
Appeal Decision

Site visit made on 28 February 2017

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 31 May 2017

Appeal Ref: APP/R0660/W/16/3165643

Land at Oak Gardens, Bunbury, CW6 9QN

- 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 Nicholas Howard (Crabtree Homes) against the decision of Cheshire East Council.
 - The application Ref 16/2010N, dated 21 April 2016, was refused by notice dated 24 November 2016.
 - The development proposed is a residential development for 15 dwellings with associated works.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development for 15 dwellings with associated works at Land at Oak Gardens, Bunbury, CW6 9QN in accordance with the terms of the application, Ref 16/2010N, dated 21 April 2016, subject to the conditions in the attached Schedule.

Procedural Matters

2. The application was submitted in outline. Whilst the application form indicates that layout is applied for, the Planning Statement and the Appeal Statement say that only access is for consideration and that the layout is for indicative purposes only. The layout plan is also marked "indicative". I have dealt with the appeal on the basis that all matters are reserved except for access.

Main Issue

3. The main issue is whether the proposal would constitute sustainable development in accordance with the National Planning Policy Framework, with particular reference to the effect of the proposed development upon the character and appearance of the area and the Council's supply of deliverable housing sites.

Reasons

Policy Background

4. The site is outside of any development boundary defined by the Crewe and Nantwich Replacement Local Plan 2011(LP) and the Bunbury Neighbourhood Plan (NP). LP Policy NE.2 indicates that all land outside the settlement boundaries will be treated as open countryside where development is limited
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to that falling within certain exceptions. The proposed development would not fall into any of the exceptions.

5. NP Policy H1 says that planning permission will be granted for a minimum of 80 new homes within or immediately adjacent to Bunbury village. The site is immediately adjacent to the village boundary. NP policy H2 indicates that new housing will be supported provided that it is small scale, in character with the settlement and is phased over the period of the Plan. It indicates that a maximum of 15 new houses on any one available and deliverable greenfield site immediately adjacent to the village will be permitted but such developments should not be co-located with other new housing development unless there are demonstrable sustainable benefits from doing so. NP Policy H3 says that all new housing proposals should be in small groups of up to 15 dwellings to reflect the character of Bunbury.
6. Paragraph 49 of the Framework requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out at paragraph 14 of the Framework and indicates that where relevant housing supply policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Paragraph 7 of the Framework establishes the three dimensions to sustainable development: economic, social and environmental.
7. On 12 December 2016 the Planning Minister, Gavin Barwell, published a Written Ministerial Statement (WMS) concerning neighbourhood planning. This requires that, where there are relevant policies for the supply of housing in a recently made neighbourhood plan, these policies should not be considered out-of-date unless there is a significant lack of supply and if a specific set of circumstances occur at the time of decision making. These are that the WMS is less than 2 years old, or the NP has been part of the development plan for 2 years or less; the NP allocates sites for housing; and the LPA can demonstrate a 3 year supply of deliverable housing sites. All these circumstances must occur together.
8. The Council has confirmed that it cannot demonstrate a current 5 year housing land supply (HLS) and that its current supply is 3.96 years. Although the boundary of the NP takes in land which has planning permission for housing, it does not specifically allocate sites for housing. Therefore, given the absence of allocated sites in the NP and the lack of a 5 year HLS, in accordance with the WMS, the relevant policies for the supply of housing are out of date.
9. I have had regard to the Council's position in respect of the emerging Cheshire East Local Plan Strategy (CELP). The Examining Inspector is of the view that the Council seems to have undertaken a comprehensive assessment of HLS and established a realistic and deliverable means of meeting need, including assessing the deliverability and viability of the proposed site allocations. However, the Council's Site Allocations Development Plan Document is only in its early stages. Therefore, whilst the Council might be making good progress in finding a supply, the supply is not yet demonstrable.

Character and Appearance

10. The site is a field which is partly bound by houses and partly by the wider countryside. The proposal would therefore result in built development encroaching into the countryside. As a result of the urbanisation of the land, there would be some harm to the open and rural landscape surrounding the village. However, as the site is partly enclosed by other residential development, I consider this harm to be limited.
11. The development proposes 15 units immediately adjacent to the village which conforms to the limit set by NP Policy H2. The Policy also says that such development should not be co-located with other new housing development. Next to the site, there is a small development of 6 affordable houses which are about 7 years old. The question, therefore, is whether the proposed houses would be co-located with these existing dwellings.
12. The NP glossary definition of "*co-location*" says it applies to all new houses built within the neighbourhood plan period of 2015-2030. The glossary definition of "*Plan Period*" is "from the adoption of the Plan until 2030". The plan was made on 29 March 2016. Regardless of the discrepancy between these definitions, the 6 houses were clearly built outside of the plan period and I consider that they cannot be counted as being co-located with the proposed dwellings. I note the glossary definition of "*New Development*" is that the NP plan period is defined as 2010-2030. However, this definition is completely at odds with the other two definitions and therefore, I give the 2010 date little weight.
13. The houses would share the same access road as the existing 6 houses but it is common for lots of houses to be accessed off the same road. Therefore, I do not consider that the joint use of the access road would be out of character with the wider settlement, neither do I consider that the 15 dwellings next to the existing 6 dwellings would have negative social or environmental impacts upon the area, especially as there is no objection from the local highway authority. In my view, 15 houses amongst other established development would be a small increase and would not look out of scale or character with the wider settlement.
14. There are trees on the periphery of the site and a veteran ash within the heart of the site. The woodland to the west and a number of other trees, including the veteran ash are subject to a Tree Preservation Order. The veteran ash would be retained as an amenity feature. The Council's tree officer has advised that the indicative layout adequately addresses the tree constraints within the site and I have no reason to disagree. Therefore, the trees can continue to positively contribute to the character and appearance of the area.
15. Overall, due to the loss of open land, there would be some limited harm to the character and appearance of the countryside and there would be conflict with LP Policy NE.2, the aims and objectives of which are to limit development in the open countryside to protect its character and amenity. It would also conflict with emerging CELP Policy PG 5 which has similar objectives. However, I find that the scale of the proposed housing scheme would be commensurate with surrounding development and would not harm the character and appearance of the settlement. Therefore, I find no conflict with NP Policies H1, H2 or H3. Furthermore, I find no direct conflict with

emerging CELP Policy SE 1 which seeks to protect and enhance the quality, distinctiveness and character of settlements.

Other Matters

Financial Contributions and Affordable Housing

Nature Conservation

16. LP Policy NE.5 indicates that development must compensate for any unavoidable damaged wildlife habitat by the provision of an equivalent feature nearby. The site is identified in the NP as being of "medium" distinctiveness in terms of conservation value. The appellant's ecological survey identifies the majority of the site (approx. 0.85 ha) as supporting semi-improved grassland which would be lost by the development. There would be a corresponding loss of biodiversity.
17. The Council say that the cost of the creation of Lowland Grassland is £11,293.00 per ha. This figure is for the cost of the creation of species rich UK BAP grassland. The habitat lost is of a value below the threshold of priority habitat. Consequently, the Council say that half this figure (£5646.50 per ha) would be appropriate to compensate for the loss of the habitat present on site. This would equate to £4517.20 and has been agreed with the appellant to be used for the purposes of habitat creation and enhancement within the vicinity of the site. There are no other contributions for this project.

Education

18. LP Policy BE.5 allows for the payment of a financial contribution towards community facilities, the need for which arises directly as a consequence of the development. The Council's education department advises that 15 dwellings would generate 3 primary aged pupils and 2 secondary pupils. The Council says that there is a shortfall of secondary school places within the catchment area of the site. These 2 places would attract a total contribution of £32,695 to be spent on improving local school capacity by way of contributing towards accommodation. The Council have confirmed that it would be put towards a single classroom and at present, the contribution would be the only one for this project.

Affordable Housing

19. LP RES.7 and the Council's adopted Interim Planning Statement (IPS) on Affordable Housing (2011) seek the provision of affordable housing in new development. The IPS says that on windfall sites of 15 dwellings or more, in settlements with a population of 3000 or more, the desired target is 30% provision of affordable housing. This is consistent with the Government's objective that planning should deliver a wide choice of high quality homes, as set out in the National Planning Policy Framework. The appellant has agreed to this level of provision.

Conclusion on Financial Contributions and Affordable Housing

20. Given the above factors, I consider that these contributions are necessary to make the development acceptable; they are directly related to the development; and are proportionate to the scale of the development proposed. They do not exceed any pooling limits. Therefore, they pass the test in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. Furthermore, the contributions would satisfy the requirements of LP Policies NE.5, BE.5, and RES.7.

Living Conditions

21. There are some level differences between the land at Wakes Meadow and the appeal site. A planning condition ensures that the reserved matters application will show the levels of the land within the site and the levels of the adjoining gardens. The scale and massing of the dwellings could be designed with regard to these levels. From the indicative layout before me, I am satisfied that dwellings could be orientated and sited in such a way as to avoid an adverse impact upon the occupiers of neighbouring dwellings. I appreciate that existing occupiers would have their outlook changed but not so much as to cause unacceptable harm to their living conditions.

Public Rights of Way (PROW)

22. There are footpaths crossing the site. However, the Council's definitive Map Officer has confirmed that approval has been given for an Order to be made under s257 of the Town and Country Planning Act to divert Footpath No 14 Bunbury and to extinguish an unrecorded footpath between FP14 and FP15 Bunbury. As the PROW would be diverted alongside the site, I am satisfied that walkers would retain an equally direct route.

Flooding

23. I note neighbours' concerns in respect of flooding but the land is not in an area with a high probability of flood risk and planning conditions would ensure that the site is properly drained.

Highway Safety

24. I note neighbours' comments in relation to highway safety, pedestrian safety and car parking. Car parking for the proposed dwellings will be considered at the reserved matters stage, nevertheless, the local highway authority (LHA) has confirmed that the indicative layout conforms with Council standards in respect of internal layout and off road parking provision. I have seen photographs neighbours have provided of large vehicles parked on the existing access. However, in my assessment, these vehicles could be parked in such a way as to avoid blocking the highway especially as the appellant proposes to increase the width of Oak Gardens from some 4.1m to some 4.8m and to include a new footway. The appellant has also proposed adequate visibility splays at the entrance to the development with a speed restricting road bump which would aid pedestrian safety. I therefore conclude that there would be no harm to highway or pedestrian safety.

Ecology and Protected Species

25. The indicative layout shows that the woodland edge can be retained. The veteran ash tree is also shown to be retained. This tree is also subject to a Tree Preservation Order which provides statutory protection for it.
26. I understand that the application site falls within an indicative wildlife corridor as shown in the NP. The NP recommends a 15m non-developable buffer zone adjacent to the wildlife corridor. The Council has acknowledged that this appears to have been achieved in the indicative layout and I have no reason to find otherwise.
27. Great crested newts have been recorded by the appellant's ecologists at ponds within 250m of the site. To mitigate the risk of great crested newts being killed or injured during the construction phase, the appellant has proposed to remove and exclude newts from the site using standard best practice methodologies under the terms of a Natural England licence. The loss of habitat would be compensated for through the provision of habitat mounds and the creation of a small additional pond. Therefore, this species would be protected.
28. The reptile survey shows that a number of juvenile grass snakes have been recorded on site. To mitigate the risk of killing and injuring snakes during the construction phase, the appellant has proposed the removal and exclusion of reptiles from the site. The loss of habitat associated with the scheme would be compensated for through the retention of an area of rough grassland on the western edge of the site; the creation of a new pond for food; the provision of compost heaps to provide egg laying sites; and the formation of habitat mounds to provide shelter. I am, therefore, satisfied that the grass snakes would be protected. This mitigation, along with the great crested newt mitigation, would also assist with mitigating impacts upon the common toad.
29. The submitted badger survey confirmed badger activity in the wider area beyond the site, including an active badger sett within 30m of the site which can be retained during the proposed development. Badgers are highly mobile and therefore it will be necessary to undertake a further survey before development is commenced. A condition has been imposed to secure this requirement.
30. I note neighbours' comments that owls have been seen around the site. The ecological survey confirms that no evidence of roosting or nesting barn owls has been recorded during any of the various surveys and I have no technical evidence that the site provides a home to owls.
31. A large number of bat species have been recorded as being active on the site. The only roosting activity related to a minor roost within the retained veteran ash tree. Therefore, it is unlikely that there would be a direct impact upon roosting bats. Most bat activity around the site is associated with the site's boundary hedgerows and trees. These trees and hedgerows are shown as being retained. There would also be some additional planting and a new pond which would further contribute to bat habitat. Therefore, there would be no harm to bats as a result of the development.

The Effect on the Best and Most Versatile Agricultural Land (BMVAL)

32. The site is Grade 2 agricultural land, and thus BMVAL. Although it is at present not in agricultural use, it has potential for food production and clearly this would be lost permanently if the development were to go ahead. There is no dispute that there would be conflict with LP Policy NE.12 which seeks to protect such land from development. However, the policy is not wholly in accordance with the Framework, which applies the filter of a "significant" development of such land. I am not convinced that the loss of some 0.85 ha of such land could reasonably be considered significant in this context.

Planning Balance

33. The development would have a social benefit in that it would add to the supply of housing in a sustainable location on the edge of an existing settlement. There would be a further benefit in that the development would provide some affordable dwellings. The development would result in a small boost to the local economy in relation to the short term construction period and the future occupants would make a longer term contribution by their use of nearby local businesses. There would be some limited environmental harm due to a small encroachment of built development into the countryside and a limited loss of BMVAL.
34. Overall, the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole, and the proposal would amount to sustainable development. I find no overall conflict with emerging CELP Policy SD 1 which seeks to ensure that development is sustainable.
35. The Council has drawn my attention to a recent appeal decision in Shavington¹. However, in that case the site was shown in the emerging plan to remain within a Green Gap and the policy relating to that designation was also supported by the Local Plan Inspector. The current appeal does not have that factor weighing in the balance and therefore the two cases are not directly comparable.

Conditions

36. I have considered the Council's suggested conditions in accordance with the Planning Practice Guidance (PPG). In addition to the standard implementation and submission of reserved matters conditions, it is necessary, in the interests of precision, to define the plans with which the scheme should accord. Conditions have been imposed in the interests of the satisfactory drainage of the site and to avoid flooding. In the interests of highway safety a condition has been imposed requiring the implementation of access details. Conditions have been imposed in the interests of biodiversity/protected species. Conditions are imposed to ensure that a public right of way remains in the vicinity of the site. Conditions requiring a construction method statement and details of site levels are necessary in the interests of the living conditions of neighbours. Electric car charging points are required in the interests of reducing vehicle emissions.

¹ APP/R0660/W/16/3147420

37. I have not imposed a condition requiring tree protection or requiring a buffer of undeveloped habitat as these matters can be considered at reserved matters stage and therefore such conditions do not pass the test of necessity. I have not imposed conditions in respect of contaminated land as I have no technical evidence that the land is at risk of contamination and therefore such a condition would not pass the test of necessity. I have not removed permitted development rights as the PPG advises that such conditions should only be used in exceptional circumstances and no such circumstances have been advanced. Furthermore, as this is an outline approval, the exact details of the dwellings are not yet known.
38. Conditions 1, 8, 10, 11 and 13 are pre-commencement conditions as they cannot be satisfactorily dealt with any other way.

Conclusion

39. For the above reasons, and having regard to all other matters raised, including those by interested parties, I conclude that, overall, the proposal would constitute sustainable development, as defined by the Framework, and the appeal is therefore allowed subject to conditions.

Siobhan Watson

INSPECTOR

Schedule

- 1) 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location; Site Access and Visibility Splay; Footpath Plan.
- 5) No dwelling shall be occupied until the increased width of Oak Gardens; the speed bump; and the new footway, as shown on the plan "Site Access and Visibility Splay", and referred to in the appellants Transport Statement, dated April 2016, has been laid out, constructed and surfaced in accordance with the approved plans. The highway, as altered, shall be retained thereafter.
- 6) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system,

having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The completed works shall be maintained and operated thereafter.

- 7) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority. The completed works shall be maintained and operated thereafter.
- 8) No development shall commence until the public right of way through the site has been diverted as shown on the approved Footpath Plan.
- 9) No dwelling shall be occupied until details of a public right of way management scheme have been submitted to and approved by the local planning authority. The public right of way shall be maintained in accordance with the approved scheme thereafter.
- 10) Before the approval of the final reserved matters application, an updated protected species impact assessment and mitigation strategy shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) Before the approval of the final reserved matters application a habitat management plan to cover the life of the development shall be submitted to and approved in writing by the local planning authority. From the day of commencement of development, the management plan shall be adhered to thereafter.
- 12) Details of a scheme for the provision of electrical car charging points shall be submitted to and agreed in writing by the local planning authority. No dwelling shall be occupied until the charging points have been provided in accordance with the approved details.
- 13) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;

- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from construction works;
- viii) delivery, and construction working hours;
- ix) details of the method of installing any pile foundations.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) No development shall take place until the following information has been submitted to, and approved in writing, by the local planning authority:
- i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals; levels of adjoining gardens; and floor levels of adjoining buildings.
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

The development shall be carried out in accordance with the approved details.