to the representations made, I consider the relevant Policy and CIL legal tests have been satisfied. However, I do not consider the provisions of the Agreement or suggested planning conditions would outweigh the particular harm I have found in this case or overcome the robust planning policy objections to the proposal.

Conclusion

53. Therefore, for the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

John Hunter	of Kings Chambers
He called	
Steven Holmes	Chester West and Chester Council

FOR THE APPELLANT:

Alison Ogley	of Kings Chambers
She called	
Victoria Wood	Berrys
Martin Band	Environmental Associates

INTERESTED PERSONS:

Mr and Mrs D Blackford	The appellants
Julie Brown	Local resident
Felicity Wimbush	Zyda Law
Chris Hammersley	Zyda Law
Beth Fletcher	Chester West and Chester Council
Helen Howie	Berrys

DOCUMENTS

- 1 Section 106 Agreement
- 2 Opening statement on behalf of the appellants
- 3 Opening statement on behalf of the Council
- 4 Closing submissions on behalf of the appellants
- 5 Closing submissions on behalf of the Council
- 6 Testing the Preferred Spatial Vision: Winsford Neighbourhood Plan
- 7 Statement of Common Ground
- 8 Extract from Winsford Neighbourhood Plan: Report by independent examiner

PLANS

- A Illustrative Master Plan 5282-01 Rev B
- B Location of site: Appeal decision Swanlow Lane, Winsford