
Appeal Decision

Inquiry held on 24 -26 November 2015

Site visit made on 25 November 2015

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 23 March 2016

Appeal Ref: APP/R0660/W/15/3011872

Land to the south of Park Road, Willaston, Cheshire

- The appeal is made by under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Stretton Willaston Ltd against Cheshire East Council.
 - The application Ref 14/5824N is dated 18 December 2014.
 - The development proposed is up to 175 residential dwellings to include access.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The application was submitted in outline form with all matters except access reserved for future consideration. The appeal will be determined on the same basis.

The appeal site and the proposed development

3. The appeal site is about 7 hectares of arable farmland to the west of Willaston and to the south of Park Road. To the east of the site, and to the north beyond Park Road, the site is bounded by existing residential development, to the west by further farmland, also in the Appellant's control, and to the south by a railway line. An intermittent hedgerow is close to the west boundary of the site. Alongside the hedgerow is a public footpath that extends southwards from Park Road to a footbridge over the railway line.
 4. Close by to the west of the footbridge is a road bridge that carries the A51 over the railway line. The A51, which at this point is the Nantwich by-pass, and Park Road converge at the Peacock Roundabout. From this roundabout Crewe Road, the A534, extends north-eastwards to the north of Willaston towards Crewe. Also from the roundabout Crewe Road extends south-westwards, as the B5338, towards Nantwich. The site generally slopes down at a gentle gradient from Park Road towards the railway line. Along the Park Road frontage is a dense high hedgerow.
 5. The proposed development is for up to 175 dwellings, 52 of which would be affordable houses on a 65/35% social rented/shared equity split. The provision of 30% affordable housing is the main provision of a signed and dated Section 106 Planning Obligation submitted at the Inquiry. The Obligation also includes the provision of on-site public open space and a local area equipped for play (LEAP). The single roadway access into the development off Park Road would be close to the north-west corner of the site.
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Matters agreed between the Appellant and the Council

6. Matters agreed between the main parties are taken from Statements of Common Ground on planning, housing land supply and landscape. These are included as Inquiry Documents (ID 30-32).

7. The site falls within Flood Zone 1 and is at low risk of flooding. The occupants of the proposed dwellings would not be at risk and the development would not increase flood risk in the catchment area. The single highway access is suitable for the development proposed and the site is in a sustainable location for access by occupants of the dwellings to modes of transport other than the private motor car. The site is of negligible ecological value with species poor hedgerows, along which are occasional mature trees of only local value. 87% of the site is Grade 3A agricultural land and 13% is Grade 3B. Agricultural land quality is not a determinative issue but is a factor to be weighed in the planning balance.

8. The Council cannot demonstrate a five year deliverable housing land supply and paragraph 49 of the National Planning Policy Framework is engaged. This is also a factor to be weighed in the planning balance.

9. The appeal site is outside the settlement boundary of Willaston as defined in the Borough of Crewe and Nantwich Replacement Local Plan 2011 (RLP) and is therefore designated as being part of the open countryside. The site is also part of the Wistaston and Nantwich Green Gap between the urban areas of Crewe and Nantwich as established by RLP policy NE.4. The site is not part of any designated landscape and the putative landscape reason for refusal of the application makes no reference to paragraph 109 of the NPPF. The proposed development would adversely affect a number of visual receptors and the change of use from agricultural land to residential development would result in localised adverse landscape effects.

10. The main parties also completed a Statement of Common Ground on transport matters. The putative reason for refusal of the application on highway grounds has not been pursued by the Council and no evidence on highway matters was presented at the Inquiry. Highway matters are not contentious between the main parties and the agreed matters are not therefore reported here.

Planning policy

11. The development plan, for the purposes of the appeal, is the RLP. RLP policy NE.2 'Open Countryside' states that within open countryside only development which is essential for certain specified purposes will be permitted. The proposed housing development is not for any of the specified purposes. RLP policy NE.4 'Green Gaps' states that within Green Gaps approval will not be given for, amongst other things, the construction of new buildings which would result in erosion of the physical gap between built up areas or would adversely affect the visual character of the landscape. Policy NE.4 also states that exceptions will only be considered where it can be demonstrated that no suitable alternative location is available. RLP policy RES.5 'Housing in the Countryside' states that new dwellings will be restricted to those that would be for certain specified purposes. The proposed dwellings would not be for any of the specified purposes.

12. The RLP will be replaced by the emerging Cheshire East Local Plan Strategy (LPS). LPS policy PG 5 'Open Countryside' generally brings forward the provisions of RLP policy NE.2 but also reflects RLP policy NE.4 by stating that the retention of gaps between settlements is important, in order to maintain the definition and separation

of existing communities, that such areas will be protected from inappropriate development, and that particular attention should be paid to landscape character so the appearance and distinctiveness of the Cheshire East countryside is preserved.

13. Paragraph 49 of the National Planning Policy Framework (NPPF) states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. Paragraph 216 states that decision takers may also give weight to relevant policies in emerging plans according, amongst other things, to the stage of preparation of the emerging plan and to the degree of consistency of the relevant policies in the emerging plan to policies in the NPPF.

Reasons

14. The main issue is whether the site is a sustainable location for the housing development proposed, with particular regard to its effect on the character and visual amenity of the area and on the effectiveness of the Green Gap within which it would be located.

The character and visual amenity of the area

15. The appeal site is within the 'Lower Farms and Woods' Landscape Character Type 10 (LCT10) as identified in the Cheshire Landscape Character Assessment. The key characteristics of LCT10 include low lying gently rolling topography, hedgerow boundaries and standard trees to reorganised fields but with a loss of boundaries leading to formation of large fields, horsiculture and medium settlement density. Whilst these characteristics apply to the LCT10 area they do not generally apply to the appeal site, which is an unremarkable single field. The topography of the site, in fact, was altered probably when the railway line to the south was installed, and the site does not contain any significant landscape features. The railway line, the nearby main road and adjoining residential development all contribute to the character of the site, which is, at best, ordinary. The site is not part of, in NPPF paragraph 109 terms, a valued landscape.

16. The proposed development would have a profound effect on the character of the appeal site; its rural character would be replaced by a residential development of decidedly urban character. However, the effect of the proposed development on the character of the wider area would be significantly less than profound. The site is at the edge of a settlement and there is existing residential development to the east and north. The site is contained, and bounded to the south, by the railway line, and the main road to the west also affects the degree to which the development would be harmful to the character of the area. The proposed development, given the relative containment of the site and the influence of urbanising elements in all directions, would have only a slight adverse effect on the character of the area.

17. The greatest effect on the visual amenity of the area would be for users of the footpath (FP10) alongside the west boundary of the site. To the north of Park Road FP10 passes through a triangular paddock between Park Road and Crewe Road alongside development at the west edge of Willaston. To the south of the site, between the footbridge over the railway line and residential development in the vicinity of the roundabout junction of the A51 and the A500, FP10 passes between a field to the east and the A51 to the west. In contrast, between Park Road and the footbridge FP10 passes through a rural landscape with agricultural land on both

sides. The part of FP10 that is within the site, given that it is passing through a relatively undisturbed open landscape, makes a positive contribution to the visual amenity of the area and to the enjoyment derived by users who walk along it. The view from FP10, where it passes over the footbridge over the railway line, is also important to the visual amenity of the area. The view from this vantage point to the west is contained by the elevated by-pass but to the east it is of distant residential development beyond intervening farmland. At this point on the footpath users are within the countryside and away from the nearby urban areas to the east and west.

18. The masterplan for the proposed development includes the provision of a green corridor through which FP10 would pass. Nevertheless, there would be new residential development close by to the east and planting within the green corridor would not effectively screen the development or mitigate its urbanising effect. Rather than passing through a relatively open and natural landscape the footpath would pass through an artificial landscape that would be part of, and would be dominated by, the nearby residential development. The proposed development would extend up to the footbridge over the railway line. The view from this vantage point would be changed by the development. The view to the east would no longer be wholly over farmland but would be, to the north of the railway line, of nearby residential development. The impression, at this point for users of the footpath of being within open countryside and away from the urban area, would be lost.

19. The hedgerow along the Park Road frontage of the site would be retained and additional landscaping could be introduced to mitigate any adverse visual effects in views from Park Road. Residents of existing dwellings to the east and north would experience changes to the outlook from their properties but their visual amenities would not be significantly affected. There would be no significant adverse visual effects in views towards the site from any other vantage points.

20. The proposed development would have a slight adverse effect on the character of the area but would have, albeit for a short section of public footpath and from one vantage point, a significant adverse effect on the visual amenity of the area. The proposed development, in this regard, conflicts with RLP policy NE.4 and with the objectives of RLP policies NE.2 and RES.5 and LPS policy PG 5.

The Wistaston and Nantwich Green Gap

21. Crewe Road, from the centre of Crewe, passes through the continuous urban areas of first Crewe, then Wistaston and finally Willaston before reaching the Wistaston and Nantwich Green Gap. The Green Gap at this point is about 750 metres wide as it is between existing development to the north of the site and the urban area of Nantwich either side of Crewe Road. The Green Gap between Willaston and Nantwich along the railway line is about 820 metres wide and, between Willaston and where the urban area of Nantwich extends up to the junction of Newcastle Road and Elwood Way, is about 850 metres wide.

22. The proposed development, in dimensional terms, would reduce the width of the Green Gap but not between Willaston and Nantwich either side of Crewe Road. The most significant reduction in the width of the Green Gap would be between the south-west corner of the site and the junction of Newcastle Road and Elwood Way. Between these two points the Green Gap is only about 550 metres wide. However, the Green Gap is about this wide between the aforementioned junction and Willaston where the settlement extends up to the roundabout junction of the A51 and the A500 either side of Cheerbrook Road.

23. The physical and dimensional erosion of the Green Gap are important considerations but the perceived erosion of the Green Gap must also be considered. In this regard the green gap is not primarily, for residents and visitors, seen from the air but when travelling along roads and walking footpaths in the area. On the north side of Crewe Road between the urban area of Nantwich and the Peacock Roundabout are Crewe Road Nurseries, a hotel and a public house. There is also another substantial building in commercial use close to the roundabout. The distinct perception, passing along Crewe Road towards the roundabout, given the extent and continuity of development on its north side, is that the Green Gap starts at the roundabout. From the roundabout it is only a short drive of less than 400 metres, either along Crewe Road or Park Road, to the urban edge of Willaston.

24. Similarly, the perception of the Green Gap to the west of the roundabout junction of the A51 and the A500, along Newcastle Road, is affected by built development on both sides. To the north of the road are the substantial buildings of Cheerbrook Farm and other buildings, and to the south are buildings at Brook Bank. The perception, driving along Newcastle Road, is, in fact, that the Green Gap is significantly less than its actual width of about 550 metres.

25. The perception travelling westwards along Park Road from the centre of Willaston, notwithstanding the continuity and extent of built development on its north side, is that the Green Gap is reached after passing beyond development on its south side. In this regard the site contributes to the physical and perceived width of the Green Gap. The Nantwich By-pass, between the roundabout junctions of the A51 with the A500 and the A534, has parts of the Green Gap on both sides. Though visibility from the by-pass is limited by vegetation the perception for drivers and passengers in vehicles is that they are passing through a gap between settlements.

26. The Wistaston and Nantwich Green Gap to the north of Willaston is over 2 kms wide. Between Nantwich and Willaston it is significantly narrower and it is at its narrowest, about 550 metres, along Newcastle Road. The proposed development would be no closer than this to the urban area of Nantwich. However, the perception of the Green Gap between Willaston and Nantwich is that it is significantly narrower than its actual width. The proposed development would erode the Green Gap both physically and, just as importantly, perceptually. The erosion of the Green Gap would take place where it is generally at its narrowest and where it is perceived, particularly on roads passing across the gap, to be narrower than it dimensionally is.

27. The proposed development would result in a significant erosion of the Wistaston and Nantwich Green Gap and would contribute to a perceived narrowing of the gap between Willaston and Nantwich. The proposed development, for this reason, conflicts with RLP policy NE.4 and with emerging LPS policy PG 5.

Conclusion on the first issue

28. The appeal site would be, other than with regard to the effect of the development on the character and visual amenity of the area and on the Green Gap, a sustainable location for the housing proposed. However, the environmental role of sustainable development as set out in paragraph 7 of the NPPF includes the protection of the natural and built environment. The site is part of the natural environment and is part of the designated Green Gap between two elements of the built environment. The slight adverse effect on the character of the area and the significant adverse effect on the visual amenity of the area that would be caused by the proposed development would not be sufficient in themselves to warrant a

conclusion that the housing proposed would not be sustainable development. However, the proposed development would also, and most importantly, result in a significant erosion of the Wistaston and Nantwich Green Gap and would contribute to a perceived narrowing of the gap between the two settlements, at its narrowest point between Willaston and Nantwich. Collectively, the harm that would be caused to the natural and built environments justifies a conclusion that the housing proposed would not be sustainable development.

The planning balance and overall conclusions

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This requirement of planning law is at the heart of the balancing exercise. The planning balance requires planning judgement to be exercised.

30. The Council accepts, given that they cannot demonstrate a five year supply of housing land, and given recent case law and other appeal decisions, that RLP policies NE.2 and RES.5 are out of date in NPPF paragraph 49 terms. This does not mean that they should be afforded no weight, just that they should be afforded reduced weight when applying Section 38(6) of the 2004 Act. In this regard the policies, which seek to protect the character and visual amenity of the countryside, are consistent with one of the core planning principles of the NPPF and must therefore, in the light of paragraph 215 of the NPPF, be afforded more than just limited weight.

31. The Appellant maintains that RLP policy NE.4 should also be considered, given the lack of a five year supply of housing land, to be out of date. But this policy seeks to prevent development in specific parts of the countryside; those that contribute to the separation of distinct settlements. It is not just, therefore, a policy that seeks to protect the countryside from development. Furthermore, it is worth noting the exception stated in the policy; that development will only be considered where it can be demonstrated that no suitable alternative location is available. Suitable alternative locations, for the purposes of redressing the under supply of housing land, could be those outside Green Gaps protected by RLP policy NE.4, but within countryside areas subject to RLP policies NE.2 and RES.5. For these reasons, RLP policy NE.4 is not considered to be solely a housing supply policy and is afforded significant weight for the purposes of applying Section 38(6) of the 2004 Act. This conclusion is generally consistent with recent appeal decisions and the planning judgement made in this regard accords with the recent appeal court judgement in *Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government* [2016] EWCA Civ 168.

32. Both main parties have referred to appeal decisions for the development of other sites in the designated Green Gaps in the Council area. However, it is an important planning principle that a development proposal should be determined on its individual merits. Furthermore, it is worth noting that no other appeal decision relates to the development of land within the Wistaston and Nantwich Green Gap where it separates, at its narrowest point, Willaston from Nantwich.

33. The proposed development of up to 175 dwellings, 52 of which would be affordable houses, is a significant positive aspect of the scheme. In this regard the development would meet the economic and social roles of sustainability. The housing proposed would, furthermore, contribute to redressing the under supply of housing land in the Council area.

34. The under supply of housing in the Council area is not a trump card that can be assumed to outweigh all other considerations. It is a significant material consideration but must be weighed against the harm that would be caused and against the requirement of Section 38(6) of the 2004 Act. The harm that would be caused to the character and visual amenity of the area and through the loss of best and most versatile agricultural land does not significantly and demonstrably outweigh the under supply of housing land. The under supply of housing land is a material consideration that outweighs the conflict with RLP policies NE.2 and RES.5.

35. The proposed development would, however, also result in a significant erosion of the Wistaston and Nantwich Green Gap and would contribute to a perceived narrowing of the gap, at nearly its narrowest point, between Willaston and Nantwich. The development thus conflicts with RLP policy NE.4, which is afforded significant weight. The harm that would be caused by the significant erosion of the Green Gap, collectively with the harm identified in the previous paragraph, significantly and demonstrably outweighs the contribution that the development would make to redressing the under supply of housing land in the Council area. Determination of the appeal, in this case, must be made in accordance with the development plan.

36. The appeal is dismissed and planning permission is refused for 'up to 175 residential dwellings to include access' on land to the south of Park Road, Willaston, Cheshire.

John Braithwaite

Inspector

DOCUMENTS

- 1 Appearances on behalf of the Appellant.
- 2 Council's letter of notification of the Inquiry and list of those notified.
- 3 Opening statement on behalf of the Council.
- 4 Opening submissions on behalf of the Appellant.
- 5 Legal submissions on behalf of the Appellant.
- 6 Letter of interest in purchase of the site from Countryside Properties.
- 7 Inquiry statement by Mr R Fallon.
- 8 Inquiry statement by Mrs Pochin.
- 9 Getting to Know Willaston – a series of walks.
- 10 Willaston Parish Plan 2009.
- 11 Willaston Housing Numbers Guide as at 9 November 2015.
- 12 Site access and highway improvement proposals plan.
- 13 Aerial photographs showing existing and proposed context.
- 14 Agreed position on agricultural land quality of the site.
- 15 Press release by the Council.
- 16 LIDAR plans of site.
- 17 Appeal Decision APP/R0660/W/15/3010061.
- 18 CIL Compliance Statement by the Council.
- 19 Agreed planning conditions.
- 20 Heads of terms of Section 106 Planning Obligation.
- 21 Section 106 Planning Obligation.
- 22 Updated Appendix 7 to Mr Haywood's proof of evidence.
- 23 Judgement in Phides Estates v SoS for CLG and two others.
- 24 Judgement in Cheshire East B C v SoS for CLG and Richborough Estates.
- 25 Report to a meeting on 21 July 2015 of the Council's Cabinet.
- 26 Judgement in Richborough Estates v Cheshire East Council and SoS for CLG.
- 27 List of trunk road and motorway schemes completed 1987-1993.
- 28 Closing submissions on behalf of the Council.
- 29 Closing submissions on behalf of the Appellant.
- 30 Statement of Common Ground on planning matters.
- 31 Statement of Common Ground on housing land supply.
- 32 Statement of Common Ground on landscape matters.
- 33 Statement of Common Ground on highway matters.