
Appeal Decision

Site visit made on 16 May 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 6 July 2017

Appeal Ref: APP/R0660/W/17/3170349

6 Bunbury Lane and land to the rear, Bunbury, Cheshire.

- 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 Wulvern against the decision of Cheshire East Council.
 - The application Ref 16/0646N, dated 9 February 2016, was refused by a notice dated 1 September 2016.
 - The development proposed is an outline planning application for the demolition of 1no.bungalow and the erection of 15 dwellings, including associated access at land to the east of Bunbury lane, Bunbury.
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Decision

1. The appeal is allowed and planning permission is granted for outline planning for the demolition of 1no.bungalow and the erection of 15 dwellings, including associated access, at 6 Bunbury Lane and land to the rear, Bunbury, Cheshire in accordance with the terms of the application, Ref 16/0646N, dated 9 February 2016, subject to the conditions set out in the attached Schedule.

Application for Costs

2. An application for costs was made by Wulvern against Cheshire East Council. That application is the subject of a separate Decision.

Procedural Matters

3. The application was for outline planning permission with all matters except for access reserved for subsequent approval. Drawings showing an indicative site layout were submitted with the application and I have had regard to these in determining the appeal.
4. A completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 which include obligations to come into effect if planning permission is granted has been submitted by the appellants. I will address this matter later on in my decision.
5. I have had regard to the recent Supreme Court judgement,¹ however I am satisfied that it has no direct implications for the basis on which both main parties cases were put to me in this instance.

¹ [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

Main Issue

6. The main issue in this case is whether the proposed development would be acceptable in principle in this location in the light of relevant local and national planning policies.

Planning Policy

7. The development plan for the area comprises the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan 2011, which was adopted in 2005 (Local Plan), and the Bunbury Neighbourhood Plan (BNP) which was made on 29 March 2016.
8. The Cheshire East Local Plan: Local Plan Strategy Submission Version was published in March 2014 (CELP). Paragraph 216 of the National Planning Policy Framework (The Framework) states that decision makers should give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plans; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The CELP is at a fairly advanced stage, given that it has now gone through some elements of the independent examination, albeit that the Local Plan Inspector's final report has not yet been issued. Even though further work will be required to resolve the remaining issues and ensure that the Local Plan Strategy is sound (as set out in the 'Inspector's views on further modifications needed to the Local Plan Strategy (Proposed Changes)' which was published in 13 December 2016), I consider that the relevant policies in the emerging CELP for this case are broadly in accordance with The Framework and should carry at least moderate weight.
9. There is no dispute between the parties that the Council cannot currently demonstrate a five year housing land supply at the present time. Consequently, having regard to paragraph 49 of The Framework, relevant policies for the supply of housing are out of date. Paragraph 14 of The Framework says that, at its heart, is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. For decision taking this means where the development plan is absent, silent or relevant policies are out of date, granting planning 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.

Reasons

10. The appeal site, except for the small part where No 6 Bunbury Lane is located and the site access would be provided, lies outside of the settlement boundary for Bunbury as defined in the Local Plan and BNP. Policy NE.2 of the Local Plan treats all land outside its settlement boundaries as open countryside, where only development essential for certain purposes would be permitted. Policy RES.5 restricts new dwellings in the countryside to limited infilling and for persons engaged in agriculture or forestry. The appeal proposal is not for a development provided for by either Policy NE.2 or Policy RES.5 of the Local Plan and is therefore in conflict with them.

11. The settlement boundary within the Local Plan would have been defined in order to allow for sufficient growth to meet future land use needs for the Plan period, which was up to 2011. As such, post 2011, the settlement boundary would have the effect of constraining development, including housing, within Bunbury. The restrictions imposed upon development within the open countryside, outside the settlement boundaries, by Policies NE.2 and RES.5 of the Local Plan, is therefore time expired. However, it is clear that these policies serve a dual purpose in seeking to protect the open countryside from development in order to preserve its character and amenity. In my opinion, the aspects of these Local Plan policies which seek to safeguard character and amenity are consistent with one of the core planning principles of The Framework, namely the need to recognise the intrinsic character and beauty of the countryside. On balance, therefore, whilst not up to date, I afford these policies moderate weight.
12. It is however clear from the emerging CELP and the BNP that some greenfield land outside of the currently defined settlement boundary, will be required to meet future housing needs. Policy PG2 of the CELP identifies four types of settlements within Cheshire East. Bunbury is classed as a Local Service Centre and where small scale development to meet needs and priorities will be supported where they contribute to the creation and maintenance of sustainable communities. Policy PG6 states that Local Service Centres are expected to accommodate five hectares of employment land and 2,500 new houses.
13. Policy H1 of the BNP states that planning permission will be granted for a minimum of 80 new homes to be built in Bunbury in the period from April 2010 to March 2030. It further advises that development in the Neighbourhood Plan Area will be focused within or immediately adjacent to Bunbury Village, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.
14. BNP Policy H2 relates to the scale of housing development and states that new development will be supported in principle provided that it is small scale, is in character with the settlement phased over the period of the Plan, and falls within at least one of a number of specified categories. Category (a) relates to greenfield development and allows for a maximum of 15 new houses on any one available and deliverable greenfield site immediately adjacent to the village. It further states that such development should not be 'co-located' with other new housing developments unless there are demonstrable sustainable benefits from doing so.
15. The BNP does not allocate sites for housing and therefore the Written Ministerial Statement on Neighbourhood Planning² does not apply in this case. Consequently, given the absence of a five-year housing land supply in Cheshire East, policies for the supply of housing in the Neighbourhood Plan are, like policies for the supply of housing in the Local Plan, out of date. Policy H2 of the BNP relates to the scale of housing development. However, it is clear from the supporting justification for the policy that the limit of 15 houses, and the requirement relating to co-location, are aimed at ensuring that the scale and location of the housing respects the settlement character and form, and to ensure that existing communities and infrastructure are not adversely affected.

² Written Ministerial Statement, 12 December 2016

Protecting local distinctiveness is supported by the Framework and I therefore give significant weight to Policy H2.

16. The appeal site is a predominantly greenfield site which adjoins Bunbury's settlement boundary. Although the appeal proposal would be for only 15 dwellings, the Council considers that in view of a recent grant of planning permission for a further development of 15 houses off Hill Close³, the appeal proposal would represent co-location, and consequently would result in a scale of development that would conflict with Policy H2 of the BNP.
17. The glossary to the BNP provides further advice on how co-location should be interpreted for the purposes of Policy H2. It advises that *"New housing developments should be built in geographically separate parts of the village, in order that existing local communities and infrastructure are not adversely affected by a combination of new developments. No single area of the village should be subject to a large development that has resulted from smaller development being built close or accessed from each other."* It further advises that *"The separation may be maintained by a significant distance, geographic features or visual segregation or a combination of these elements. A new development should not share an access road with another new development."*
18. The appeal site is located on the south eastern edge of Bunbury where the settlement fringe is characterised by a distinct pattern of agricultural fields enclosed by native hedgerows. The appeal site is open, level and currently used to graze sheep. Its boundary is clearly defined by a deep and mature native hedgerow.
19. It is clear that the development at Hill Close, and that proposed in this appeal, would be situated geographically adjacent to the same part of the village. However, as a consequence of the existing size of the village and the provision within the BNP to accommodate a minimum of 80 new houses during the Plan period, the majority of which it is accepted in the BNP will have to be accommodated on greenfield sites, then given that new sites are restricted to accommodating no more than 15 dwellings, it is inevitable, it seems to me, that some of the new housing would have to be located within the same geographical area of the village. I am mindful, in this regard, that the glossary expands on this matter and provides further advice on how the separation of development should be maintained.
20. The appeal proposal would take access directly from Bunbury Lane and would not share an access with the already permitted development off Hill Close. Furthermore, there would be a clear visual segregation between the two sites. This segregation would be maintained by the open paddock which lies within the Hill Close development site but which would remain undeveloped. The Council does not dispute that this paddock would remain free from development and a planning obligation has been provided to secure this. I am satisfied that this open land would provide a significant distance between the two developments. Furthermore, this visual segregation would be reinforced by the retention of the site's distinct native hedgerows which characterise this part of the settlement fringe.
21. New housing development in Bunbury has generally taken place organically, through small scale development which has taken account of the form and

³ Application Ref: 15/5783N

character of the original settlement. I noted on my site visit that a new development, off Oak Gardens displays a similar visual segregation and separation distance between it and neighbouring developments as would be the case with the Hill Close development and the appeal proposal. I have not been provided with any substantive evidence that would lead me to the conclusion that the Hill Close development and this appeal proposal would be built at the same time. Even if they were, their means of access would be separate. Moreover, I have no reason to suppose that they could not be easily absorbed into the community without putting undue strain on the village infrastructure. Furthermore, it is clear from the indicative layouts submitted with both the appeal scheme and the Hill Close applications, that it would be possible to secure two visually and locally distinct developments, and the Council would have control over final matters of appearance and layout at reserved matters stage. I therefore conclude that the proposed development would not represent co-location and would not therefore conflict with Policy H2 of the BNP the aims of which are set out above.

Planning Obligation

22. The appellants have submitted a signed and completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act, 1990, which includes a number of obligations. Consideration of planning obligations is to be undertaken having regard to paragraph 204 of the Framework and the statutory requirements contained within Regulation 122 and 123 of The Community Infrastructure Levy (CIL) Regulations 2010.
23. The planning obligation provides financial contributions towards secondary education. It also secures the provision of an ecological enhancement space, including arrangements for the ongoing management and maintenance of that space. In addition, it sets out detailed obligations regarding the provision of 30% of the dwellings proposed as affordable housing as part of the development.
24. A CIL Regulations 2010 Compliance Statement has been provided by the Council. The justification for the infrastructure contributions secured demonstrates that they would be directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. The statement also confirms that the contributions secured are compliant with the provisions concerning the pooling of infrastructure monies. I conclude that the obligations, which also have policy support, would comply with the requirement of Regulation 122 and 123 of the CIL regulations and the tests in The Framework.

Benefits of the Development Proposed

25. The Framework advises that significant weight should be placed in the need to support economic growth through the planning system. The provision of employment through the construction phase of the development, and local spend by future occupants of the proposed development would provide economic benefits which carry a moderate positive weight in the planning balance.
26. In terms of the social role, the proposed development would provide 15 new homes at a time when the Council cannot demonstrate a five year supply of housing land is a significant benefit. Furthermore, the submitted Unilateral

Undertaking provides an obligation to provide 30% of the homes as affordable housing at a time of pressing need. Again, that is a significant benefit of the scheme.

27. In terms of the environmental role, there would be some loss of open countryside and agricultural land which would cause modest harm. That is tempered however, by knowledge that such harm would be inevitable on an edge of settlement site in this area. Whilst I have not been provided with any evidence that would suggest that the change in the landscape would have a harmful impact on the character or appearance of the countryside, that absence of harm does not carry any positive weight in the planning balance. There would, however, be some environmental gain through landscaping and ecological enhancements set out in the appellant's Ecological Appraisal.⁴

Planning Balance and Overall Conclusion

28. Paragraph 7 of The Framework advises that there are three dimensions to sustainable development: economic, social and environment. Paragraph 8 goes on to say that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
29. Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for the decision. Proposed development that accords with an up-to-date development plan should be approved, and proposed development that conflicts should be refused unless material considerations indicate otherwise.
30. I have found that the appeal proposal would conflict with the Local Plan as it would be for a housing development outside of the settlement boundary not provided for by Policies NE.2 and RES.5. However, the BNP also forms part of the development plan, and I have found that the appeal proposal would not be in conflict with the relevant policies of this Plan, which aim to enhance its role as a sustainable settlement whilst protecting the surrounding countryside. The proposal would also accord with the proposed settlement hierarchy and strategy for development set out in the emerging CELP, to which I have afforded moderate weight.
31. I have had regard to third party concerns regarding the accessibility of the site for pedestrians, and I accept that throughout the village there are areas where the pavements are fragmented. However, overall the services and facilities within the village are within easy walking and cycling distance of site and accessible by alternative routes. Furthermore, there is no dispute between the main parties that the appeal site is sustainable in location terms, given the distances between it and a variety of services and facilities. I see no reason to disagree. Indeed, it is identified as a Local Service Centre in the CELP.
32. The Council cannot demonstrate a five year supply of deliverable housing land, which is a material consideration of substantial weight in this appeal. I have taken into consideration all the other matters raised by the third parties, including the rationale for the co-location policy in the BNP. However, I have

⁴ Ecological Appraisal carried out by Ascerta, Revision B, dated 28 September 2015.

found that the appeal proposal would not conflict with the BNP, and nor would it conflict with the relevant policies in the emerging CELP. The social and economic benefits set out above significantly and demonstrably outweigh the limited environmental harm I have attributed to the loss of open countryside and agricultural land, and the conflict with Policies NE.2 and RES.5 of the Local Plan. The proposed development would be acceptable in principle in this location, in the light of relevant local and national planning policies, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Conditions

33. The Council has suggested a number of conditions which I have considered against advice in The Framework and Planning Practice Guidance. As a result, I have amended some for clarity.
34. I have imposed standard conditions limiting the life of the planning permission and setting out requirements for the reserved matters. A condition specifying the approved plans is required to provide certainty and in the interest of highway safety.
35. A pre-commencement condition requiring details of surface water drainage and to carry out a Phase 1 Preliminary Risk Assessment in respect of ground contamination is necessary, in order to safeguard the environment and the protect the living conditions of future residents. The submission and approval of a Construction Environmental Management Plan prior to the commencement of development is also necessary to safeguard the living conditions of neighbouring residents and in the interests of highway safety.
36. In the interests of visual amenity, a condition requiring the retention and protection of trees/hedgerows on the site during construction is necessary. A condition securing the submission of details of the existing and proposed ground levels is necessary to safeguard the living conditions of neighbouring residents and in the interests of visual amenity.
37. Conditions requiring detailed proposals for the incorporation of features into the scheme for the protection of breeding birds and the movement of hedgehogs are necessary in the interests of biodiversity and the protection of wildlife.
38. A condition requiring the provision and retention of visibility splays on the site access is required in the interests of highway safety. To help mitigate and adapt to climate change a condition securing the provision and operation of electric car charging points for each dwelling within the development is justified.

Elizabeth Pleasant

INSPECTOR

Schedule of Conditions

- 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 three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two 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: Location Plan, 7098/P/001 and Proposed Site Access Plan, Land off Bunbury Lane - 2.4 x 59m Visibility Splay prepared by Mott MacDonald.
- 5) The development hereby permitted shall not commence until details of the design, implementation, maintenance and management of a surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The approved development shall be completed in accordance with the approved details.
- 6) The development hereby permitted shall not commence until;
 - a) A Phase I Preliminary Risk Assessment has been submitted to, and approved in writing by, the Local Planning Authority (LPA) AND if required:
 - b) A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the LPA AND if :
 - c) Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the LPA.

Prior to the occupation of the development:

- d) The remedial scheme in the approved Remediation Strategy shall be carried out.
 - e) A Validation Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the LPA, prior to the occupation of the development.
- 7) Prior to the development commencing, a Construction Environmental Management Plan for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The approved Construction Environmental Management Plan shall thereafter be adhered to throughout the construction period. The Plan shall to be submitted shall include, but is not confined to:-
 - 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, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used.
 - i. There shall be no burning of materials on site during demolition/construction;
 - j. A scheme to minimise dust emissions arising from construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- 8) The application for approval of the reserved matters shall include a detailed Arboricultural Impact Assessment. No development shall take place except in complete accordance with the approved Arboricultural Impact Assessment. The Assessment shall include, but is not confined to, 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 Tree Work Specification.
 - d. Implementation, supervision and monitoring of the approved Tree work 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.
- 9) Development shall not begin until details of existing ground levels, proposed ground levels and the level of proposed floor slabs for the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) Development shall not begin until details of detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds have been submitted to and approved in writing by the local

planning authority. The approved features shall be installed prior to the first occupation of the any part of the development hereby approved and thereafter so maintained.

- 11) Development shall not begin until details of detailed proposals for the incorporation of gaps for hedgehogs to be incorporate into any garden or boundary fencing proposed have been submitted to and approved in writing by the local planning authority. The gaps shall be 10cm by 15cm and located at least every 5m. The approved features shall be provided prior to the first occupation of any part of the development hereby approved and therefore so maintained.
- 12) The development shall not be occupied until the visibility splays as shown on the Mott MacDonald plan titled '*Proposed Site Access, Land off Bunbury Lane – 2.4 x 59m Visibility Splay*' have been provided at each side of the vehicular access point onto Bunbury Lane. The splays shall be kept clear of any object, vegetation or other obstruction of a height exceeding 0.6m above the level of the adjacent footway / access at all times thereafter.
- 13) No dwelling shall be occupied unless and until an electric vehicle charging point for that dwelling has been installed and is operational in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The approved infrastructure shall be permanently retained thereafter.

END OF SCHEDULE