
Appeal Decision

Site visit made on 11 May 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 22 August 2017

Appeal Ref: APP/R0660/W/16/3145225

Dunkirk Farm Paddock, London Road, Holmes Chapel, Cheshire, CW4 8AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr George Barlow (on behalf of Oketops) against Cheshire East Council.
 - The application Ref 14/5834C, is dated 9 December 2014.
 - The development proposed is the construction of 10 dwellings.
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Procedural Matters

1. Since the submission of the appeal, my attention has been drawn to a number of additional documents and statements published, which have been material to the issues and matters arising within the appeal.
 2. These include a Court of Appeal judgement of 11 May 2016 in respect of *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441*, which has clarified matters related to affordable housing; and a Supreme Court judgement of 10 May 2017 in respect of *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council*, which addresses the interpretation of paragraph 49 of the National Planning Policy Framework (the Framework) and its relationship with paragraph 14 of the same document.
 3. Furthermore, during the course of the appeal both the *Brereton Neighbourhood Development Plan March 2016* (the Brereton NP), the area within which the appeal site sits, and the *Holmes Chapel Neighbourhood Plan April 2017* (the Holmes Chapel NP) the area of which the appeal site adjoins, have been made and published. Additionally, a Secretary of State Decision for a mixed use development on *Land off London Road, Holmes Chapel (Ref: APP/R0660/W/15/3100555)*, which is close to the appeal site, and a *Written Ministerial Statement – HCWS346 (WMS)* regarding neighbourhood planning form December 2016, have been published.
 4. Finally, whilst the parties had referred within the submitted evidence to policies in the submission version of the emerging Local Plan Strategy, the *Cheshire East Local Plan Strategy 2010-2030* (the LP Strategy) was formally adopted in July 2017. This has had the effect of superseding and replacing many (but not all) of the policies of the Congleton Borough Local Plan First Review 2005 (the Local Plan), with some policies 'saved' until such time as the Council's Site
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Allocations and Development Policies document, and Minerals and Waste Development Plan Document have been adopted. In this respect, whilst I note that Local Plan *Policy H6: Residential Development in the Open Countryside and the Green Belt* has been deleted, *Policy PS8: Open Countryside* has been retained.

5. I have given careful consideration to all of these documents and publications in reaching my decision on this appeal, and where pertinent refer to them in more detail in the reasoning of the appeal decision.
6. The appellant has also submitted a Unilateral Undertaking (UU) dated 21 April 2016 with the appeal documentation, which addresses the provision of affordable housing within the proposed development. I will return to the UU later on in my decision.

Decision

7. The appeal is allowed and planning permission is granted for the construction of 10 dwellings at Dunkirk Farm Paddock, London Road, Holmes Chapel, Cheshire, CW4 8AX in accordance with the terms of the application Ref 14/5834C, dated 9 December 2014, and subject to the conditions as set out within the annex.

Application for costs

8. An application for costs was made by Oketops against Cheshire East Council. This application will be the subject of a separate Decision.

Background and Main Issue

9. The appeal has been made on the basis that the Council failed to determine the planning application within the prescribed period.
10. The Council has indicated that had it been in a position to determine the application, that it would have refused planning permission on the basis that the proposed development would be located within the open countryside beyond existing settlement boundaries, where development should be restricted to that which is essential for a countryside location, and where there is a need to protect the intrinsic value of the open countryside from unwarranted incursion.
11. As a consequence, the main issue is the effect of the proposed development on the character and appearance of the countryside.

Reasons

12. The appeal site comprises a broadly rectangular, open and grassed area of agricultural land covering approximately 1.6 hectares, and incorporating a number of trees and a pond. The boundaries of the site are delineated by an embankment to the north-west, upon which the Crewe to Manchester railway line is situated, with open countryside to the south-west. To the north of the site is located the River Croco, beyond which is a residential development set around a courtyard, with a private drive immediately adjacent to the south of the site, which serves Dunkirk Farm to the east. A footpath runs through the appeal site.

13. The appeal site is indicated as being located within the open countryside and beyond the extent of the settlement of Holmes Chapel. In this respect, my attention has been drawn to paragraph 55 of the Framework, in terms of new housing development within the open countryside, and support for the promotion of sustainable development in rural areas where it will enhance or maintain the vitality of rural communities, a matter to which I return later in the decision. However, I am satisfied given its location that the proposed development would not represent the provision of isolated new dwellings for which special circumstances must be demonstrated.
14. The site does not possess any specific landscape designation, and I note it has not been suggested by the Council that it presents any particular attribute to warrant protection over and above its intrinsic landscape value. The site is identified as being located within the East Lowland Plain (ELP5: Wimboldsley) Character Area, as set out in the Cheshire Landscape Character Assessment 2009. This character area is indicated as comprising a mix of small-medium irregular and regular fields within a largely flat landscape, with relatively few hedgerow trees and hedgerows, which combined with low woodland cover creates an open landscape with long views towards distant skylines. The Brereton NP also reflects the importance of open landscape views and the openness of the countryside.
15. The proposed development of the existing field would inevitably have an adverse impact on the character of the countryside at this juncture, as a consequence of the permanent loss of the undeveloped land and impact on the rural appearance of the existing field. However, I acknowledge that the development is of a relatively low density with dwellings set within comparatively large plots, with substantial landscaping and planting also indicated along the eastern side of the site, adjacent to the existing track to Dunkirk Farm. Furthermore, the proposals would be viewed in the context of the permitted housing development immediately adjacent to the north-east, and the man-made backdrop of the railway embankment set broadly to the west. Whilst I accept that users of the public footpath crossing the site would in particular experience a significant change in the character of the land, I consider this to be a rather localised impact. Furthermore, I find the aforementioned factors would to a limited degree mitigate the visual impact of the proposed development, and as a consequence limit the impact on the wider rural character of the countryside.
16. In addition to the above, I am mindful that the Secretary of State granted outline planning permission in October 2016 (*Ref. APP/R0660/W/15/3100555*) for a mixed use development of a substantial parcel of land and fields to the east and south-east of the appeal site, which would include up to 190 dwellings, employment floorspace, and associated highway works, open space, recreational facilities and landscaping. Whilst accepting the outline nature of the proposals, the development of this site would significantly alter the character and appearance of the countryside in the immediate vicinity of the appeal site. In particular, the long views referred to as a particular feature of the East Lowland Plan Character Area, would in respect of the appeal site be in all probability removed from the north-east, east, and south-east. Whilst there is no indication that development of the land has commenced, there is also no evidence to suggest that the development would be unlikely to come forward. The development of the large site would undoubtedly significantly diminish the

value of the land subject to this appeal, in the context of its contribution to the wider character of the landscape and countryside.

17. The Council has highlighted within its submissions that the proposed development would be in conflict with saved policy PS8 of the Local Plan, and Policy PG5 of the LP Strategy. With regards these policies, in addition to them being as a means of seeking to control the supply of housing, a matter to which I return later in this decision, their purpose is also highlighted as being to protect the existing appearance, character and beauty of the countryside. In this respect the Council has also referred me to Policy HOU01 (settlement boundaries) of the Brereton NP, which introduces settlement boundaries to protect the character of the area.
18. In this respect, whilst I have had regard to the mitigating factors referred to above, and the visual impact of the approved mixed use development on Land off London Road, Holmes Chapel, I nevertheless conclude that the proposal would result in a limited and localised adverse landscape impact. This would have some limited detriment to the character and appearance of the area, and would therefore be in conflict with saved Policy PS8 of the Local Plan, Policy PG5 of the LP Strategy, and Policy HOU1 of the Brereton NP.

Other Possible Harm

19. Interested parties have raised a number of other concerns with regards the proposed development, in the course of both the assessment of the planning application and the appeal.
20. Recent development, as well as the impact of the proposal, has been cited as a concern regarding the impact on Holmes Chapel and its infrastructure and facilities. In this respect, my attention has been drawn to the Holmes Chapel NP and policies in respect of infrastructure, including the need for early consultation in advance of a planning application with the Council and Parish Council on all proposals for matters that effect infrastructure. I accept that the proposed quantum of development would inevitably place some limited additional demands on the facilities and services within Holmes Chapel. However, I have not been provided with any conclusive evidence that existing schools, doctors' surgeries or retail and associated facilities would be so adversely affected by the proposed development as to be unable to accommodate the increased demand. I have not been directed to a policy basis for requiring the provision of such contributions in this location for development beyond both the settlement and Neighbourhood Plan boundary, and I am also mindful that the Council has not required the appellant to mitigate any impacts of the development in these respects.
21. In respect of access to services and facilities, I have had regard to the contention that the distance to the various destinations has been underplayed. Nevertheless, whilst I have no definitive evidence before me from which to draw a conclusion, in noting the re-calculated distances I do not consider that these would be either excessive or unreasonable, or would prevent the likelihood of accessing the services and facilities by foot.
22. It has been contended that there is no longer an unmet housing need for the type and mix of housing being promoted through this development and in this location, with reference made to both the Brereton NP and Holmes Chapel NP. In this respect, I am also mindful of the recent adoption of the LP Strategy.

23. I have had regard to the suggestion that targets for housing set out in the two neighbourhood plans have already been met or exceeded for residential development within (Brereton NP), or adjacent (Holmes Chapel NP) to, the neighbourhood plan boundaries as a consequence of already committed development. However, whether or not this may be the case, the targets set out in the neighbourhood plans and indeed the Development Plan as a whole, should not be viewed as maxima and therefore a means of resisting sustainable development. This would be contrary to the underlying objectives of the Framework and the need to continually seek to boost significantly the supply of housing. Furthermore, in respect of the housing type and mix proposed, I am mindful that the Council has identified a need for the provision of affordable housing in the rural area including Holmes Chapel and Brereton, of a varying size and range, and which I am satisfied the appellant has sought to address through their submission.
24. Interested parties have also raised concerns over highway safety, and in particular the suitability of the access to the A50 for the cumulative number of vehicles that would be using it from the various developments including the appeal proposal. In this respect, I observed that the carriageway on the A50 at the point of access is sufficiently wide to provide refuge for a vehicle seeking to turn right into the lane, with visibility splays for cars turning on to the A50 adequate. Whilst I accept that the proposed development would result in further vehicular traffic using the road, I am not persuaded on the basis of the submissions that the likely levels of additional traffic would result in highway conditions which could be concluded to be severe. I am therefore satisfied that the proposed development would not result in an adverse impact on highway safety.
25. The potential for the obstruction of Brereton footpath FP2 which crosses the appeal site has been expressed as a concern, particularly as a consequence of the well-used nature of the path. However, whilst I have had regard to the initial objection from the Council's Public Rights of Way team, I am mindful that the footpath is indicated as passing between two dwellings and therefore as being retained. I am satisfied that any need to divert the footpath or ensure that the footpath is not obstructed can be addressed as a matter by the appellant through the making of an appropriate application, and by the Council by virtue of its enforcement function.
26. Turning to matters related to ground conditions, drainage and flooding, I have had regard to concerns that the submitted Flood Risk Assessment and Geo-Environmental Site Assessment submitted, essentially represent an exercise in '*cutting and pasting*' from submissions made on the previous application for the adjoining land. However, whilst I have also had regard to the testimony of local residents in respect of the propensity of the land to suffer from localised surface water flooding, the appellant has indicated that these reports have been updated to reflect the appeal site, and I note that in assessing these matters, the Council (who also act as the Flood Authority) has not raised any objection on the basis of ground conditions or flood risk related to the development. Furthermore, and in the absence of any detailed technical evidence to the contrary, I am satisfied that the details of these matters can be adequately addressed and secured as has been proposed by the Council in suggesting the use of appropriate planning conditions.

27. Whilst I have had regard to the concerns over the design and layout of the proposals, I would agree with the Council's conclusion that the detailed design of the proposed development is of a high standard and quality, and has been carefully considered in respect of both the layout and individual design of house types with regards to existing development in the vicinity. I have also carefully considered the impact of the proposed development on biodiversity. However, I have had regard to the conclusions of the Council's Ecologist that the existing habitats on site are not of any significant nature conservation value, with habitat creation measures proposed as compensation and integral to the development. In this respect, I am satisfied that the imposition of a suitable planning condition to secure the compensation would be an appropriate response.
28. I have also considered the argument that a grant of planning permission would set a precedent for similar developments within the area. However, no directly similar or comparable sites to which this might apply have been put forward, and I am mindful that each application and appeal must be treated on its own individual merits, and a generalised concern of this nature does not justify withholding permission in this case.

Planning Benefits

29. At the time of the application and original submission of the planning appeal, both the Council and the appellant accepted that the Council was unable to demonstrate a 5 year supply of deliverable housing land. However, I note that in adopting the LP Strategy, the Council's approach to addressing the shortfall in housing land supply through the implementation of a '*Sedgepool 8 methodology*' has been accepted by the Local Plan Inspector, with the conclusion that the Council is now able to demonstrate a 5 year supply of deliverable housing land. Whilst I have had regard to the appellant's scepticism over the Council's ability to deliver the required number of houses given its track record, it is not my role to undertake a '*quasi local plan examination*' within the context of this appeal. Therefore, in the absence of any compelling evidence that would support a conclusion contrary to that of the Local Plan Inspector, I have no reason to dispute that the Council possesses a 5 year housing land supply.
30. Nevertheless, the proposed development would result in the contribution of 10 dwellings towards the delivery of housing in Cheshire East, which would accord with the objective of the Framework of seeking to boost the supply of housing, and meet the long-term housing requirement. Whilst I accept that the quantum of development would make only a comparatively small contribution, some limited weight in support of the proposals must nevertheless be afforded to this provision. Furthermore, and despite falling beneath the threshold for the requirement of affordable housing as set out at Policy SC5 of the LP Strategy, and as established within the Court of Appeal judgement of 11 May 2016 in respect of affordable housing, the provision of 3 affordable housing units would go towards meeting the identified local need for such accommodation, which would accord with one of the policy principles highlighted in the LP Strategy and the Case for Growth. I am satisfied that this provision would attract moderate weight in support of the proposals.
31. Further to the additions to the local housing market, the proposed development would also provide some further limited economic benefit as a result of the

opportunities for the creation of employment from the construction of the dwellings as well as within the supply chain and related services, and economically in respect of additional spending in the local area.

Obligations and conditions

32. As set out at the beginning of this Decision, the appellant has submitted a planning obligation in support of the proposed development, with regards to the provision of affordable housing units. I am satisfied that the undertaking is in order and meets all the requirements which had been set by the Council, and that the need for the provision of affordable housing within the locality has been appropriately detailed specified so as to demonstrate the relationship to the development, the necessity and acceptability in planning terms, and that the obligation is fairly and reasonably related in scale. In this respect, I am satisfied that the obligation would accord with the provisions of Regulation 122 of the Community Infrastructure Levy regulations 2010 and the tests for planning obligations set out in the Framework.
33. Turning to the suggested conditions, I have considered these in the light of paragraph 206 of the Framework. Conditions requiring details of materials, boundary treatments, hard and soft landscaping (including ongoing maintenance and care), and tree protection would be reasonable and necessary in the interests of the character and appearance of the development and the landscape. The removal of permitted development rights for alterations and extensions to the proposed dwellings would be in the interests of both the visual and residential amenity of the proposed development and future occupiers, with the implementation of the approved scheme of noise and vibration attenuation measures also in the interests of safeguarding the living conditions of future occupiers. Details of external facing material and internal insulation would also be required in order to minimise electromagnetic interference which would impact on the Jodrell Bank Observatory.
34. A detailed survey of the site for nesting birds and proposed mitigation would be required should the work be proposed to commence between 1 March and 31 August, in the interests of safeguarding biodiversity, as would be the incorporation of features within the proposals which are suitable for use by bats and breeding birds. The submission of a scheme for the disposal of foul and surface water from the site, would be in the interests of preventing the increased risk of flooding and ensuring the proper drainage of the proposed development. A condition requiring the submission of contaminated land information/confirmation would allow the ground conditions of the site to be satisfactorily addressed.

Planning Balance and Conclusion

35. I have concluded that the proposed development would make a limited contribution to the supply of housing within the Borough, which would clearly weigh in favour of the proposal. The provision of 3 affordable units would however, in addressing an identified local need, attract moderate weight in support of the proposals. I am also mindful that the appeal site is in an accessible location, with good access to local shops, services and facilities, as well as regular train services to Crewe and Manchester from Holmes Chapel Station. I therefore conclude that the appeal proposal would attract some moderate social weight in support of the overall sustainability balance.

36. I also consider that the proposals would also provide some limited economic benefit as a result of the creation of employment from the construction of the dwellings, and support to existing local services and the economy.
37. I am however mindful that the development of the existing open land would result in an adverse visual impact on the existing landscape. However, I have concluded that the impact of this would be significantly mitigated by the presence of existing development and the adjoining railway embankment, as well as by the position of the significant approved mixed use development on adjoining land. I consider that these are factors which would therefore result in only a localised and limited adverse effect. I am satisfied though that the proposal would not result in an unacceptable impact on existing trees or ecological interest on the appeal site and that matters related to ground conditions and the drainage of the site could be satisfactorily addressed.
38. Overall, and having regard to all other matters raised and the economic, social and environmental dimensions of sustainable development set out in paragraph 7 of the Framework, I am satisfied that the limited harm likely to be caused by the proposal would be outweighed by the development's benefits, particularly in terms of the provision of affordable housing to meet local needs. I conclude that the scheme therefore represents sustainable development.
39. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed subject to the conditions listed.

M Seaton

INSPECTOR

Annex

Conditions

- 1) The development hereby approved shall commence within three years of the date of this permission.
- 2) The development hereby approved shall be carried out in total accordance with the approved plans numbered 902 108 P0, 902 107 P0, 902 106 P2, 902 LO1 P1, 902 102 P2, 902 103 P0, 902 104 P0, 902 105 P0 and SCP/10142/001.
- 3) No development involving the use of any facing or roofing materials shall take place until details of all such materials have first been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details unless any variation is first agreed in writing by the Local Planning Authority.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority, a plan indicating the positions, design, materials and type of boundary treatment to be erected (including trespass-proof fencing to the boundary with the railway line). The boundary treatments shall be completed before any of the buildings hereby approved are first occupied. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until full details of both hard and soft landscape works including native species of ecological value have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. Where appropriate, these details shall include: proposed finished levels or contours; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports); retained historic landscape features and proposals for restoration, where relevant. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers and densities where appropriate; and an implementation programme.
- 6) 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 completion of the development or in accordance with a programme previously agreed in writing by the local planning authority. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces). All new tree plantings shall be positioned in accordance with the requirements of British Standard BS5837: 2012, Trees in Relation to Construction: Recommendations. Any trees, shrubs, hedges or plants which within a period of 5-years from the completion of the development die, are

removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) No development shall take place until a scheme for the protection of the retained trees, shrubs and hedges growing on or adjacent to the site, produced in accordance with BS5837: 2012, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No ground clearance, demolition or construction work (including any tree felling, tree pruning, earthworks, temporary access construction and/or widening, or any operations involving the use of motorised vehicles or construction machinery) shall commence until protective fencing that meets the requirements of BS 5837: 2012 has been erected around each tree/tree group or hedge to be preserved on the site or on adjoining land, and no work shall be carried out on the site until the written approval of the local planning authority has been issued confirming that the protective fencing has been erected in accordance with this condition. Within the areas so fenced, the existing ground level shall be neither raised nor lowered. Roots with a diameter of more than 25 millimetres shall be left unsevered. There shall be no construction work, development or development related activity, including the deposit of spoil, disposal of liquids, lighting of fires, or the storage of materials or machinery, within the protected areas. The protective fencing shall be permanently retained during the construction of the development hereby permitted.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by Classes A to E (inclusive) of Part 1 of Schedule 2 of the Order shall be carried out.
- 10) Notwithstanding any detail indicated on the plans hereby approved, details of the external facing material and internal insulation to the buildings shall be the subject of plans submitted to and approved in writing by the Local Planning Authority before any part of the development approved first commences. Development shall be carried out in accordance with the approved details, which shall be retained thereafter.
- 11) Prior to commencement of any works between 1st March and 31st August in any year, a detailed survey of the site shall be undertaken to check for nesting birds. Where nests are found in any hedgerow, tree, or shrub that is to be removed, or building that is to be demolished and removed, a 4-metre exclusion zone shall be left around the nest until breeding is complete. Completion of breeding shall have occurred when a suitably qualified person confirms it in writing to the local planning authority.
- 12) No development shall take place until proposals for the incorporation of features into the development hereby approved that are suitable for use by bats and breeding birds, including a timetable for their implementation, have first been submitted to and approved in writing by the local planning authority. The proposals shall be installed and thereafter permanently retained in accordance with approved details.

- 13) No development shall take place until there has been submitted to and approved in writing by the local planning authority a detailed scheme for the disposal of foul and surface water from the site, which includes sustainable drainage measures. The approved scheme shall be completed before any of the buildings hereby approved are occupied. Development shall be carried out in accordance with the approved details.
- 14) No building hereby permitted shall be occupied until the noise and vibration attenuation measures detailed within the Noise and Vibration Survey, dated 19th November 2014 and referenced 8359/0947/01, have first been implemented in full. The approved measures shall be permanently retained thereafter.
- 15) Prior to the development commencing:
 - (a) A contaminated land Phase I report to assess the actual/potential contamination risks at the site shall be submitted to, and approved in writing by, the Local Planning Authority (LPA).
 - (b) Should the Phase I report recommend that a Phase II investigation is required, a Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the LPA.
 - (c) Should the Phase II investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the LPA. The remedial scheme in the approved Remediation Strategy shall then be carried out.

Prior to the first use or occupation of any part of the development:

 - (d) Should remediation be 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 LPA.