



Appeal Decision

Hearing held on 4 July 2023

Site visit made on 5 July 2023

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/R0660/W/23/3316324

Land off London Road, Holmes Chapel, CW4 8AX

- 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 Bloor Homes NW Ltd against the decision of Cheshire East Council.
 - The application Ref 22/0633C, dated 14 February 2022, was refused by notice dated 1 December 2022.
 - The development proposed is Residential development of 25 no. dwellings including associated infrastructure and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Cheshire East Site Allocations and Development Policies Document (SADPD) was adopted on 14 December 2022, following the refusal of planning permission for the appeal scheme. The SADPD forms part of the development plan and can be given full weight in the determination of this appeal. Policy PS8 (Open Countryside) of the Congleton Borough Local Plan which is referred to in the reason for refusal has been superseded and is no longer relevant to the determination of this appeal. SADPD Policies PG9 and REC1 are the policies most relevant to this appeal.
3. A draft planning obligation by Deed of Agreement pursuant to section 106 of the Town and Country Planning Act 1990 (s106 agreement) was submitted by the appellant on 22 June 2023. In response to a lack of feedback from the Council on the draft s106 agreement, the appellant also submitted a draft Unilateral Undertaking (UU) on 3 July 2023.
4. Following discussion at the hearing, I gave the parties the opportunity to submit an executed s106 agreement which was submitted on 26 July 2023. It would secure affordable housing and contributions to off-site open space and outdoor sports facilities, highway works including a Traffic Regulation Order (TRO) to reduce speed limits, primary and secondary education and to health care facilities in Holmes Chapel. I deal with the provisions of the s106 agreement later in my decision.
5. The Bluebell Green development to the north of the appeal site was allowed on appeal¹ in 2016, for up to 190 dwellings and 350 square metres of employment use, with all matters apart from the means of access reserved for later

¹ Appeal Ref APP/R0660/W/15/3100555

approval. The area for employment was later increased through two applications for the variation of the conditions of the original outline permission. The details of the development were approved under two reserved matters applications for 76 dwellings (Phase 1)² and 114 dwellings (Phase 2)³.

6. The outline approval was subject to a s106 UU. It secured a contribution of £550,376 towards a roundabout at the A50/London Road and A54/Chester Road junction (the A50/A54 junction) which is approximately 0.8km to the north of the appeal site. The s106 UU was subsequently varied in conjunction with the permissions granted for the variation of conditions referred to above.
7. A further Deed of Variation (DoV) to the s106 UU was submitted with the planning application for the appeal development and was presented to the hearing in draft. The completed DoV was submitted on 26 July 2023. It seeks to vary the provisions of the s106 UU in relation to the improvement of the A50/A54 junction. I deal with the provisions of the DoV later in my decision.

Main Issues

8. The main issues in this case are:

- Whether or not the site is a suitable location for the proposed development, having regard to the policies for the location of development in the Borough; and
- The effect of the proposed development on the character and appearance of Holmes Chapel and the countryside in the vicinity of the appeal site.

Reasons

Location

9. Although the appeal site is located within the parish of Brereton, it is situated immediately to the south of the built-up area of Holmes Chapel. It comprises an open area of 1.87 hectares located to the south of the residential development at Bluebell Green, which is now completed and is served by a new access road off the A50.
10. In the settlement hierarchy set out in Policy PG2 of the Cheshire East Local Plan Strategy (2017) (LPS), Holmes Chapel is one of 13 Local Service Centres (LSCs). Policy PG2 supports small scale development within LSCs to meet needs and priorities, where it would contribute to creating and maintaining sustainable communities. The supporting text to the policy states that development will be restricted to locations well related to the built-up extent of LSCs and that it will be identified through site allocations and the designation of settlement boundaries in the SADPD.
11. It is a matter of common ground between the parties that the appeal site is located outside the Holmes Chapel settlement boundary in both the SADPD and the Brereton Neighbourhood Plan (2016) (NP). For the purposes of planning policy, the site is located within the open countryside.

² Reference 17/6123C

³ Reference 19/3855C

12. As such, the proposal would not comply with SADPD Policy PG9 which supports new development where it would be located within settlement boundaries, nor with NP Policy HOU01, which allows for new housing development within the settlement boundary. The proposal would not fall within any of the categories identified in LPS Policy PG6 which sets out where development in the countryside will be permitted, nor with the categories set out in NP Policy HOU02.
13. There is no dispute between the parties that the Council can demonstrate a five-year supply of deliverable and developable housing sites and there is nothing in the evidence which would lead me to a contrary view. Although the LPS is more than five years old, it is no part of the appellant's case that the policies are out of date for other reasons, and there is no evidence to support a different position. For these reasons, I consider that the development plan is up to date.
14. In relation to the first main issue in this case, I conclude that the appeal proposal would be contrary to the spatial strategy set out in LPS Policies PG2 and PG6, SADPD Policy PG9 and NP Policies HOU1 and HOU2, which, amongst other things seek to direct new development to within the settlement boundaries and to restrict development within the countryside.
15. The appellant's position is that the adoption of the SADPD does not materially affect the circumstances of this appeal, as the conflict with policy would be outweighed by the significant benefits of the proposed development. However, the SADPD has been recently adopted and completes the 'suite' of documents making up the development plan. The conflict with the development plan, read as a whole, confers very significant weight against the appeal scheme.

Character and appearance

16. The appeal site forms part of an undeveloped area immediately to the south of the new dwellings on the southern edge of the Bluebell Green development. The site falls into two broad parcels, separated by an established hedge and ditch feature running north – south through the middle which is interspersed with mature trees. To the west of the hedge/ditch feature, the northern site boundary is delineated by the curving access road with dwellings behind it, a formal path/cycle way running through landscaped open areas to the west and by an established mixed hedge with mature trees to the south.
17. To the east of the hedge/ditch feature, the parcel is defined by the dwellings to the south of Cowslip Road and mature trees and hedges along the A50. This section of the appeal site would only be partly developed as far as the proposed Nature Area, which is currently enclosed by a post and wire fence and four mature trees on its western boundary. As set out in the appellant's Arboricultural Assessment, the trees would be retained.
18. The proposed development would comprise 17 two storey dwellings, 2 apartments (in a two-storey building) and 6 bungalows, served by access drives and a main access road off Bluebell Road, together with areas of open space. Gaps in the existing hedge on the southern boundary would be filled with a native hedge mix, and additional trees would be planted on the inside of the hedge. The open areas would be laid to wildflower meadow and the proposed Nature Area would incorporate the existing pond.

19. The depth of the development would be limited, and on the outward facing plots the bungalows would reduce the built mass at the interface with the open countryside. Due to the separation distance of between 15 to 40 metres between the new dwellings and the existing hedge along the southern boundary of the site, there would be a reasonable buffer between the development and the open countryside beyond. The scale of development would be relatively modest in relation to the size of the village as a whole and would not undermine the form of Holmes Chapel.
20. When travelling towards, or out of, the village on the A50, the roadside hedge and trees to the south of the Campion Park employment site would provide an effective screen, but the development would be open to view in the winter months. From this direction, the new dwellings would be viewed in conjunction with the existing Bluebell Green development and there would be an adequate separation distance between the site and the A50 to ensure that it would not appear unduly dominant or overbearing.
21. The physical separation between the edge of Holmes Chapel and Brereton Green would be maintained. The mature hedge and trees on the southern boundary would form an effective containing feature from that direction. The site is not covered by any specific landscape designations and the proposal would not conflict with LPS Policy SE4 which seeks to conserve landscape character and quality and local distinctiveness.
22. However, the development would extend the built-up area of Holmes Chapel into the countryside to the south of the village and would reduce the extent of open countryside when viewed from the Public Right of Way (FP3). Due to the absence of any established hedge and the large gaps between the mature trees on the boundary with the Nature Area, the eastern edge of the proposed development would have a more abrupt and harsher appearance compared with the existing Bluebell Green development when viewed from within the proposed Nature Area and from the Allum Brook Barns commercial premises. This would be emphasised by the position of the dwellings on slightly higher ground compared with the Bluebell Green development.
23. The proposal would represent a modest extension to the village and would not be unduly conspicuous or dominant when viewed from the A50 and would maintain the separation from Brereton Green. However, the extent of the harm to the rural character and appearance of the countryside when viewed from vantage points to the west and east of the site would be contrary to LPS Policy PG6, which seeks to protect the appearance and distinctiveness of the countryside. In my opinion, the conflict with Policy PG6 in this respect attracts moderate weight against the proposal.

Other Matters

Biodiversity

24. LPS Policy SE3 requires all development to positively contribute to biodiversity. The Bluebell Green Phase 2 site landscaping plan (Drawing NW032-LS-021C) shows that the appeal site would be laid out for amenity grassland together with a wildflower meadow and this has been used as the baseline for the ecological assessment. Based on the DEFRA Biodiversity Metric 3.0, the appellant's Landscape and Ecological Management Plan (LEMP) indicates that the development would result in a loss of 2.42 biodiversity units. Although the

LEMP proposes to offset this loss by off-site measures at Adlington Estate secured through the draft s106 agreement, it had not been possible to conclude the details of this with the relevant third party by the time of the hearing.

25. The Council is still developing its approach to biodiversity net gain (BNG) in a forthcoming Supplementary Planning Document, pending BNG becoming a statutory requirement in November 2023. The list of conditions agreed with the appellant includes a 'Grampian style' condition which would require the submission of a Biodiversity Gain Scheme. This would include a habitat creation method statement to secure the delivery of habitats demonstrating a 25% net gain against the baseline calculation set out in the appellant's BNG Technical Note. Based on the circumstances of this case, I consider this to be an appropriate approach.

Open Space

26. The appeal site is within the Policy REC1 notation on the SADPD Policies Map, a copy of which was supplied by the Council at the hearing. Policy REC1 seeks to resist the loss of open space, unless specified criteria are met, including that an assessment has been undertaken that shows the open space is surplus to requirements.
27. The appeal site was proposed as wildflower meadow and grassed areas on the submitted landscaping plan to serve the Bluebell Green development. However, the provision of children's play space, amenity green space and green infrastructure connectivity for the Bluebell Green development exceeds the requirements for those types of open space set out in LPS Policy SE6, without the provision of the appeal site as a meadow/grassed area. In that context, the proposal would not conflict with Policy SADPD REC1.

Highways

28. The development would be accessed off the Bluebell Green estate road which is acceptable to the Highway Authority. Based on TRICs data in the appellant's Transport Assessment (TA), there would be an increase of 11 two-way movements in each of the typical AM and PM peak periods and on that basis, the TA concludes that the vehicular impact on the surrounding area would be negligible. Furthermore, the TA concludes that there is no existing highway safety issue that is likely to be exacerbated by the development.
29. The TA proposes a new push button signalised crossing to the north of Alum Court, together with a TRO to reduce the speed limit on London Road to the north of the existing A50/Bluebell Green junction and a contribution towards enhancing the A50/A54 junction to improve accessibility for pedestrians and cyclists. The TA states that there may also be contributions towards providing additional car and cycle parking opposite Holmes Chapel station and improving the A50/A54 junction which would improve the connectivity of the settlement.
30. The package of off-site improvements to improve pedestrian and cyclist safety would be funded through the section 106 agreement and DoV and are therefore addressed below.

Jodrell Bank

31. Electromagnetic screening measures have been incorporated within the external elevations of all the dwellings on Phase 2 of the Bluebell Green development to prevent radio frequency interference which could impair the efficient operation of the Jodrell Bank radio telescopes. The appellant has confirmed that the same approach would be taken with the proposed 25 units. The necessary measures could be secured by means of a condition and that has been proposed by the parties. The proposal would not, therefore harm the efficiency of the Jodrell Bank radio telescopes and as such, would comply with LPS Policy SE14.

Section 106 Agreement

32. The Council provided a Community Infrastructure Levy (CIL) Compliance Statement for the s106 agreement obligations sought. I have assessed the obligations against the tests set out in the National Planning Policy Framework (the Framework), the Planning Practice Guidance (PPG) and the CIL Regulations 2010 (as amended).
33. The s106 agreement would secure 9 affordable dwellings with 5 being for affordable rent and 4 for shared ownership. This is necessary to meet the requirements of LPS Policy SC5 which requires at least 30% of units to be affordable on sites of 11 or more dwellings in LSCs and to be of a tenure, size and type to help meet identified housing needs.
34. Contributions to primary and secondary education are necessary to increase capacity at local schools and to comply with LPS Policies IN1, IN2 and SD1.
35. A contribution to indoor and outdoor sports facilities is necessary to meet the requirements of LPS Policies IN1, SC1, SC2 and SC3 and would be spent in accordance with the Council's Playing Pitch Strategy. A contribution to public open space is necessary to ensure that there would be adequate play space and informal amenity grass areas for recreation for new residents of the appeal site.
36. Holmes Chapel Health Centre is running at full capacity, as referred to in representations from local residents and from Holmes Chapel Parish Council. Notwithstanding the lack of a formal consultation response from the Clinical Commissioning Group, the appellant has sought further engagement on the issue of health facilities and the s106 agreement would secure a contribution of £24,660 to improvements and mitigation at Holmes Chapel Health Centre which is appropriate.

Highways Contribution

37. The A50/A54 junction is approximately 800 metres to the north of the appeal site and currently operates as a four arm signalised crossroads, with one push button pedestrian crossing on the north arm.
38. The s106 highways contribution of £120,675 would fund works to mitigate the traffic and transportation impacts of the development through highway and pedestrian improvements to the A50/A54 road corridor and junction. This would be in addition to the highways contribution of £550,376 from the DoV which is dealt with below.
39. In addition to the highways contribution, the s106 agreement provides for a TRO contribution of £24,000 to reduce the speed limit on London Road from

60mph to 40mph and within the existing Bluebell Green development from 30mph to 20mph. Whilst supportive of this in principle, the Highway Authority indicates that this is dependent on a review of the speed limit strategy for the Borough as a whole.

40. The CIL Compliance Statement indicates that the highways contribution has been calculated based on 'the scheme funding gap'. However, it is not clear from the Highway Authority's response, nor was it clear from the parties at the hearing, what scheme is being referred to, how the s106 contribution would be spent, nor how it relates to the traffic and highway safety impacts of the 25 dwellings proposed.
41. The new pedestrian crossing on London Road would be secured by means of a planning condition so would be 'outwith' the highways contribution. At the hearing, it was indicated by the parties that the highways contribution would fund pedestrian and cycle safety improvements on the A50 corridor, which would include additional push button pedestrian crossings at the A50/A54 junction. However, no details of any such scheme, costings nor the timing for such works have been presented in the evidence.
42. Improvements to pedestrian and cycle connectivity and safety would undoubtedly be desirable to support sustainable modes of travel and connectivity to the village centre and would be of wider benefit to other residents. However, put simply, and based on the evidence, it is manifestly unclear how the highways contribution relates to the scale and impact of the proposed development as evidenced in the TA, and why it would be necessary to mitigate the impact of the development. In these circumstances, I am unable to conclude that the highways contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.
43. The appellant has referred to the Derwent Holdings⁴ case in which the Court of Appeal held that if a proposed development is acceptable in planning terms the securing of additional benefits by means of a planning obligation is not unlawful. However, in that case the benefits of the scheme, comprising the improvements to Lancashire County Cricket club ground were identified and it was clear what the 'enabling' development in the form of a foodstore would fund. In the case before me, there is conflicting evidence as to whether the highways contribution would fund improvements on the A50 corridor, the A50/A54 junction or a combination of the two.
44. Had the appeal been allowed, the s106 obligations relating to affordable housing, education, open space and outdoor recreation and healthcare would have been necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. However, the highways contribution does not meet the tests set out in Regulation 122 of the CIL Regulations, paragraph 57 of the Framework and the PPG.

Deed of Variation

45. As outlined above, the UU for the original outline permission for the Bluebell Green development secured a contribution of £550,376 towards a roundabout

⁴ R (Derwent Holdings Ltd) v Trafford BC [2011] EWCA Civ 832

at the A50/A54 junction. Although the developer has paid the contribution, due to the costs of the works exceeding the sum contributed the roundabout has not been constructed. The funds are therefore unspent. Both the Holmes Chapel and Brereton NPs seek improvements to pedestrian and highway safety.

46. The provisions of the DoV seek to vary the UU so that the funds could be spent on the 'A50/A54 corridor in Holmes Chapel'. However, the Highway Authority's planning application consultation response dated 20 June 2022 indicates that the money from the DoV would enable that contribution to be 'spent on other measures in Holmes Chapel'. Overall, there is conflicting evidence as to where and on what the contribution would be spent and how it relates to the traffic impact of the proposed development. In this context, the DoV highways contribution does not meet the tests set out in Regulation 122 of the CIL Regulations, paragraph 57 of the Framework and the PPG.

Other Material Considerations

47. The development would boost the supply of market and affordable housing in a sustainable location in terms of access to services and facilities. The boost to housing supply would accord with paragraph 60 of the Framework. There are 203 households registered with Cheshire Homechoice who have indicated a requirement for an affordable home in Holmes Chapel. It is reasonable to expect that some of those households would meet the criteria for affordable housing and the provision of 9 affordable homes would contribute to meeting that need. The provision of market housing and affordable housing above the LPS Policy LC5 requirement is, therefore, given significant weight in favour.
48. The 6 bungalows and 2 other dwellings would be provided as M4(3) wheelchair adaptable homes, in excess of the 6% requirement set out in LPS Policy HOU8. One of the bungalows would be an affordable unit. The scheme would therefore contribute to meeting the needs of an ageing population and of people with specific accessibility needs, which is also given significant weight in the planning balance.
49. The development would generate economic benefits in terms of direct and indirect employment during construction, spending by local residents and Council Tax and New Homes Bonus receipts. Commensurate with the scale of development proposed, these attract moderate weight in support of the proposal.
50. The obligations in the s106 agreement relating to education, health care and open space and outdoor recreation are primarily to mitigate the impact of the development, but would be of benefit to the wider community and in this context attract limited weight in favour of the appeal proposal.
51. I concur that the appeal development would make efficient use of an existing access and other infrastructure in the vicinity of the site. However, that is not an unusual situation where sites are located on the edge of existing development and in my view, confers very limited weight in favour of the appeal scheme.
52. Whilst the appeal site fell within the red line area of the Bluebell Green outline approval, condition 1 of that permission limited the overall scale of development on the site to 'up to 190 dwellings'. That the 190 dwellings have been accommodated on a reduced site area represents an efficient use of land,

in accordance with paragraph 125 of the Framework. However, the scheme before me is a full application for planning permission which would be over and above the 190 dwellings originally permitted and would represent a new tranche of development. That position is re-enforced by the adoption of the SADPD and the position of the site outside the Holmes Chapel settlement boundary.

53. For these reasons, I do not consider that the appeal site constitutes a 'residual area' of the larger red-line site permitted in outline, and I give no weight in favour of the appeal on that point. Whilst I recognise that my conclusion on this point differs from the officer's report, it is based on the evidence before me and in the context of the more recently adopted SADPD.
54. LPS Policy PG7 expects LSCs to accommodate in the order of 3,500 new homes to 2030, but that figure is not disaggregated between the LSCs. Based on the appellant's evidence, 3186 dwellings have been completed or are committed in the LSCs to 31 March 2022. The figure set out in Policy PG7 does not represent a ceiling or limit, but the residual figure of 314 dwellings should be delivered in accordance with the spatial strategy which includes the SADPD.
55. Turning to other decisions referred to by the appellant, in the case of the Dunkirk Farm appeal⁵, the Inspector's conclusion that the limited harm likely to be caused by the proposal would be outweighed by the development's benefits was based on the balance of judgements in relation to the specific factors in that case. These included the location of the site in relation to existing and future development and the railway line. I have come to a different overall conclusion based on my assessment of the evidence in this case.
56. The Fields Farm⁶ officer's report indicated that due to the configuration of surrounding development and the railway line, the site no longer formed part of the functional open countryside, which is not the case for the appeal site.
57. The balance of benefits and harms in the Nantwich appeals⁷ were specific to that case. They included the scope for the development of a further primary school and improvements to sustainable transport connectivity which is materially different from the case before me.
58. In the case of Land off Crewe Road, Winterley⁸, the Inspector concluded that the site had become a remnant open area, of no particular benefit in an otherwise largely urban landscape which is different from the appeal site before me.
59. To the extent that the above developments were approved or allowed on appeal in locations beyond the settlement boundaries, within the open countryside and in circumstances where the Council could demonstrate a five-year housing land supply there are similarities with the appeal scheme. However, for the reasons outlined, my conclusion is that they are not directly comparable with the case before me. Furthermore, all of those decisions pre-date the adoption of the SADPD and this appeal is therefore being determined in a different policy context. In any event I have determined the appeal proposal based on the evidence before me and on its own merits.

⁵ Appeal Ref APP/R0660/W/16/3145225

⁶ Application Ref 19/0357N

⁷ Appeal Refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

⁸ Appeal Ref APP/R0660/W/20/3251104

Planning Balance and Conclusion

60. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations, which include the Framework, indicate otherwise.
61. Significant weight in favour is given to the supply of market and affordable housing to meet different needs in the community and moderate weight is given to the economic benefits. The s106 obligations for contributions to education, health care and open space and outdoor recreation attract limited weight in favour. The highways contribution in the s106 and DoV would not meet the tests for obligations set out in the Framework, and are therefore given no weight. Other matters including biodiversity, open space and Jodrell Bank are neutral in the overall balance.
62. Set against the above, the conflict with the recently adopted SADPD would undermine the spatial strategy for the location of future development set out in the development plan, read as a whole. This combined with the moderate harm to the character and appearance of the countryside carries very substantial weight against the grant of planning permission in the overall planning balance. These conflicts are of sufficient importance that the proposal should be regarded as being contrary to the development plan, read as a whole. In the circumstances of this appeal, the material considerations set out above do not justify making a decision other than in accordance with the development plan.
63. For the reasons outlined above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:	
Mr G Cannock of Counsel	
Mr J Coxon	Director, Emery Planning
Mr C Nickolls	Principal Associate, Gowling WLG
Mr A Vogt	Board Director, Curtins
Mr J Dance	Client Director, Tyler Grange
Mr T Loomes (site visit)	Planning Manager, Bloor Homes
FOR THE LOCAL PLANNING AUTHORITY	
Mr R Law	Planning Team Leader
INTERESTED PERSONS	
Mr Bath	Holmes Chapel Parish Council

DOCUMENTS SUBMITTED AT HEARING

1. List of application plans submitted by the appellant
2. List of proposed conditions submitted by the appellant
3. Extract from the Cheshire East Site Allocations and Development Policies Document Policies Map showing the appeal site and Policy REC1 (Protected Open Space) designation submitted by the Council

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Proposed condition relating to M4(3) and M4(2) dwellings proposed on the site
2. HCJ Derwent Holdings Ltd v Trafford Borough Council, Tesco Stores Ltd, Lancashire County [2011] EWCA Civ 832
3. S106 agreement dated 26 July 2023
4. Deed of Variation dated 26 July 2023