

Appeal Decision

Hearing held on 7 February 2017

Site visit made on 8 February 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 16th February 2017

Appeal Ref: APP/R0660/W/16/3156959

Land to the west of Close Lane, Alsager ST7 2TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Stewart Milne Homes against the decision of Cheshire East Council.
 - The application Ref 15/5654N, dated 21 March 2016, was refused by notice dated 8 August 2016.
 - The application sought outline planning permission for a mixed residential scheme to provide affordable, open market and over 55s sheltered accommodation, open space and new access without complying with a condition attached to planning permission Ref 13/1305N, dated 29 July 2014.
 - The condition in dispute is No 27 which states that: "56 of the dwellings hereby permitted shall not be occupied except by a person or persons over the age of 55."
 - The reason given for the condition is that it "would be reasonable to safeguard these properties for elderly residents."
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Decision

1. The appeal is allowed and outline planning permission is granted for a mixed residential scheme to provide affordable, open market and over 55s sheltered accommodation, open space and new access at Land to the west of Close Lane, Alsager ST7 2TS in accordance with the application Ref 15/5654N dated 21 March 2016 without compliance with the conditions previously imposed on the planning permission Ref 13/1305N dated 29 July 2014 and subject to the new conditions set out in Annex A.

Application for costs

2. At the Hearing an application for costs was made by Stewart Milne Homes against Cheshire East Council. This application is the subject of a separate Decision.

Procedural Matter

3. The reason for refusal refers to Policy SC4 of the emerging *Cheshire East Local Plan Strategy* (CELP). This plan is now at an advanced stage of preparation, with the consultation on the main modifications having started on 6 February 2017. It was indicated that apart from a minor modification to the wording of the supporting text, the Local Plan Inspector has not suggested any modifications to this policy. As such, it is proposed that it would be adopted in
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its current format. In the light of this, and in accordance with paragraph 216 of the *National Planning Policy Framework* (the Framework), I consider that substantial weight can be given to this policy.

Background and Main Issue

4. Outline planning permission was granted in July 2014 for a residential scheme that comprised a mix of open and affordable housing and over 55s sheltered accommodation. This was subject to a number of conditions, one of which restricted the occupancy of 56 of the dwellings to persons over the age of 55. The appeal seeks permission to vary this condition so that the occupation of only 6 of the properties to be provided is restricted in this way.
5. A reserved matters scheme for a large part of the site was approved in July 2015. This provides 74 open market and affordable houses and these are currently under construction, with a number already occupied. An illustrative layout for the remaining two parts of the site shows the provision of 6 bungalows and 2 houses, which would all be affordable, and 18 open market dwellings. However, the layout of these two areas is not a matter before me at this appeal.
6. The main issue in the appeal is whether or not the condition is reasonable and necessary having regard to the housing mix in the development, and housing needs in the area.

Reasons

7. The original outline application for the appeal site had all matters reserved other than access, but it was indicated at the time that it would be likely to provide 76 houses that would be a mix of open and affordable dwellings, and 56 units of sheltered accommodation. However, the condition which is the matter of the appeal, did not specifically require the provision of sheltered accommodation, but just restricts the age of the occupants of 56 of the units on the site to the over 55s.
8. There is no specific definition of what constitutes sheltered accommodation, and it was indicated at the hearing that such schemes may vary, but that generally they include some shared facilities such as communal gardens and parking, and an element of care. As such, sheltered accommodation would be provided in a distinct scheme rather than being distributed across the site, and would be likely to be provided at a higher density than other residential accommodation.
9. The appellant's evidence indicates that, despite actively seeking to market the site, no interest in providing a sheltered accommodation scheme was forthcoming, mainly because of the distance of the site from key services and facilities, and/or because the developer was only interested in providing much larger schemes than would be possible here. This was corroborated by the Council's own evidence from the Strategic Housing Manager, which confirmed that no social providers were interested in a sheltered housing scheme on the site. As such, it is clear that the provision of a sheltered housing scheme, as originally envisaged in the outline application, is not achievable.
10. At present, approximately 80% of the site is being developed for 74 houses. Given this, and the density of housing in the wider area, although noting that no specific plan or viability evidence has been produced to confirm this, I am

not persuaded that the remainder of the site would be capable of accommodating 56 dwellings, whilst at the same time providing a well-designed scheme that would respect the character of, or the mix of dwellings found in, the rest of the development, or the wider area. Although I accept that it may have the potential to deliver more houses than is shown on the indicative layout.

11. In approving the Reserved Matters for the first phase of the development, the Council did not secure the identification of any units to be reserved for the over 55s. In the light of this, and as I consider that the delivery of 56 units on the remainder of the site would not be feasible, it is clear that it would not be possible to comply with this condition.
12. The Council now argue that Alsager has an increasing proportion of elderly persons, with the last population projections indicating that around 40% of the population is over 55. However, this is in common with many of the main settlements in the borough, and there is nothing to suggest that the proportion of over 55s in Alsager is significantly higher than elsewhere, or that the rate of increase is considerably greater than is being seen elsewhere. Moreover, the evidence shows that, not only is there a good mix of housing types in the town, but that it has a significantly higher proportion of bungalows than the borough average. In addition, I am not persuaded that the data from recently completed schemes, and those under construction or with permission, shows a disproportionately high number of larger dwellings are being built in the area.
13. In the light of the demographic trends Policy SC4 of the CELP seeks to ensure that new residential development provides a mix of tenures, types and sizes, and that to address the needs of an ageing population developments are capable of meeting and adapting to the long term needs of older residents. This is supported by the Council's *Vulnerable and Older Persons Housing Strategy* which indicates that the vast majority of older people wish to remain in their own home rather than utilising more specialised type of accommodation. As such, it indicates that there is a need to provide a significant amount of accessible homes, such as bungalows, in the borough.
14. The proposed modification to the condition would ensure that the remainder of the scheme provided 6 bungalows, whose occupancy would be limited to the over 55s. The appellant has indicated that it has a registered social provider interested in these. Given this, I am satisfied that this element of the scheme would be deliverable. The *Strategic Housing Market Assessment 2013 Update* indicates a need in Alsager for 5 affordable units for older persons a year. As such the proposed modified condition would provide in excess of a years supply of such dwellings. Considering the overall size of the development, I consider that such a contribution would be reasonable.
15. Moreover, the revised condition that is proposed would not prevent more bungalows being provided on the site. I note the concerns of the Council regarding the need to maintain a balanced mix of dwellings on the site, and in the wider area. However, the housing mix proposed is a matter that the Council would need to consider when a Reserved Matters application is submitted, and if it is considered the scheme proposed did not provide an appropriate mix in accordance with SC4, it could be refused. In addition, whilst the proposed condition would lead to a reduction in the number of units

restricted solely to over 55s it does not mean that the proposal would not provide other accommodation that may well be attractive to older people.

16. The appellant has highlighted that the Council cannot demonstrate a 5 year housing land supply, and this was not disputed by the Council. In the light of this, and the need to significantly boost the supply of all types of housing across the borough, the ability to provide a deliverable scheme that provides a mix of dwellings, in contrast to a scheme that would be undeliverable as a result of the constraints imposed by the current condition, is a matter to which I give considerable weight.
17. In allowing the original application the Inspector considered that the scheme would represent sustainable development. Whilst the decision letter indicates that the sheltered housing scheme proposed at the time contributed to the scheme's sustainability, there is nothing to indicate that this part of the scheme was fundamental to the conclusion that it was sustainable development. Whilst the proposed change to the condition would alter the mix of housing provided on the site, the resulting impact on the social and economic elements of the scheme's sustainability would be limited. As a result, I still consider the scheme would represent sustainable development.
18. Overall, given the lack of interest from any providers in a sheltered housing scheme on the site, and the physical size of the site remaining to be developed, it is not possible for the appellant to comply with the condition. I consider that to continue to impose a condition that cannot be delivered would not be reasonable, and would fail the tests set out in paragraph 206 of the Framework. The proposed modified condition would provide 6 bungalows which would contribute to an identified need for affordable accommodation for the over 55s in the area. It would also result in a scheme that would be able to be delivered. Accordingly, there would be no conflict with Policy SC4 of the CELP.

Other Matters

19. A number of concerns have been raised about the impact of the proposed changes to the housing mix on highway safety. The application was accompanied by a highway statement which indicated that the proposed changes to the scheme would not result in any significant increase in the number of traffic movements generated by the development. A conclusion to which the Highways Engineer agreed. In the light of this I am satisfied that the modification of the condition would not have any detrimental impact on highway safety.
20. Whilst I note various other concerns raised by local residents, these relate to the principle of residential development on the site, which is not a matter that is before me in this appeal.

Planning Obligation

21. The original application was accompanied by a S106 Agreement which covered a number of issues, including affordable housing and an education contribution. In light of the changes to the proposed housing mix on the site, a signed 106 Deed of Variation has been submitted which secures an additional education contribution, and the provision of 8 affordable dwellings on the site. I have considered this in the light of the statutory tests contained in Regulation 122 of

the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 204 of the Framework. The Deed of Variation is based on the illustrative scheme, if this changes at reserved matters, the Council would need to consider whether any further revisions to the S106 would be needed.

22. *Education.* Policy GR19 of the *Congleton Borough Local Plan First Review (adopted January 2005)* (CLP) and policy BE5 of the *Crewe and Nantwich Replacement Local Plan 2011 (adopted February 2005)* (CNLP) indicates that new developments will be required to make adequate provision for any infrastructure requirements which arise as a consequence of the development. The Council have indicated that this reduction in accommodation restricted to the over 55s would generate an additional 3 primary aged pupils and 3 secondary aged pupils. The Council forecast that it would not have the classroom accommodation for these pupils at the schools in the local area. Justification has been provided for the financial contribution being sought, and is provided for within the agreement. The Council have shown that there are no pooling concerns with this contribution. Given this I consider that this obligation would meet the statutory tests.
23. *Affordable Housing.* The Obligation makes provision for the 6 bungalows and two 2-bed dwellings to be provided as affordable housing units. These would be in the form of affordable rent and intermediate tenure. This is supported by policies in the CNLP and the CLP and the *Interim Planning Statement on Affordable Housing* which sets out a minimum requirement of 30% affordable housing on all unidentified windfall sites of 15 dwellings, or more than 0.4 hectares in size. The Strategic Housing Market Assessment shows that the majority demand in the area is for 2 bed housing, and for older persons is for 1 bed properties. The Obligation sets out detailed arrangements for the transfer and management of these units. As such, I am satisfied that the agreement would ensure the development contributes to affordable housing needs within the borough, and I consider the Obligation passes the statutory tests.

Conclusion and Conditions

24. For the reasons given above, I conclude the appeal should be allowed. I have therefore granted a new outline permission for the residential development with a new condition, in line with that suggested by the appellant, in place of the disputed one.
25. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Although a number of conditions have been discharged in respect of the first phase of development under construction, they remain relevant for the rest of the site. As such, I have re-imposed all the conditions that remain relevant, with some minor amendments, and the combining of the former condition 3 and 4 into one condition, as discussed at the hearing.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jenny Wigley	Counsel
Patrick Downes	Harris Lamb
Kieran McLaughlin	JLL
Louise Pilkington	Stewart Milne
Grant Anderson	Hill Dickinson

FOR THE LOCAL PLANNING AUTHORITY:

Sue Orrell	Principal Planning Officer, Cheshire East Council
Sophie Williams	Senior Planning Officer, Cheshire East Council

INTERESTED PERSONS:

Cllr Derek Hough	Alsager Ward Councillor, Cheshire East Council
Cllr John Hammond	Haslington Ward Councillor, Cheshire East Council
Cllr Sue Helliwell	Alsager Town Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Costs Application submitted by the appellant
2. Signed Statement of Common Ground submitted by the appellant and the Council
3. Community Infrastructure Levy Compliance Statement submitted by the Council
4. Updated draft S106 Agreement submitted by the appellant
5. Agreed Core Documents submitted by the appellant
6. Data on housing completions in Alsager since 2009 submitted by the Council

Annex A

Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 29 July 2017. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development begins, and the development shall be carried out as approved.
- 3) No development shall take place until details of a Sustainable Drainage Systems (SuDS) for the site have been submitted to, and approved in writing by, the local planning authority. No development shall take place except in complete accordance with the approved details.
- 4) The discharge of surface water from the proposed development shall be no greater than that which discharges from the existing site. The maximum discharge rate shall be restricted to approximately 5 litres/second, in accordance with the submitted Flood Risk Assessment. For discharges above the allowable rate, details of attenuation for up to the 1% annual probability event, including allowances for climate change, shall be submitted to, and approved in writing by, the local planning authority prior to commencement of development. No development shall take place except in complete accordance with the approved attenuation scheme.
- 5) No development shall take place until details of the undeveloped buffer zone to be provided alongside the watercourses running through the site have been submitted to, and approved in writing by, the local planning authority. No development shall take place except in complete accordance with the approved details.
- 6) A scheme to manage the risk of flooding from overland flow of surface water shall be submitted to, and approved in writing by, the local planning authority prior to the commencement of development. No development shall take place except in complete accordance with the approved scheme.
- 7) Prior to commencement of development details of any culverts to be installed on the site shall be submitted to, and approved in writing by, the local planning authority. The submitted details shall include what impact the proposed culverting would have and how compensatory works would address this, and full details of working methods and timing, and what treatment of bed material would be required. No development shall take place except in complete accordance with the approved details.
- 8) The site shall be drained using a totally separate system with only foul drainage connected into the public sewerage system. Surface water shall discharge directly in to the watercourse crossing the site and no surface water flows shall communicate with the public sewerage system via direct or indirect means unless it can be demonstrated that the use of SuDS is not technically feasible in respect of this site.

- 9) Prior to development commencing, an Environmental Management Plan shall be submitted to, and approved in writing by, the local planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the construction phase. In particular the plan shall include:
- a) the hours of construction work and deliveries;
 - b) the parking of vehicles of site operatives and visitors;
 - c) loading and unloading of plant and materials;
 - d) storage of plant and materials used in constructing the development;
 - e) wheel washing facilities;
 - f) details of any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
 - g) details of the responsible person (e.g. site manager/office) who could be contacted in the event of complaint;
 - h) mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - i) waste management: there shall be no burning of materials on site during demolition/construction; and,
 - j) details of the scheme to minimise dust emissions from the development.
- The approved Environmental Management Plan above shall be implemented and in force throughout the construction phase of the development.
- 10) Prior to the development commencing:
- a) A Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority.
 - b) If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the local planning authority. The remediation scheme in the approved Remediation Statement shall then be carried out.
 - c) If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to, and approved in writing by, the local planning authority prior to the first use or occupation of any part of the development hereby approved.
- 11) The reserved matters shall include a detailed scheme of Noise Mitigation for proposed dwellings affected by noise from the M6 motorway. The scheme shall include a detailed plan of which dwellings will be subject to the proposed mitigation measures, and the mitigation measures which have been specifically applied to that dwelling both internally and externally, and the interior layout of the property. No dwelling hereby permitted, which has been identified as requiring mitigation measures, shall be occupied until the approved mitigation measures pertaining to that property have been implemented in full.
- 12) The reserved matters shall make provision for the route of the existing public footpath across the site to be maintained within the public open space and retained as a grass surface path.

- 13) The proposed footpath link along Close Lane shown on the approved plan (Drawing No. SK262/PL/PH2/101) being specifically referred to shall be provided in accordance with detailed design/specification/drawings to be submitted to, and approved in writing by, the local planning authority within 2 months of the date of this permission.
- 14) Prior to any commencement of works between 1 March and 31 August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds, and the results submitted to the local planning authority. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person, and a further report submitted to the local planning authority before any further works within the exclusion zone take place.
- 15) Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to, and approved in writing by, the local planning authority. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the local planning authority.
- 16) No development shall take place except in accordance with the Reptile Mitigation Measures submitted with the application. Notwithstanding the submitted details the Mitigation shall include a pond designed to provide breeding habitat for frogs, a hibernacula and compost heap (for egg laying) and the reptile mitigation area shall be located adjacent to, but not within, the SBI.
- 17) Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to, and approved in writing by, the local planning authority. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. No part of the development hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
- 18) Prior to any further development of the site beyond those plots indicated in 14/5114C a further scheme shall be submitted to the local planning authority to demonstrate that not less than 10% of the additional dwellings' total energy consumption will be provided by means of a 'fabric first led approach' in accordance with the current Building Regulations. The approved scheme shall be implemented, and retained as operational thereafter, unless otherwise agreed in writing by the local planning authority.
- 19) No development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been

submitted to, and approved in writing by, the local planning authority. No dwelling hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.

- 20) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.
- 21) The reserved matters shall include an Arboricultural Impact Assessment in accordance with BS:5837:2012 which shall include:
 - a) trees proposed for retention;
 - b) trees proposed to be removed;
 - c) trees to be pruned;
 - d) an evaluation of the impact of any proposed tree losses; and,
 - e) an evaluation of tree constraints.
- 22) No development shall commence (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement has been submitted to, and approved in writing by, the local planning authority. No development shall take place except in complete accordance with the approved Method Statement. Such Method Statement shall include details of the following:-
 - a) A scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on, or adjacent to, the site including trees which are the subject of a Tree Preservation Order currently in force, or are shown to be retained on the approved layout, which shall be in place prior to the commencement of work.
 - b) Implementation, supervision and monitoring of the approved protection scheme. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted, and shall not be removed without the prior written permission of the local planning authority.
 - c) A detailed Treework Specification.
 - d) Implementation, supervision and monitoring of the approved Treework Specification.
 - e) Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - f) Timing and phasing of arboricultural works in relation to the approved development.

- 23) No development shall take place until details of a "no dig" construction method in accordance with section 7.4 of BS 5837:2012 for the access path has been submitted to, and agreed in writing by, the local planning authority. The path shall be constructed in complete accordance with the approved details.
- 24) The reserved matters shall include details of the parking provision for each of the dwellings hereby permitted. No dwelling hereby permitted shall be occupied until the parking for that dwelling has been constructed in accordance with the approved details. These areas shall be reserved exclusively for the parking and turning of vehicles and shall not be obstructed in any way.
- 25) The reserved matters shall include details of the bin storage for each of the dwellings hereby permitted. No dwelling hereby permitted shall be occupied until the bin storage for that dwelling has been provided in accordance with the approved details.
- 26) Six of the dwellings hereby permitted shall not be occupied except by a person or persons over the age of 55 years.