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## Appeal Decision

Site visit made on 11 February 2016

**by M Seaton BSc (Hons) DipTP MRTPI**

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

**Decision date: 23 September 2016**

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**Appeal Ref: APP/R0660/W/15/3138189**

**Land at Rear of 92 Macclesfield Road, Holmes Chapel, Crewe, Cheshire, CW4 8AL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr & Mrs Norman Mathews against the decision of Cheshire East Council.
  - The application Ref 15/2992C, dated 30 June 2015, was refused by notice dated 6 October 2015.
  - The development proposed is the erection of up to 3 No. dwellings, with all matters reserved except access.
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### Procedural Matters

1. The application has been submitted in outline with only access to be considered at this stage. The remaining matters (appearance, landscaping, layout and scale) are reserved for later consideration. I have dealt with the appeal on this basis, treating the plans submitted as indicative of the type of development that could be carried out
  2. Since the submission of the appeal, there has been a Court of Appeal judgement of 11 May 2016 in respect of Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441. In this case, the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015. The judgement has clarified that the policies in the Written Ministerial Statement (WMS) of 28 November 2014 as to the specific circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought from small scale and self-build development, must once again be treated as a material consideration in development management and development plan procedures and decisions, and in the exercise of powers and duties under the Planning Acts generally.
  3. In respect of this scheme, I note that the issue of affordable housing was identified by the Council in the context of its Interim Planning Statement on Affordable Housing, and a requirement for 30% provision on all sites larger than 3 dwellings in rural areas. The Council had indicated an acceptance that the provision (of 0.9 dwellings) could be made in the form of a financial contribution, with the appellant having agreed to this approach and submitted a completed Unilateral Undertaking as a means of securing the financial contribution.
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4. I am mindful that even allowing for the outline nature of the scheme, the proposed quantum of development of *up to 3 No. dwellings* would be below the general threshold set by the WMS for affordable housing contributions or provision for developments of 10-units or less, and also would not exceed the lower threshold of 5-units or less which may be set for designated rural areas. This is reiterated within the Planning Obligations Chapter of the Planning Practice Guidance (the Guidance). As a consequence, the proposed development would not be required to make provision for affordable housing, which is a position accepted by the Council and appellant in the context of the Court of Appeal judgement. Therefore, despite the submission of a Unilateral Undertaking to address affordable housing matters and being mindful of the appellant's contention over its necessity, the submitted planning obligation has not had any bearing in my decision-making related to this appeal.

### **Decision**

5. The appeal is allowed and planning permission is granted for the erection of up to 3 No. dwellings, with all matters reserved except access on Land at Rear of 92 Macclesfield Road, Holmes Chapel, Crewe, Cheshire, CW4 8AL in accordance with the terms of the application Ref 15/2992C, dated 30 June 2015, and subject to the conditions as set out within the annex.

### **Main Issues**

6. The main issues are;
- the effect of the proposed development on the landscape character and appearance of the area; and,
  - whether, having regard to local and national planning policy, the proposal would amount to a sustainable form of development, having regard to its location within the countryside.

### **Reasons**

#### *Landscape character and appearance*

7. The appeal site is comprised of an area of rough pasture of approximately 0.69 hectares, which is bounded to the north by the private drive providing access to Saltersford Hall Bungalow as well as the associated curtilage, and to the west by the rear boundaries to Nos. 90 & 92 Macclesfield Road. The southern and eastern boundaries are defined by hedgerows and fences with open agricultural land beyond.
8. The site is located within the open countryside and just within the western boundary of the Dane Valley Area of Special County Value (ASCV). Saved policy PS9 of the Congleton Borough Local Plan First Review 2005 (the Local Plan), states that development which would damage the character or features for which the ASCV has been designated will not be permitted. The appeal site is also cited as being located within the *Lower Farms and Woods (LFW2: Brereton Heath)* landscape type as set out in the Cheshire Landscape Character Assessment 2009. I note that both the appellant and the Council have made detailed landscape submissions in respect of the impact of the proposed development, and that there is seemingly no dispute that the proposals would have an impact on the countryside and the landscape. The main area of disagreement centres upon the valuation of the assessment of the effects of

the development, with some significant variation between the Council and the appellant's positions.

9. I have carefully considered the submitted evidence in respect of the contended impacts of the development on the landscape. On the basis of the submissions and my observations on the site, I consider that the visual impact of the development would principally affect the immediate local setting rather than having a wider landscape impact, and would agree that short-range views would be likely to be the most affected. I note that the appeal site would not be visible from the Dane Valley Way located within the ASCV as a consequence of the screening provided by the wooded escarpment upon which it is positioned, and that the Council has not specifically disputed this conclusion. Whilst there is no dispute that the development would be visible from the bridleway passing close to the appeal site, I accept the appellant's contention that it would be viewed in the context of other existing built form, as well as retained boundary planting and landscaping, and the significant background wooded area of the escarpment. I consider this to be of significance in assessing the magnitude of the change, as I accept would be the establishment over time of boundary landscaping around the appeal site.
10. I have had regard to the Council's conclusion that the permanence of change to the site would have a *substantial-adverse* impact on the landscape, and a *substantial-moderate* visual impact. However, for the reasons set out above, I find the appellant's conclusions regarding the potential landscape and visual effects on the Dane Valley ASCV as being *moderate-minor* adverse importance in Year 1, and *minor* adverse importance in Year 15 further to the establishment of landscaping, to be more reasonable and proportionate in assessing the impact of the scale and nature of the development.
11. The Council has highlighted within its reasons for refusal that the proposed development would be contrary to saved policies PS8 (open countryside) and H6 (residential development in the open countryside and the green belt) of the Local Plan. With regards these policies, I have carefully considered the submissions regarding their status in light of the Council's admission of the absence of a five-year supply of deliverable housing sites. In this respect, I consider the effect of saved policies PS8 and H6 of the Local Plan to be concerned with the supply of housing as a consequence of the setting of restrictions and limits for residential development, and in light of paragraph 49 of the Framework, these policies cannot be considered to be up-to-date. However, I have noted the Council's contention regarding their continued relevance to the protection of the countryside. I would agree that in respect of this aim, and in accordance with the reference to the recognition of the intrinsic character and beauty of the countryside as set out within paragraph 17 of the Framework, the policies must in part retain due weight as a means of assessing the impact of the proposals on the countryside. I have therefore considered them in light of this conclusion.
12. On the basis of the submitted evidence and my observations of the site, I would accept the conclusions of the LVIA and landscape assessment to be reasonable and that the development would give rise to moderate-minor and minor adverse landscape and visual effects on the Dane Valley ASCV and the countryside. Whilst I have had regard to the possibility of further mitigation of the impact that future planting and landscaping may have, I would nevertheless, conclude that the proposal would still result in a limited adverse

landscape impact to the detriment of the character and appearance of the area. I find this to result in conflict with saved Policies PS8, PS9, GR5 and H6, which seek to ensure the protection of the open countryside and landscape and the character of the Dane Valley ASCV.

*Sustainable development*

13. Paragraph 6 of the Framework indicates that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means for the planning system. It further points out at paragraph 7 that there are three dimensions to sustainable development: economic, social and environmental. The three roles are mutually dependent and should not be taken in isolation (paragraph 8). The considerations that can contribute to sustainable development, within the meaning of the Framework, go far beyond the narrow meaning of locational sustainability. As portrayed, sustainable development is thus a multi-faceted, broad based concept. The factors involved are not always positive and it is often necessary to weigh relevant attributes against one another in order to arrive at a balanced position.
14. Economic growth contributes to the building of a strong and competitive economy, which leads to prosperity. The development would have the potential for new investment and long term spending in the local area, as well as the creation of local jobs in the construction industry and business for and jobs in the building supply industry. These support sustainable economic development to deliver the homes, business and infrastructure that the country needs, and which is emphasised particularly in paragraphs 17 and 18 of the Framework. I have noted the contention of interested parties that local infrastructure would be unable to cope with the new development, but have not been provided with any detailed evidence to support such an assertion. Whilst I accept that the scale of the proposals is comparatively limited, the availability of any site that could contribute even to a degree to house building and economic development in the short term should attract some moderate weight.
15. On the basis of the limited evidence before me, the Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites. In this respect, the proposal would make a limited contribution to the supply of housing within the Borough, which would clearly weigh in favour of the proposal. I am also mindful that there is agreement between the parties regarding the accessibility of the appeal site, which it is noted possesses good access to local shops, services and facilities, and I noted at the site visit is close to a regular hourly bus service to Congleton and Crewe. There is also the availability of regular train services to Crewe and Manchester from Holmes Chapel Station. I would therefore also agree with the conclusion that the appeal site would be well-located for local services and facilities, and as a consequence housing provision at the appeal site would attract some limited social weight in support of the overall sustainability balance.
16. Interested parties have raised concerns over the potential for the proposed development to result in an adverse impact on living conditions, particularly having regard to a loss of privacy and overshadowing of neighbouring gardens and property as a consequence of the layout and landscaping of the site. Whilst I have had regard to these issues, I am mindful that the proposals have been submitted in outline with all details other than access reserved for future consideration. Nevertheless, on the basis of my observations of the site and the

surrounding land and properties, I am satisfied that it would be possible to develop the site in a manner which would retain an acceptable level of privacy and light to adjoining properties, thus safeguarding the living conditions of neighbouring occupiers.

17. Turning finally to the environmental role, I have already concluded that the proposed development would have a limited adverse impact on the landscape character of the surrounding area and on the ACSV as a consequence of the introduction of up to 3 dwellings on the currently open land of the appeal site. However, whilst acknowledging that the proposals are in outline with details of layout, scale and appearance reserved at this stage, I am satisfied that it would be possible for the proposed development to incorporate an appropriate form of design and appearance to respect the characteristics of existing development within the wider local area. I also acknowledge and agree that, given the location of the appeal site, any concerns over the drainage of the site could be adequately addressed as part of the landscaping and layout submissions as part of the reserved matters.
18. The Council has accepted that the impact of the development on trees and hedgerows would be acceptable. Furthermore, in respect of ecological interests, it is concluded that the loss of the open pasture would not have any significant impact on grassland habitats of nature conservation value, and also that there would not be an adverse impact on habitats for roosting bats and that nesting birds could be safeguarded through an appropriate condition. I have also had regard to the Council's conclusions with regards to Great Crested Newts following the submission by the appellant of a survey and outline mitigation proposals. However, I note that the Council has advised that it would be feasible for a detailed mitigation strategy to be produced in accordance with the outline strategy, and that sufficient land would be available for habitat creation and enhancement, which would weigh in support of the proposal. As a consequence, no objection has been raised in this respect.
19. In respect of the access to the appeal site, I have had regard to the conclusion of the Council's Strategic Infrastructure Team that the addition of traffic for three dwellings would not have a material impact on the adjacent or wider highway network, and also that access to the adopted highway would be acceptable. I am also satisfied on the basis of my observations on the site that the proposed development would not result in any adverse highway impacts.

## **Conclusion**

20. In reaching my conclusion, I have been mindful of the Council's inability to demonstrate a five year supply of deliverable housing sites, and therefore, having regard to paragraph 49 of the Framework, that policies related to housing supply should be considered to be out-of-date and that the proposed development should therefore be considered in the context of the presumption in favour of sustainable development. In this respect, I recognise that paragraph 14 of the Framework advises that where a development plan is absent, silent or relevant policies are out-of-date, that permission should be granted for development proposals unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
21. Given the current position with regard to the development plan, and the absence of a five year supply of deliverable housing sites, considerable weight in support must be afforded to the provision of new dwellings to meet housing

needs within the area and the country. I also consider that the proposals would provide some limited economic benefit as a result of the creation of employment from the construction of the dwellings, and support to existing local services and the economy.

22. The appeal site is situated within an accessible and sustainable location for new development, with good access to public transport, and would not result in an adverse impact on highway safety. However, by virtue of the development of the existing open land, I consider that the proposed development would have a limited adverse impact on the existing landscape. I am satisfied though that the proposal would not result in an unacceptable impact on existing trees or ecological interest on the appeal site and that matters related to the drainage of the site could be satisfactorily addressed.
23. Overall, and having regard to all other matters raised and the economic, social and environmental dimensions of sustainable development set out in paragraph 7 of the Framework, I am satisfied that the limited harm likely to be caused by the proposal would not significantly and demonstrably outweigh the development's benefits, particularly in terms of the contribution towards the housing needs within the Borough. I conclude that the scheme therefore represents sustainable development.
24. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed subject to the conditions listed.

### **Conditions**

25. Turning to the suggested conditions, I have considered these in the light of paragraph 206 of the Framework. This paragraph sets out that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
26. Condition relating to timeliness, the submission of reserved matters, and the identification of plans are necessary in the interest of proper planning and the avoidance of doubt. The submission and agreement of a piling method statement would be in the interests of the living conditions of neighbouring occupiers, whilst the submission of contaminated land information/confirmation would allow the ground conditions of the site to be satisfactorily addressed. Conditions relating to the protection of retained trees, ensuring the submission of an Arboricultural Impact Assessment and Great Crested Newt Survey and Mitigation Strategy with the Reserved Matters application, and the avoidance of nesting periods for works on the site, would be necessary in the interests of character and appearance and the biodiversity of the site.
27. I have considered the suggestion of a condition related to details of external materials and insulation of the properties, but regard these to be matters more appropriately dealt with as part of any Reserved Matters application.

*M Seaton*

INSPECTOR

## **Annex**

### **Conditions**

- 1) The development hereby approved shall commence before whichever is the later of the following dates:
  - (a) within three years of the date of this permission, or
  - (b) within two years of approval of the last of the reserved matters to be approved.
- 2) Plans and particulars of the reserved matters relating to the; Layout, Scale, Appearance and Landscaping shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
- 3) Application for approval of reserved matters shall be made within three years of the date of this permission.
- 4) The development hereby approved shall be carried out in accordance with the approved Location Plan (642-LOC-01) and Site Plan (Access Arrangements only – (642-SL-01)), received by the Local Planning Authority on the 30th June 2015.
- 5) Prior to the commencement of development the applicant shall submit a method statement, to be approved by the Local Planning Authority. The piling work shall be undertaken in accordance with the approved method statement: The method statement shall include the following details:
  1. Details of the method of piling
  2. Days / hours of work
  3. Duration of the pile driving operations (expected starting date and completion date)
  4. Prior notification to the occupiers of potentially affected properties
  5. Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
- 6) Prior to first occupation of the hereby approved development, the following contaminated land information / confirmation should be submitted to and approved in writing by the Local Planning Authority that;
  - No contamination was encountered during the works, or if so provide details as to what was and what remedial works were undertaken;
  - No material was imported to site for garden/landscaped areas, or if so provide details of the material and chemical testing results to demonstrate that it was suitable for use.
- 7) (a) Prior to the commencement of development development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837 (Trees in Relation to Construction 2012: Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order

currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.

(b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.

(c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

(d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

- 8) The Reserved Matters application shall include the submission of the following documents;
- an Arboricultural Impact Assessment; and
  - a detailed Great Crested Newt Survey and Mitigation Strategy.
- 9) Prior to any works taking place that involve the loss of any hedgerow, tree or shrub between 1st March and 31st August in any year, a detailed survey shall be undertaken to check for the existence of nesting birds. Where nests are found, a 4m exclusion zone shall be created around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any works involving the removal of the hedgerow, tree or shrub take place.