



Appeal Decision

Hearing Held on 14 June 2022

Site visit made on 14 June 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/R0660/W/21/3282191

Land between Chelford Road and Whirley Road, Macclesfield, Cheshire

Easting: 388885 Northing: 373822

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Matthew Shipman (Bellway Homes Manchester) against the decision of Cheshire East Borough Council.
 - The application Ref 19/3098M, dated 14 June 2019, was refused by notice dated 23 March 2021.
 - The development proposed is the erection of 23 No. dwellings, vehicular access, roads and footways, hard and soft landscaping, drainage and other associated works.
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Decision

1. The appeal is allowed. Planning permission is granted for the erection of 23 No. dwellings, vehicular access, roads and footways, hard and soft landscaping, drainage and other associated works at Land between Chelford Road and Whirley Road Easting: 388885 Northing: 373822 in accordance with the terms of the application Ref 19/3098M dated 14 June 2019 subject to the conditions within the attached schedule.

Procedural Matters

2. I am in receipt of a completed planning obligation which includes a scheme to contribute to biodiversity net gain. It is therefore common ground between the parties that partly on this basis, refusal reason 4 which related to biodiversity falls away.
3. An amended landscape plan (Parcel B) (dwg ref LDS451-03C) which includes a mixed native hedgerow was submitted alongside the appeal. The revised plan was discussed briefly at the hearing. While the appeal process should not be used to evolve a scheme, I have accepted this plan as the changes in part relate to matters which seek to address refusal reason 4.

Application for costs

4. An application for costs has been made by Mr Matthew Shipman (Bellway Homes Manchester) against Cheshire East Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The first main issue is whether allowing the proposal would amount to over-development of the site having particular regard to the requirements of Policy LPS18 of the Cheshire East Council Local Plan Strategy (2017) (CELPS). The second main issue, which is linked to and leads on from the first, is whether the extraction of peat deposits from the site would have any unacceptable adverse environmental impact with particular regard to air pollution through the release of greenhouse gas emissions (GGEs).

Reasons

6. The site to which this appeal relates falls within the boundary of a housing allocation within the CELPS. The relevant Policy, LPS18, states amongst other things that the development of land off Chelford Road and Whirley Road will be achieved through the delivery of around 150 new dwellings.
7. It was clarified at the Hearing that the area covered by the allocation benefits from extant planning permission for 134 dwellings (application references 17/4277M & 19/3097M) and outline planning permission for up to 31 Dwellings (application reference 18/0294M) amounting to the potential for 165 dwellings. Taking into account the dwellings subject to this appeal, that figure could rise to 188.
8. I am aware that there is a further parcel of land covered by the allocation. It was clarified at the Hearing that this has not been subject to any planning application. There are no guarantees that this area would be developed.
9. The Council clarified that Policy LPS18 does not cap housing numbers on the site and that other allocated sites have been developed both over and under their housing targets, while the appellant expressed concern about the nonspecific flexibility the policy appears to offer.
10. However, I consider that the amount of housing within the allocation that would be permitted accounting for the addition of 23 dwellings under this appeal would take the number permitted significantly in excess of 'around' 150 dwellings.
11. I therefore conclude on this matter that the proposal would conflict with part 1 of Policy LPS18 which amongst other things states that the development of the allocated site will be achieved through the delivery of around 150 new dwellings.
12. The Council stated at the Hearing that its concern with regard to overdevelopment was not that the proposed density was considered too high in design terms or that it considered the design of the proposal was inappropriate to the area. Rather, the concern related to the impact of the proposal in relation to GGEs as a result of extraction of peat deposits by reason of the number of dwellings proposed for the site and the extent of development that would result.
13. The evidence indicates that there is 2,267m³ of peat deposits beneath the appeal site. It also indicates that approximately 939m³ of peat deposits will be extracted from beneath roads, private driveways, hardstanding and service infrastructure to provide appropriate ground conditions to allow construction.

14. At the Hearing, the Council confirmed that Policy SE10 of the CELPS was drafted to serve minerals and waste purposes and that it would describe itself as a minerals and waste planning authority. The Policy is entitled 'Sustainable Provision of Minerals'. The purpose of the Policy is to make provision for an adequate and steady supply of minerals in support of sustainable economic growth, whilst avoiding unacceptable adverse impacts on the environment. Part 9 of the Policy states that the Council will not support proposals for peat extraction from new or extended sites.
15. The explanatory text confirms that this reflects the national planning policy position on the extraction of peat. The Framework¹ with regard to this particular matter at paragraph 211. d) states that in considering proposals for mineral extraction, minerals planning authorities should not grant planning permission for peat extraction from new or extended sites.
16. However, although the proposal would involve the removal of peat deposits to facilitate the safe and stable development of the site, it is a proposal for housing development and not a proposal for peat extraction. It was confirmed at the hearing that the peat to be extracted which would be removed from the site would likely be placed with a waste processing facility and its extraction at the site would not occur to facilitate economic gain. Given that this is a housing application, and not a proposal for mineral extraction, there would be no conflict with Policy SE10 of the CELPS or the Framework.
17. The appellant is confident that they have a full understanding of peat deposits on the site, much of which are at a shallow depth. Even having considered the GAVIA report, I have no reason to believe that their understanding is unsatisfactory. The GAVIA Report² (prepared for Henbury Parish Council) takes a broad approach and appears to have been prepared without the benefit of a visit to the site or any site investigation, contrary to the appellants own reports.
18. Approximately 30% of the extracted peat deposits would be re-used on site, while the remainder will be removed from site. The Redmore Environmental Report³ details the overall GGEs as a result of the development. The figures include the loss of the carbon fixing potential of the peat deposits through on-site disturbance.
19. The evidence indicates that the removal and loss of peat deposits would represent only 3.5% of the GGEs associated with the development as a whole. GGE's associated with the peat issue would be mitigated as far as possible through amongst other things, the submission of a Materials Management Plan for the extraction and relocation of peat deposits, which could be the subject of a suitably worded condition.
20. GGEs as result of the impact of the development on peat deposits would be extremely limited when considered against the emissions associated with the development as a whole. I cannot therefore conclude that the affect of the proposal on peat deposits at the site would result in a harmful or cumulative impact on air quality or represent any other pollution which would unacceptably

¹ National Planning Policy Framework 2021.

² Gavia Environmental Ltd – Review of Planning Documents regarding Peatland Management March 2021.

³ Redmore Environmental Statement of Case (Air Quality) Report Reference 5151-1r3 December 2021.

effect the natural or built environment or detrimentally affect amenity or cause harm as a result of GGEs.

21. The proposal would consequently accord with Policy SE12 of the CELPS which amongst other things requires that all development is designed so as not to result in a harmful impact on air quality or any other pollution which would unacceptably affect the natural and built environment or detrimentally affect amenity or cause harm.

Other Matters

22. A planning obligation accompanies the appeal which includes provisions for financial contributions. There would be a contribution towards the enhancement of Birtles Road allotments and a sum of money to be used towards the enhancement of local secondary education facilities. Financial contributions are included towards improvements to Bodmin Avenue play area and amenity open space, Weston playing field football pitch and Macclesfield Leisure Centre. There is also the provision for a biodiversity off setting contribution in association with the provision of biodiversity net gain. The agreement includes the provision of affordable housing.
23. The contributions include mitigations to off-set the impact of the development within the locality. The evidence indicates that the submitted planning obligation is therefore necessary to make the development acceptable in planning terms to enable the proposal to accord with policies IN1, IN2, SC1, SC2, SC5 and SE6 of the CELPS. It is directly related to the development and fairly and reasonably related in scale and kind to the development. The planning obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 56 of the Framework.
24. Given the proposal would have a relationship with other housing development schemes it has been subject to Environmental Impact Assessment (EIA) screening. However, the proposal would not be of a scale and nature likely to result in significant environmental effects. The development is not EIA development.
25. With regard to highways matters, the evidence indicates that the site would take its vehicular access through the site of the pre-existing approval for dwellings (17/4277M & 19/3097M) and utilise the access to Chelford Road approved under that application. The acceptability of this and matters of access and highway safety form common ground between the parties with which I have no reason to disagree.
26. Other than issues surrounding GGEs as a result of impact on peat deposits, the Council has not identified any significant adverse impact on Air Quality and there is nothing compelling within the evidence nor arising from discussion at the Hearing which leads me to a different conclusion on this matter. Conditions are included relating to electric vehicle infrastructure and ultra-low emission boilers, if gas boilers are to be installed.
27. With regards to flooding and drainage issues on the site, the Council has not raised concern in this regard. There is no sufficiently authoritative information within the evidence to indicate that there would be flooding or drainage issues as a result of the development of this particular site. Further, conditions are

included which require details of ground water monitoring and foul and surface water drainage and it should be the case that any residual matters could be appropriately managed at the site through the agreement and provision of these schemes.

28. A document entitled Peatlands of Cheshire East was drawn to my attention within the evidence. This was discussed at the Hearing where the Council confirmed that this document does not form part of the development plan. It is worth noting that the appeal site is not identified as a peatland within the document which does not take any shallow peats or soils with peaty pockets into consideration, and as such, I have afforded this document limited weight in terms of its applicability to this particular site. There is nothing compelling to indicate that works on this site would significantly adversely affect peat deposits on any adjoining site.

Conditions

29. In addition to the standard three-year time limit for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans and details of existing and proposed site levels in the interests of certainty.
30. A Materials Management Plan for the extraction and relocation of peat deposits an Electric Vehicle Infrastructure Plan, the requirement for ultra low emission boilers (if used) and the removal of a range of permitted development rights are necessary to minimise the release of GGEs and pollutants.
31. Conditions necessary in the interests of the living conditions of occupiers within the area include the requirement for a dust management plan, the restriction of working hours at the site, and the requirement for the development to be carried out in accordance with a Construction and Environmental Management Plan. Conditions are also necessary relating to a piling method statement (if piling is to be used) and requiring development to proceed in accordance with the noise assessment report.
32. Details of landscaping and facing and roofing materials and a condition to ensure appropriate arboricultural works are undertaken are necessary in the interests of the character and appearance of the area. Conditions 5, 6 and 7 are necessary to ensure proper drainage of the site. Condition 9 is required to ensure safe and appropriate access to the site.
33. Further conditions are necessary in the interests of biodiversity. A condition is required in relation to the provision of affordable housing. Conditions relating to ground remediation are necessary to ensure the safety of future residents at the site.

Planning Balance and Conclusion

34. I have identified some conflict with Policy LPS18 which amongst other things states that the development of land off Chelford Road and Whirley Road will be achieved through the delivery of around 150 new dwellings given that the number of permitted dwellings would, taking account of this application significantly exceed that figure.
35. However, the extraction of peat deposits from the site would not have any unacceptable adverse environmental impacts with particular regard to GGEs.

Critically, therefore, I have not identified harm as a result of the conflict with Policy LPS18, and the proposal would not amount to overdevelopment of the site.

36. There are matters which add weight in favour of the proposal, such as the provision of affordable housing, and other social and economic benefits normally always associated with a housing development of this scale as well as the provision of biodiversity net gain.
37. The proposal would also contribute towards housing supply albeit that I accept the evidence indicates that the Council has adequate housing land supply and a high level of delivery against the Housing Delivery Test which therefore tempers the positive weight that I afford to this matter.
38. On a straightforward development plan balance, I am firmly of the view that the provision of the benefits I have described above are significant considerations which in this instance outweigh the development plan conflict. I therefore conclude that the appeal should be allowed.

T J Burnham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Manley QC, Jon Suckley, Jethro Redmore, Martin Dyer, Elizabeth Seal,
Robert Astaff, Tim Russel, Martin Parry

FOR THE LOCAL PLANNING AUTHORITY:

Robert Law, Alan Clarke

INTERESTED PARTIES:

Cllr Smetham, Cllr Barber, Thomas Eccles, Simon Browne, Paul Venn,
Cllr Dr Ruth Thompson

DOCUMENTS PROVIDED AT HEARING:

Cheshire East Council Community Infrastructure Levy Final Charging Schedule

DOCUMENTS PROVIDED AFTER HEARING:

Planning Obligation (signed)

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan - BHM100/LP02, Planning Layout Parcel B - BHM100/PL01/Rev P21, Boundary Treatment Plan – BHM100/BT02 Rev D, Hard Surfacing Plan – BHM100/HS02 Rev E, Materials Layout - BHM100/ML01 Rev E, Landscape Specification (Parcel B) – LDS451(A)-LS(PB), Planting Plan (Parcel B) (dwg ref LDS451-03C), Full Planning Preliminary Drainage and Levels Layout – 30373/100 Rev F, House Type Range – February 2020 & Street Scene A-A - SS02 Rev B.

3) Prior to the commencement of the development hereby permitted, a Dust Management Plan (DMP) shall be submitted to and approved in writing by the Local Planning Authority. Development shall proceed only in accordance with the approved DMP.

4) Prior to the commencement of development hereby permitted, a Materials Management Plan for the extraction and relocation of peat deposits within Cheshire East shall be submitted to and approved in writing by the Local Planning Authority. The Materials Management Plan shall include the following details:

- quantities and types of material to be excavated
- depths of excavation
- locations of storage for the different materials (and timescales for material to be stored)
- locations for re-use and quantities/nature of material proposed to be re-use
- quantities of material to be imported in total, type of material to be imported, source
- details of peat reinstatement on site
- details of vehicle movements associated with the relocation of peat and a vehicle management plan

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

5) Prior to the commencement of development hereby permitted, a scheme of ground water monitoring with measures to control flows shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

6) Prior to the commencement of development hereby permitted, a surface water drainage strategy, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the Local Planning Authority. No surface water shall discharge to the public sewerage system either directly or indirectly. The development shall be completed in accordance with the approved details and retained for the lifetime of the development.

7) Prior to the commencement of development hereby permitted (excluding remediation), a scheme of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

8) Prior to first occupation of the development hereby permitted, a 30 year Landscape Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved scheme.

9) Prior to first occupation of the development hereby permitted the approved access to Chelford Road shall have been constructed in accordance with the approved plan Planning Layout Parcel B - BHM100/PL01/Rev P21 and the required visibility splays shall have been provided.

10) Prior to the first occupation of the development hereby permitted, an Electric Vehicle Infrastructure Plan (EVIP) shall be submitted to and agreed in writing by the Local Planning Authority. The EVIP shall meet the following specification including plans demonstrating the location of each unit and the type to be used:

- A single Mode 3 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW Fast charging or the best available given the electrical infrastructure.
- Should the infrastructure not be available, written confirmation of such from the electrical supplier shall be submitted prior to discharge.
- Where there is insufficient infrastructure, Mode 2 compliant charging may be deemed acceptable subject to the previous being submitted before installation.

The infrastructure shall be implemented in accordance with the agreed details and maintained for the lifetime of the development.

11) (a) Any soil or soil forming materials to be brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation to site. (b) Prior to occupation evidence and verification information relating to the above (for example, laboratory certificates) shall be submitted to and approved in writing by the LPA.

12) Details of the existing ground levels, proposed ground levels and the level of proposed floor slabs of the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority before any changes in site levels are made. The development shall be carried out in accordance with the approved details.

13) Prior to the implementation of the landscaping scheme a new planting specification for the approved landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The planting shall be implemented in accordance with the revised specification and the landscaping plan.

14) Prior to undertaking any works between 1st March and 31st August in any year, a detailed survey is required to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or

demolished in the case of buildings), a minimum 4 metre exclusion zone shall be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to the Local Planning Authority.

15) Prior to the commencement of development involving the construction of the external walls of the dwellings hereby permitted, proposals for the incorporation of features into the scheme suitable for use by breeding birds including house sparrows, and roosting bats 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 dwellings which are the subject of the proposals and thereafter retained for the lifetime of the development.

16) No development involving the use of any facing or roofing materials shall take place until details or samples of the materials to be used in the construction of external surfaces of 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.

17) The approved landscaping plan shall be completed in accordance with the following;

a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. 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).

c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.

d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

18) Prior to any work commencing on the boundary treatments hereby permitted, a revised boundary treatment plan incorporating the provision of gaps for hedgehogs within any garden or boundary fencing proposed shall be submitted to and approved in writing by the Local Planning Authority. The gaps shall be 13cm by 13cm and located at least every 5 metres. Proposals for the signing of Hedgehog access gaps to ensure they are not blocked up by future landowners should be included. The boundary treatment shall be installed in accordance with approved details and retained for the lifetime of the development.

19) 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 virtue of Class(es) A-E of Part 1 and Class A of Part 2 of Schedule 2 of the Order shall be carried out.

20) Working hours at the site shall be limited to the hours of 08:00-18:00 Monday to Friday 09:00-14:00 Saturdays. There shall be no working on Sundays or Bank Holidays.

21) Any gas boiler to be installed shall meet the following criteria. Ultra low NOX emission boilers of less < 40 mgNOX/kWh (at 0% O₂) in accordance with EN 15502 Part 1 2015 Class 6.

22) The development hereby approved shall proceed in accordance with the recommendations made in the submitted Ecological Assessment produced by 'TEP' and referenced '7440.002', unless varied by a European Protected Species license subsequently issued by Natural England.

23) The development hereby approved shall be carried out in full accordance with the Affordable Housing Scheme within the submitted Planning Statement and Affordable Housing Scheme dated July 2019 and Affordables Planning Layout (Ref: BHM100/AF02 Rev A).

24) The development hereby approved shall be carried out in accordance with the submitted 'Construction and Environmental Management Plan' produced by 'Bellway' and referenced 'Revision 0', received by the LPA on 24th June 2019.

25) Ground remediation shall only be carried out in accordance with the agreed remediation strategy. A Verification Report prepared in accordance with the approved Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development.

26) Should there be a requirement to undertake piling works, a piling method statement shall be submitted to and approved in writing by the Local Planning Authority prior to any such piling works being undertaken. The development shall be carried out in accordance with the approved details. No piling works shall be undertaken outside the hours of 09:00-17:30 Monday to Friday, 09:00-13:00 Saturdays nor at any time on Sundays or Bank Holidays.

27) The development hereby approved shall be carried out in accordance with the recommendations made within the submitted Noise Assessment Report by Red Acoustics and referenced R1638-REP02-PB, dated 13th June 2019. Details of any mitigation required shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved mitigation shall be installed prior to the first occupation of the units to which they relate and shall thereafter be retained for the lifetime of the development.

28) All arboricultural works shall be carried out in accordance with the Arboricultural Impact Assessment by Ascerta dated June 2019 (Ref: 1035.18) received by the Local Authority on the 27th June 2019.