



Appeal Decision

Site visit made on 19 June 2024

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2024

Appeal Ref: APP/R0660/W/23/3332521

Parkside, Bunbury Lane, Bunbury CW6 9QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Roger Ryder against the decision of Cheshire East Council.
 - The application Ref is 22/4203N.
 - The development proposed is described on the application form as 'demolition of one dwelling and erection of up to 25 First Home dwellings, access off Bunbury Lane and all other matters reserved'.
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Decision

1. The appeal is allowed, and planning permission is granted for demolition of one dwelling and erection of up to 20 First Home dwellings, access off Bunbury Lane and all other matters reserved at Parkside, Bunbury Lane, Bunbury CW6 9QZ in accordance with the terms of the application, Ref 22/4203N, and subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application was submitted in outline with all matters reserved except for access. I have regarded all elements of the drawings submitted as indicative apart from the access details.
3. The original application was made for up to 25 First Homes. However, as part of its assessment of the proposal the Council sought to reduce the number to no more than 20 dwellings. The appellant confirms that they would accept the imposition of a condition to this effect. I have determined the appeal on this basis, and I am satisfied this change would not result in prejudice to any party.
4. During the appeal, a completed section 106 agreement (s106) was submitted. The planning obligations contained therein include contributions to education, health services and public open space and would secure the development as First Homes in perpetuity. I shall return to the obligations later in this decision.
5. The revised National Planning Policy Framework (Framework) was published in December 2023 following the refusal of the planning application. The parties had the opportunity to comment on the revised Framework as part of their submissions. Paragraph 73 of the Framework relates to the development of exception sites which effectively replaces reference to entry-level exception sites in the previous version of the Framework. I have determined the appeal proposal on the basis that it is for First Homes.
6. The evidence refers to the draft revised Neighbourhood Plan for Bunbury which would eventually supersede the extant Bunbury Neighbourhood Plan 2015-

2030 (NP). However, there is no indication as to when the revised Plan may be subject to formal examination. Consequently, the draft revised Neighbourhood Plan is not made and I have afforded no weight to the policies within it.

Main Issues

7. The main issues are:

- Whether the proposed development would be in a suitable location having regard to access to services and facilities;
- The effect upon the character and appearance of the area; and,
- Whether the location of the affordable homes would be acceptable.

Reasons

Suitability of location

8. The appeal site relates to an existing dwelling and its curtilage, together with an associated paddock to the rear, which are located to the west of Bunbury Lane. The existing dwelling is within the settlement boundary for the village of Bunbury, with the remainder of the site being within the countryside for the purposes of the development plan. The proposed development would provide First Homes, which are the Government's preferred discounted market tenure to provide homes for first-time buyers.
9. Bunbury is identified as a Local Service Centre in the settlement hierarchy, as set out in Policy PG2 of the Cheshire East Local Plan Strategy 2010-2030 (CELPS). The spatial distribution of development within the borough is set out in CELPS Policy PG7. The Local Service Centres are expected to accommodate in the order of 3,500 new homes. Policy PG8 of the Site Allocations and Development Policies Document (2022) (SADPD) indicates that these homes will be addressed by windfall sites. The Other Settlements and Rural Areas are expected to accommodate around 2,950 homes.
10. CELPS Policy PG6 sets out that, in the open countryside, only development that is essential for certain purposes, such as agriculture or outdoor recreation, will be permitted. There are certain exceptions, including affordable housing in accordance with the criteria contained in CELPS Policy SC6 'Rural Exceptions Housing for Local Needs'. Neither Policy SC6 nor any other development plan policy refer to First Homes exception sites. The proposal would not therefore strictly accord with Policy PG6. However, this policy pre-dates the Written Ministerial Statement on Affordable Homes Update (2021) (WMS) and paragraph 73 of the Framework which deal with First Homes and represent current national policy on this type of housing. Consequently, they are a significant material consideration.
11. Policy H1 of the NP states that permission will be granted for a minimum of 80 new homes to be focussed on sites within or adjacent to the village. I understand that the 80 homes figure has already been exceeded within the NP area. While the appellant contends that Policy H1 is out of date, the figure of 80 dwellings is not expressed as a maximum number in any case and I find no conflict with it. NP Policies H2 and H3 set out that new housing proposals should be in small groups of up to 15 dwellings. The proposal would exceed this number and would not therefore strictly comply with these policies. However,

the more recently adopted policies of the CELPS do not set such a limit and these take precedence over NP Policies H2 and H3 in accordance with paragraph 30 of the Framework.

12. CELPS Policies SD1 and SD2 relate to sustainable development principles and set out, amongst other things, that residential development will be expected to provide access to a range of forms of public transport, open space and key services and amenities; and incorporate measures to encourage travel by sustainable modes of transport such as walking, cycling and public transport.
13. As noted by the Inspector for the previous appeal¹, the services and facilities in Bunbury would not be sufficient to meet all the daily needs of future occupiers, who would likely need to travel further afield for other services, employment and education. However, that scheme did not relate to First Homes. Paragraph 73 of the Framework and the WMS are clear that First Homes exception sites should be on land which is not allocated for housing and should be adjacent to existing settlements. This indicates that these sites will not be as locationally sustainable as sites within the settlement boundaries. Furthermore, the Framework does not refer to a requirement for these sites to be served by facilities and services. Moreover, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision making.
14. Bunbury does nonetheless offer some facilities commensurate with its status as a Local Service Centre. These include a medical centre, convenience store, coffee shop, chip shop, public houses and a church. There are also some sporting facilities, including a tennis club and playing fields, within the village. All of these are within reasonable walking distance of the appeal site.
15. While there are no schools and limited employment opportunities in the village, it would be possible to walk to the bus stops some 400m to the north of the site. This is within an acceptable walking distance of 500m, as set out in CELPS Policy SD2. Although the bus service is relatively infrequent, it does nevertheless provide access to Nantwich, which has a much greater range of services, including schools and employment. Taking these factors into account, I consider that future occupiers would not be wholly reliant on the use of private vehicles to access basic services and facilities.
16. I conclude that the proposed development would be in a suitable location having regard to access to services and facilities. There would be no overriding conflict with CELPS Policies SD1, SD2, PG2 and PG7, SADPD Policies PG8 and PG9 and NP Policy H1. Amongst other things, these policies set out the principles of sustainable development and address the spatial distribution of development and the settlement boundaries.

Character and appearance

17. The appeal site lies adjacent to the settlement boundary and is well related to existing development. It is bordered by residential properties to both sides which form part of a linear form of development to the southern end of the village, and there are dwellings on the opposite side of Bunbury Lane. In contrast, the paddock itself and the neighbouring paddock to the south, form part of a swathe of open land which extends to the west and have a distinctly

¹ Appeal Ref. APP/R0660/W/21/3281542

rural character. However, the site is of little landscape value and as a relatively small area that is not prominently located, it makes only a limited contribution to the character and appearance of the village.

18. While the proposed development would result in the loss of the field, I have reasoned above that the site makes only a limited contribution to the character of the village. Moreover, implicit in the context of paragraph 73 of the Framework and the WMS, is that development of First Homes will take place in locations such as this at the edge of the settlement. The development would be proportionate to the settlement in light of footnote 37 of the Framework. It would be well contained by existing neighbouring development and would not result in a harmful encroachment into the countryside to the west.
19. The character of built form surrounding the site is predominantly that of detached or semi-detached properties situated within relatively spacious plots, which reflects the location of the site at the edge of the village. The Council is concerned about over-development of the site, having regard to a number of matters, including the site density.
20. The proposal would be for up to 20 dwellings, though depending on the final layout of the site there would be scope for this number to be reduced through the reserved matters. While the numerical density of the development would be likely to exceed the existing prevailing density in the surrounding area, it would not be especially high, particularly when compared to other areas of Bunbury, and would make efficient use of the land.
21. The illustrative site plan shows one way in which the development could be laid out. I consider that the provision of 25 dwellings would potentially result in over-development of the site and have implications for the living conditions of the neighbours and future occupiers. Restricting the number of dwellings to a maximum of 20 would result in a satisfactory outcome and this quantum of development could be accommodated on the site without it appearing cramped or over-developed. Given this restriction, I see no reason why the layout of the development could not accommodate adequate open space, gardens, cycle and refuse storage. There would also be space for sufficient parking provision and any frontage parking could be softened with landscaping. Hedgerows and trees would be retained and would assist in screening the development.
22. Scale and layout are reserved matters for later consideration. Therefore, the precise details of the development, including its siting, layout and orientation, are not before me for consideration. However, on the basis of the size of the site and the distance from neighbouring properties, I consider that a satisfactory layout and scale of development could be accommodated within the site which would protect the character and appearance of the area. The Council would have control over the details, and these would need to be sensitively handled as part of the reserved matters.
23. For the above reasons I consider that the proposal would not be significantly harmful to the character and appearance of the area, including the character of the countryside. In this regard, there would be no conflict with CELPS Policies SD2, SE1 and SE6, or SADPD Policies GEN1 and HOU13 which, amongst other matters, require that development achieves a sense of place by protecting and enhancing the quality, distinctiveness and character of settlements, preserves the countryside, and achieves housing standards. It would also accord with the Framework where this seeks to achieve similar aims.

Affordable homes location

24. The Council is concerned that the proposal would result in a high concentration of First Homes in one location rather than being spread around the borough so that it may be accessed by all. It is unclear from the evidence why that would be harmful, and I have not been directed to any development plan policies which the proposal would conflict with in this regard.
25. The WMS is clear that local authorities should support the development of First Homes exception sites, suitable for first-time buyers, unless the need for such homes is already being met within the local authority's area. It does not specifically require First Homes to be dispersed across the borough. Allowing this appeal would not preclude other such schemes from coming forward elsewhere. I have not, therefore, identified any conflict with the development plan or the Framework in relation to First Homes in this particular location.

Other Matters

Planning obligations

26. The s106 would secure a number of obligations, including that all the dwellings be provided as First Homes, the need for which is not currently being met within the borough. Therefore, this obligation is necessary, is directly related to the proposal and there is no substantive evidence before me to demonstrate it would be unfair in scale and kind. The appellant has disputed the need for the financial contributions contained in the s106 and notes that it contains provisions for financial payments to be struck out.
27. The properties would contain two or three bedrooms suitable for family occupation and children of primary and secondary school age could occupy them. There is limited evidence before me to support the appellant's assertion that first time buyers are unlikely to have children of secondary school age. Although there are no capacity issues at local primary schools, based on the evidence I consider that there is a shortfall in at least one of the secondary school places in the area, which the development would be likely to exacerbate. I am therefore satisfied that the proposed education contribution towards supporting additional secondary school capacity is necessary.
28. The development would be capable of providing the required on site open space in accordance with CELPS Policy SE6, and this would be considered and secured as part of the future reserved matters. Policy SE6 also requires development to secure new provision to help address identified shortages in existing open space provision. The evidence before me is insufficiently detailed to demonstrate that there are shortages in the provision of open space in Bunbury and I note that no financial contribution towards open space provision was sought for the previous application for 15 dwellings.
29. The National Health Service contribution contained in the s106 would be used to mitigate the impact of the development on healthcare provision. That is on the basis that the proposal would increase the population of the village and there are said to be clinical capacity constraints within the Primary Care Network boundary, which is made up of six GP practices. However, the appellant's evidence, which has not been disputed by the Council, indicates that the three closest surgeries and those therefore most likely to be used by occupiers of the development, including Bunbury Medical Centre, are accepting

new patients. That does not suggest there is a particular capacity issue. Furthermore, the Council's justification for the proposed contribution refers to the needs of the area's aging population, but it is less likely that the proposed First Homes would be occupied by this age group.

30. I have therefore received insufficient evidence that the need for the financial contributions to open space and health services are necessary or directly related to the proposed development. These fail to meet the tests set out in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended), particularly in terms of not being necessary to make the development acceptable in planning terms and not being directly related to the development. I have therefore not taken these parts of the planning obligation into consideration and have afforded them no weight in determining the appeal.
31. Other than in relation to the health service and public open space contributions, I am satisfied that the remainder of the planning obligations contained within the s106 are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations and paragraph 57 of the Framework.

Other considerations

32. A number of other issues have been raised by interested parties and consultees which I have taken into consideration but neither alone nor in combination do they amount to a reason to dismiss the appeal. Conditions can be imposed to address a number of the issues raised, including those relating to tree protection and surface water drainage.
33. I have no substantive evidence before me to show that the proposal would result in significant additional congestion to the local road network, parking problems or adversely affect road safety and I note the Council and Highway Authority have not objected to the proposal on these grounds.
34. Given that the proposal is in outline form, precise details of the development, including its siting, layout and orientation, are not before me for consideration. However, I consider that acceptable interface distances between the new dwellings and existing neighbouring properties could be achieved to prevent significant adverse impacts on the neighbours by way of overshadowing, outlook, privacy and noise and disturbance.
35. Any loss of biodiversity on the site would be adequately addressed through the measures outlined in the Ecological Appraisal to secure a biodiversity net gain. On this basis, there would be no ecological reason to dismiss the appeal.
36. Previous applications and appeals for development on this site have been unsuccessful, but the proposal before me is materially different and I have assessed it on its own merits having regard to the current development plan and the Framework.

Planning Balance

37. The proposed development would provide a number of social and economic benefits including the provision of up to 20 First Homes which would not be

harmful to the character and appearance of the area. For the reasons set out above, I find that the proposal would result in limited conflict with CELPS Policy PG6 and NP Policies H2 and H3. However, given the absence of reference to First Homes exception sites in the development plan, substantial weight should be given to other material considerations.

38. The WMS states that it is a key priority to enable as many people as possible to enjoy the benefits of home ownership, and First Homes are a crucial way in which this will be achieved. There is no evidence before me to show that the need for this type of housing is being met on sites elsewhere in the borough. NP Policy H2 sets out that new housing development should not be co-located with other new developments unless there are demonstrable sustainable benefits from doing so. The provision of a large number of First Homes, in an area where the need for such homes is not being met, is a demonstrable benefit to which I attach significant weight. In addition, construction employment opportunities would be created, future occupiers would contribute to the local economy and community, and ecological enhancements would be secured. I afford moderate positive weight to these factors.
39. I therefore find that the modest adverse impacts of the development proposed, and the development plan conflict, would not significantly and demonstrably outweigh the benefits of the scheme as outlined above. The other material considerations that weigh in favour of the appeal scheme justify a decision other than in accordance with the development plan in this case.

Conditions

40. I have had regard to the conditions suggested by the Council. In imposing conditions I have had regard to the relevant tests in the Framework, Planning Practice Guidance and of statute.
41. Conditions specifying the reserved matters and the time limit for submission of the reserved matters and commencement of the development, are necessary to provide certainty. As only outline planning permission is sought with all matters reserved, except for access, the only drawings that I have conditioned are the site location plan identifying the extent of the site and the plans detailing the access.
42. A condition restricting the maximum number of dwellings is reasonable and necessary to ensure the scale and layout of the development are satisfactory. To protect local living conditions and neighbouring land uses conditions in relation to site levels and ground contamination are necessary. Given the size and nature of the site and its surroundings, it is necessary and reasonable in this instance to withdraw certain permitted development rights. In the interests of the character and appearance of the area, conditions are necessary to secure details of materials. To encourage sustainable forms of travel a condition is imposed for electric vehicle charging. I have also attached a condition to ensure that the development provides accessible and adaptable dwellings. A condition requiring details of a surface water drainage strategy is required to prevent flood risk. In order to ensure that air quality is maintained a condition relating to the emissions of gas-fired boilers has been imposed. A number of conditions are necessary in order to safeguard biodiversity and trees, including the requirement for details of features to enhance biodiversity.

43. As landscaping is a reserved matter, the Council's conditions relating to landscaping are unnecessary as these details would be dealt with as part of the reserved matters.

Conclusion

44. For the above reasons, having considered all other relevant material considerations, I conclude that the appeal should be allowed.

M Ollerenshaw

INSPECTOR

Schedule of Conditions

- 1) Application(s) for approval of reserved matters shall be made within three years of the date of this permission and the development shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) 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.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan PA/BLB/LP/01, Habitat Plan, and Proposed Access Strategy P21012-005D and P21012-200A.
- 4) The development hereby permitted shall comprise no more than 20 dwellings.
- 5) No development (other than agreed demolition and site clearance works) shall commence until:
 - (a) A post demolition Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to and approved in writing by the local planning authority.
 - (b) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to and approved in writing by the local planning authority.
 - (c) The remedial scheme shall be carried out in accordance with the approved Remediation Strategy unless otherwise agreed in writing by the local planning authority.
- 6) No part of the development hereby approved shall be occupied or in use prior to submission and approval in writing by the local planning authority of a Verification Report prepared in accordance with the approved Remediation Strategy that covers that part of the development to be occupied or used.
- 7) 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. Prior to occupation, evidence and verification information (for example, laboratory certificates) shall be submitted to and approved in writing by the local planning authority.
- 8) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the local planning authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made, and appropriate remediation implemented in accordance with a scheme also agreed in writing by the local planning authority.

- 9) No above ground works shall commence until details and/or samples of the materials to be used for the external surfaces of the development hereby approved have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) The reserved matters shall include an electric vehicle infrastructure plan. The infrastructure plan shall aim to 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 to the local planning authority prior to discharge.
 - Where there is insufficient infrastructure, Mode 2 compliant charging may be deemed acceptable subject to the previous being submitted.
 - The approved infrastructure plan shall be implemented and maintained throughout the use of the development.
- 11) The reserved matters shall include details of the existing ground levels, proposed ground levels and the level of proposed floor slabs. Details which receive the written approval of the local planning authority shall be implemented in full, unless alternative details are otherwise approved by the local planning authority.
- 12) The reserved matters shall include an overall detailed strategy / design limiting the surface water runoff generated by the proposed development and associated management / maintenance plan and managing overland flow routes for the site, for approval in writing by the local planning authority. The drainage strategy/design shall include:
- Percolation tests taken during this stage must be in accordance with BRE365.
 - The strategy shall account for 1 in 100-year rainfall event plus 40% allowance for climate change, with the appropriate drainage modelling and calculations to support the chosen method of surface water drainage.
 - Management and Maintenance Plan.
 - Details of an appropriate boundary drainage treatment design.

The development shall only be implemented in accordance with the approved details.

- 13) The development hereby approved shall be carried out in accordance with the outline Flood Risk Assessment (Ref: 6561/R2, prepared by Lees Roxburgh Consulting Engineers) dated September 2022.
- 14) The reserved matters shall be supported by a strategy for the incorporation of features to enhance the biodiversity value of the proposed development. The submitted strategy shall include proposals for the provision of features

for nesting birds including house sparrow, and roosting bats (as specified in the Cheshire East Design guide), gaps in garden fences to facilitate the movement of hedgehogs, and brash/deadwood piles. The proposals shall thereafter be installed in accordance with the approved details and maintained for the lifetime of the development.

- 15) Any reserved matters application shall be supported by a detailed lighting scheme. The lighting scheme should reflect the Bat Conservation Trust Guidance Note 08/18 (Bats and Artificial Lighting in the UK) and should consider both illuminance (lux) and luminance (candelas/m²). It should include dark areas and avoid light spill upon bat roost features, bat commuting and foraging habitat (boundary hedgerows, trees, watercourses etc.) aiming for a maximum of 1lux light spill on those features.

The scheme should also include a modelled lux plan, and details of:

- Proposed lighting regime.
- Number and location of proposed luminaires.
- Luminaire light distribution type.
- Lamp type, lamp wattage and spectral distribution.
- Mounting height, orientation direction and beam angle.
- Type of control gear.

The approved lighting strategy shall be implemented in full unless otherwise agreed in writing by the local planning authority.

- 16) Any reserved matters application shall be accompanied by a detailed habitat creation method statement; ecological monitoring strategy and a 30 year habitat management plan for the retained, enhanced and newly created habitats for that phase of the development.
- (a) The habitat creation method statement to detail how the newly created habitats specified in the Biodiversity Metric calculations and submitted in support of the outline application for that phase will be delivered.
 - (b) The 30 year habitat management plan to detail how the newly created, retained and enhanced habitats in that phase will be managed to achieve the target conditions specified in the Biodiversity Metric calculations and 'Proposed BIA Habitat Plan' prepared by FPCR submitted in support of the outline application.
 - (c) The ecological monitoring strategy for each phase of the development shall include proposals for the surveying and reporting of the results of the habitat creation and management works for the duration of the management plan for that phase of the development. The strategy shall include a mechanism whereby revised management and habitat creation proposals shall be submitted to and approved by the local planning authority in the event that the habitats in that phase of the development are found to be failing to achieve the distinctiveness or condition targets of the Biodiversity Metric calculations hereby approved.
 - (d) The habitat creation work method statement to include a timetable for the delivery of habitats in accordance with the proposed details for that phase of the development.

- 17) Any future reserved matters application shall be supported by an Arboricultural Impact Assessment in accordance with the design requirements of BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations, which shall include a Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS).

The Method Statement shall include full details of the following:

- a) Location and installation of all services/ utilities/ drainage.
 - b) Details of any construction including existing and proposed levels within the Root Protection Area (RPA) or that may impact on the retained trees, and proposed mitigation for such impacts.
 - c) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification within the RPA of trees.
 - d) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing on a TPP.
 - e) Implementation, supervision and monitoring of the approved Tree Protection Scheme.
 - f) Details of site access, temporary parking, on site facilities, loading, unloading and storage of equipment, materials, fuels and waste, concrete mixing and use of fires.
 - g) A detailed tree felling / pruning specification in accordance with BS3998:2012 Tree Work (Recommendations).
- 18) Prior to occupation of the development hereby approved, the developer shall submit information to the local planning authority confirming that all installed gas-fired boilers meet the following specification: ultra low NOX emission boilers of less < 40 mgNOX/kWh (at 0% O₂) in accordance with EN 15502 Part 1 2015 Class 6.
- 19) The reserved matters shall include 30% accessible and adaptable dwellings and 6% wheelchair adaptable dwellings.
- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any subsequent modification thereto), no development specified within Schedule 2, Part 1 classes A, AA or E shall be undertaken in respect of the development hereby permitted.

END OF SCHEDULE