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## Appeal Decision

Inquiry held on 20 – 23 October 2015

Site visit made on 22 October 2015

**by Nick Fagan BSc (Hons) DipTP MRTPI**

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

**Decision date: 21 January 2016**

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**Appeal Ref: APP/A0665/W/15/3005148**

**Land adjacent to 28 Church Street, Davenham, Cheshire CW9 8NE**

- 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 Tesni Properties Ltd, Sarah Elizabeth Ganczarski and Richard Douglas Leigh against the decision of Cheshire West & Chester Council.
  - The application Ref 14/02349/FUL, dated 31 May 2014, was refused by notice dated 7 November 2014.
  - The development proposed is the erection of 16 houses (two will be affordable homes) and 4 affordable apartments, widening of part of the existing access road, creation of a pedestrian access link to the public footpath to the west of the site, works to the frontage wall flanking Church Street, and the creation of informal open space, new tree/hedgerow planting and car parking and manoeuvring areas.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 16 houses (two will be affordable homes) and 4 affordable apartments, widening of part of the existing access road, creation of a pedestrian access link to the public footpath to the west of the site, works to the frontage wall flanking Church Street, and the creation of informal open space, new tree/hedgerow planting and car parking and manoeuvring areas at land adjacent to 28 Church Street, Davenham, Cheshire CW9 8NE in accordance with the terms of the application, Ref 14/02349/FUL, dated 31 May 2014, subject to the conditions in the Schedule at the end of this Decision.

### Application for costs

2. At the Inquiry an application for costs was made by Tesni Properties Ltd, Sarah Elizabeth Ganczarski and Richard Douglas Leigh against Cheshire West & Chester Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The Inquiry opened on 20 October and sat for four days closing on 23 October. I carried out an unaccompanied site visit on 19 October, an accompanied site visit on the morning of 22 October and a visit to the Ellesmere Port sites referred to in the disputed list of housing sites in the afternoon of that day.
4. As I indicated at the start of the Inquiry the description of the development that I have used above is a hybrid of that used in the application form and the Council's decision notice, which both main parties agreed accurately reflects the nature of the proposed development.

5. A signed and dated planning obligation by deed of agreement under Section 106 of the Planning Act was given to me at the Inquiry. I address the details of this below.

### **Main Issues**

6. The main issues in the appeal are:
  - (a) Whether the Council can demonstrate a 5 year supply of deliverable housing sites and;
  - (b) If a 5 year supply can be demonstrated whether other material considerations indicate that planning permission should be granted, or;
  - (c) If a 5 year supply cannot be demonstrated whether there are any adverse impacts, including matters raised by local people, that would significantly and demonstrably outweigh the benefits.

### **Reasons**

#### ***The Site, Surroundings and Proposal***

7. The appeal site is a former agricultural field 0.75 hectare in area to the south of Church Street, which it borders with a low stone wall and high Leylandii hedge. To the west it borders, also with a high Leylandii hedge, a narrow public footpath known as The Grove, which links Church Street to London Road. Its southern boundary is largely screened from the parkland of Davenham Hall by mature trees, some of which are TPO protected. Its eastern boundary is the private road giving access to the neighbouring detached twentieth century houses at 30, 32, 32A, 34 and 34A Church Street.
8. The site lies within the Davenham Conservation Area but outside the village settlement boundary, as does the garden land to the west of The Grove, although the above dwellings to the east lie within it. Davenham is a large village with several facilities including a primary school, two pubs, a post office, petrol station, pharmacy, places of worship and bus routes all of which are within a short walk of the site. It is very close to Northwich and all its facilities, which lies on the opposite side of the nearby A556 dual carriageway.
9. The proposal is a full planning application to develop the site with a mixture of two-storey dwellings including some with accommodation in third storey roof spaces. To the frontage would be a pair of semi-detached houses and a block of four flats, which would all comprise affordable housing. There would be two detached market dwellings behind the frontage properties. The front part of the private access road would be widened to allow better visibility and two-way traffic. There would be a new vehicular access created to a parking area for the proposed dwellings on the front part of the site, which would necessitate the loss of some of the mature line of trees on this side of the access road. There would also be a pedestrian link onto The Grove at this point.
10. The rest of the dwellings would be laid out in a line of two short terraces and a pair of semi-detached houses in the middle of the site, with four larger detached houses to the rear and all these would be accessed from what is now a field gate into the site. The position of some of the detached houses at the rear part of the site would necessitate the removal of some trees but the mature oak trees near the southern boundary would all be retained. The areas flanking the private access road containing the mature trees would be retained as public open space.

### ***Planning Policy Background***

11. There is no dispute between the parties that the site adjoins, but lies outside, the Davenham settlement boundary as set out on the Vale Royal Borough Local Plan (VRBLP) proposals map. It is not therefore in a location where residential development is permitted by VRBLP Policy GS5 or by Policy STRAT9 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (LP Pt1), which was adopted on 29 January 2015 following the Council's refusal of the application. This is the basis of the Council's refusal of the proposal.
12. The appellants however maintain that VRBLP Policy GS5 and the settlement boundary for Davenham on which it is based are out of date and should be afforded little weight, because they pre-date the NPPF and its drive to deliver the full current objectively assessed housing needs of the area as set out in the 2013 Strategic Housing Market Assessment.
13. But the LP Pt1 Examining Inspector specifically addressed this issue in his report. He recommended in Main Modification 8 (MM8) that until the Local Plan (Part 2) Land Allocations and Detailed Policies Plan (LP Pt2) has been adopted the policies in the former Districts' Plans including Policy GS5 in the VRBLP relating to settlement boundaries be retained.
14. The appellants' claim that he only did so based on the timetable for the LP Pt2 set out in the July 2013 Local Development Scheme (LDS) presented at the Examination. They point out that this has now slipped considerably in that there is still no date for the likely publication of this DPD, let alone the January 2016 adoption date stated in that LDS. They also allege that the Council has no impetus to address such a slippage because it avoids it having to adjust outdated settlement boundaries.
15. Whilst there has been slippage from the July 2013 LDS timetable such slippages are not uncommon with DPDs and the Examining Inspector would have been aware of such potential slippage. He nonetheless found the LP Pt 1 sound and made no stipulation as to when LP Pt2 should be published. He did so in full knowledge of any potential impact that MM8 may have in terms of delivering the Council's identified objectively assessed housing need as set out in LP Pt1 Policy STRAT2. Policies GS5 of the VRBLP and STRAT9 of the LP Pt1 reflect the aim in paragraph 17 (bullet point 5) of the National Planning Policy Framework (NPPF) to recognise the intrinsic character and beauty of the countryside.
16. Policy STRAT2 requires at least 22,000 new dwellings in the Borough between 2010 and 2030 the majority of which will be located within or on the edge of the four main towns including Northwich. LP Pt1 Policy STRAT5 requires at least 4,300 dwellings in the greater Northwich area that includes Davenham.
17. The NPPF seeks to boost significantly the supply of housing and requires local planning authorities to identify and update annually a supply of sites sufficient to provide 5 years worth of housing to meet objectively assessed needs. If the Council cannot do so then Policies STRAT9 and GS5, which clearly are policies relevant to the supply of housing as set out in NPPF paragraph 49, must be regarded as being out of date.
18. I therefore now turn to consider the issue of housing land supply.

## **Housing Land Supply**

19. The only matter of disagreement regarding the housing requirement is whether the agreed 20% buffer should be applied to the base 5 year requirement as the Council considers or to the base 5 year requirement plus the mutually agreed shortfall as the appellants consider. In all three 2015 appeal decisions in the Borough cited in evidence the former approach was adopted but this may be because the Council's method was not challenged by the appellants in those cases<sup>1</sup>.
20. As evidenced at the Inquiry other recent appeal decisions by both Inspectors and the Secretary of State have been inconsistent on this point and there is no specific mention of it in the NPPF or Planning Practice Guidance (PPG). But there is recent guidance by the Planning Advisory Service that the preferred approach is to apply the buffer to both the requirement and the shortfall which represents all the need that exists<sup>2</sup>. It seems to me that this is the logical way of addressing the issue because the shortfall is part of the requirement that has not yet been delivered and so there is no 'double-counting'. This is also the methodology used by the LP Pt1 Examining Inspector<sup>3</sup>. For these reasons I favour the appellants' methodology and the 5 year housing requirement is therefore 7,603 dwellings.
21. Other than this, where the parties disagree is over whether there is a current supply of deliverable sites sufficient to meet the current five year requirement. This was discussed at length during the Inquiry including in a round table discussion focussing on the disputed delivery from the sites set out in the A3 table compiled jointly by the main parties (the 'list of disputed sites').
22. The Council maintains that there is a deliverable supply of 10,059 dwellings over the next 5 years (2015/16 to 2019/20). The appellants maintain that there is only a current supply of 7,288 in the same period. However, this means that even if the appellants' figure were correct there would be a 4.79 years supply – only 315 dwellings short of a 5 year supply (7,603–7,288).
23. The appellants argue that there is not a 5 year supply and 2,771 dwellings should be discounted from the Council's figures for a variety of reasons, including:
  - Whether a demolitions and losses allowance should be included in calculations;
  - Whether a non-implementation discount should be applied to small sites;
  - Whether student housing can reasonably be included in the supply figure;
  - Disagreement about delivery on a number of sites in terms of availability, lead-in times and build-out rates of construction.
24. Before I turn to these disputed areas it is relevant to note that the NPPF, in footnote 11 on page 12, makes clear that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable now with a realistic prospect that housing will be delivered on the

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<sup>1</sup> Core Documents (CD) C3, C12 & C13 – the Nether Peover, Hill Top Farm Northwich & Fountain Lane Davenham appeal decisions

<sup>2</sup> CD A3 – from PAS website

<sup>3</sup> CD D8, paragraph 150

site within five years and in particular that the development is viable. It also advises that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example because they will not be viable, there is no longer a demand for the types of units or sites have long term phasing plans.

25. It is also worth pointing out that although the planning system remains planned and the LP Pt1 was adopted less than a year ago it is nonetheless subject to NPPF paragraph 49 and so it is entirely appropriate to examine whether there is a 5 year housing supply now because the supply position changes over time. The determination of supply is of course necessarily a matter of judgement based on the evidence put forward.

#### *Demolitions and Losses Allowance*

26. The appellants point out that paragraph 5.21 of the LP Pt1 anticipates that 50 dwellings per year may be lost to other uses or demolished and the gross average annual requirement would equate to 1,150 dwellings rather than the net figure of 1,100. They also note on that basis that the Inspector in the Nether Peover appeal discounted the supply by 187 dwellings using the same methodology they consider should apply in this case.
27. However, the Council's witness made it clear that it already takes actual demolitions into account because the dwelling figures in the supply are net figures. This is confirmed in paragraphs 5.14 to 5.17 of the current Housing Land Monitor 1 April 2014-31 March 2015 (HLM), which makes clear that both the housing requirement and the housing supply figures are net figures that take into account actual losses and demolitions. This is acknowledged by the Inspector in paragraph 21 of the Hill Top Farm decision.
28. There should therefore be no discounting of the supply for demolitions and losses because to do so would result in double discounting. Taking the appellants 5 year figures this would add on another 191 dwellings to the supply (7,288 + 191 = 7,479).

#### *Non-implementation Discount for Small Sites*

29. The appellants consider there should be a 20% discount to the number of dwellings relied on in the 5 year supply from sites delivering under 10 dwellings because of historic under-delivery of extant permissions for various reasons.
30. However, and as acknowledged by the Inspector in the Hill Top Farm appeal<sup>4</sup>, this is already catered for in the monitoring exercise. Specifically, paragraph 5.13 of the HLM makes clear that no allowance from such small sites is included for the first three years of the supply to avoid double counting. This is made explicit in Table 7.1 from which it is clear that only 300 dwellings in total from such small sites will contribute to the 2015-20 housing supply. I consider this to be a very reasonable figure and below the historic delivery rates from such sites in the figures identified by the appellants' witness.
31. I also note that the Inspector in the Nether Peover appeal did not regard a blanket discount of this kind to be appropriate and I agree with his reasoning

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<sup>4</sup> Ibid, paragraph 19

on this issue. The LP Pt1 Inspector also did not consider that such a non-implementation discount was necessary.

32. For these reasons there should be no such discount for the non-implementation of permissions on sites of under 10 dwellings. This would add another 182 dwellings onto the supply ( $7,479 + 182 = 7,661$ ). This total figure would equate to a current supply of 5.04 years ( $7,661 / 1,521$ ).

#### *Conclusion on Housing Land Supply*

33. The Council has identified a total of 13,830 dwellings with planning permission, 10,059 of which it considers deliverable<sup>5</sup>, which constitutes a 6.76 years supply. This latter figure includes a discount of over 25% from the total number of dwellings with planning permission.
34. I heard extensive evidence at the Inquiry into the reasonableness of the Council's assumptions about build rates generally, the applicability or otherwise of student housing to the supply, and discussions about the extent of delivery on sites with and without planning permission, allocated sites and sites where there was a resolution to grant permission.
35. Whilst I share the appellants' concerns about some of the deliverability at some of the disputed sites it is unnecessary for me to conclude exactly how many dwellings each site would be likely to deliver in the next 5 years, or to conclude on the other matters above. This is because I have already established that the Council is able to demonstrate a current 5 year supply of deliverable housing sites. It follows that the policies for the supply of housing in the development plan – Policies GS5 and STRAT9 in this case – are not out of date.
36. In view of this it is now necessary for me to consider whether there are any other material considerations that indicate that planning permission should nonetheless be granted, given that delivery of more dwellings than the minimum figures required by Policies STRAT2 and STRAT5 would still comply with those policies. Such considerations centre on the effect of the proposed development on the character and appearance of the area, as well as other relevant issues raised by the Parish Council and local residents and the benefits of the development set out by the appellants.

#### ***Character and Appearance***

37. VRBLP Policy GS5 states that the character and appearance of the open countryside will be protected, open countryside being parts of the Borough which lie outside of settlement policy boundaries. It also states that new buildings will not be allowed in the open countryside unless provided for through other policies of the Local Plan.
38. LP Pt1 Policy STRAT9 states that the intrinsic character and beauty of the Cheshire countryside will be protected by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. It also states that development must be of an appropriate scale and design to not harm the character of the countryside.
39. In my view both these policies seek to prevent harmful development in the countryside, albeit Policy GS5 adopts the earlier language of the former PPG7 rather than the NPPF which it pre-dated. The distinction in the wording

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<sup>5</sup> CD D15 HLM 2015 Table 7.1, & Statement of Common Ground (SoCG)

between them is in any case irrelevant because Policy STRAT9 was adopted after the NPPF was issued and in accordance with it, otherwise the LP Pt1 Inspector would not have found the Plan sound.

40. The Council's case in terms of impact on character and appearance is that this development would harm the site's intrinsic character and beauty simply because an open green field in the countryside would be built on. I accept that to this extent there would be some harm. But the extent of this harm should be assessed in relation to the context of the site, especially its surrounding land uses and proximity to other built development as well as to the local topography.
41. The Council in its officer report on the application states that the proposed development would not have a significant harmful impact upon the existing character or visual amenities of the area. However, at the Inquiry the Council's witness and the Parish Council's witness claimed that the loss of the site to the proposed development would give rise to (environmental) harm to the character and appearance of the area. These witnesses maintained that this would be because the loss of the Leylandii hedge would open up the site, which is currently a 'green finger of transition space' and 'important visual gap' providing a separating function between the parkland of Davenham Hall and the existing houses on Church Street.
42. However, both Councils acknowledge that the removal of the Leylandii hedge would be a positive environmental benefit. The local planning authority does not suggest that there would be any harmful impact on designated heritage assets resulting from the development, either Davenham Hall or its parkland setting or on Davenham Conservation Area. I agree that it would have no such impact. It has no objection to the removal of some of the trees on the site because the mature trees that screen its southern boundary from the Davenham Hall parkland to the south would all be retained, nor does it have any concerns about the development's effects on the ecology of the site.
43. The site and adjacent land is essentially flat and was acknowledged by the Council to be fairly self-contained, and I agree with that assessment. The proposed landscaping scheme, which could be secured by condition, would involve retaining the frontage sandstone wall with hedge planting behind it; planting a row of extra heavy standard trees and hedging in a dedicated 1.2m strip outside the boundaries of the proposed houses next to The Grove footpath and creating a new pedestrian access onto it; retaining the majority of the mature trees on the edge of the site and creating an area of public open space of over 1,000m<sup>2</sup> adjacent to the access road. It would in my view, given the removal of the Leylandii hedges, be a net environmental benefit of the scheme.
44. I also consider that the replacement of the frontage Leylandii hedge with the proposed street-facing dwellings would actually enhance the character of the Conservation Area. Church Street is an important street in the village, with many attractive and older properties including St Wilfred's Church. There is existing residential development immediately to the east of the site and to the south-west in terms of the houses on London Road. As such its residential development would be entirely within the context of residential development around it and would comprise an obvious 'rounding off' of built development in this part of Davenham.

45. In conclusion, I accept that building on this open field outside the settlement boundary would create some harm of itself to the intrinsic character and beauty of the countryside and would not be the type of development normally permitted in the countryside and thus would conflict with VRBLP Policy GS5 and LP Pt1 Policy STRAT9. But the location of the site is reasonably central to the village and its main facilities as well as being fairly self-contained in landscape terms. The development would enhance the street scene in the Conservation Area, would have no impact on Davenham Hall or its parkland setting, would retain the best mature trees on site and its landscaping scheme would comprise a net environmental benefit. The effect of the proposed development on the character and appearance of the area would therefore be acceptable.

### **Other Matters Raised by Interested Parties**

46. The Parish Council and several neighbouring residents consider that Church Street is not wide enough to cope with additional traffic movements from the development and produced photographic evidence at the Inquiry of a car trying to turn round in the road to illustrate the sort of problems that could occur. However, there is no objection to the development by the Highway Authority. I am satisfied that the amendments to the access road, layout of the scheme, amount of parking to be provided and likely level of additional traffic movements generated by the proposal would allow safe access to and egress from the site without causing undue congestion or issues of highway safety on Church Street.
47. The fact that the proposal would generate a requirement for additional school places is not a reason to dismiss the proposed development because the S106 agreement addresses this issue via a financial contribution. The Neighbourhood Plan is no barrier to the development of this site because it has not yet reached a stage at which it can be attributed any weight; indeed I was not provided with any draft of it.
48. It was suggested that the design of the proposed houses would be inappropriate and uninspiring but the local planning authority did not object on this basis and it appears to me that their detailed designs would be appropriate to their village context in the Conservation Area. There would undoubtedly be disruption to local residents during the construction of the dwellings but I consider this could be satisfactorily minimised by a condition specifying the prior agreement of a suitable construction management plan.
49. The absence of harm to character and appearance and these other matters does not necessarily mean that the development should be approved because Policies GS5 and STRAT9 protect such sites outside settlement boundaries from such development in principle, and such development plan policies are the starting point for decision making. In view of this it is now necessary to look at the scheme's benefits and assess whether they would outweigh this policy conflict.

### **The Planning Balance**

50. I now therefore look at the overall sustainability of the proposed development. The NPPF says that there are 3 dimensions to sustainable development as set out below.

### *Environmental*

51. I have already set out above the environmental benefits of the proposal in terms of its impact on the character and appearance of the area. I would add to these that the appellants are willing to ensure the development is constructed in a sustainable way and would accept a suitably worded condition.
52. Additionally the site does not represent best or most versatile agricultural land. It is located in a settlement with a number of facilities and good public transport links, part of greater Northwich, considered in spatial terms by Policies STRAT2 and STRAT5 to be the one of the most locationally sustainable areas in the Borough. The proposal would constitute Greenfield development in an area where the Council has sufficient sites, many of which are brownfield but it would not harm the individual character of Davenham and would be located in the southern part of greater Northwich, away from the constraint of the Green Belt on the town's northern edge.

### *Economic*

53. The building of 20 homes would create construction jobs and their occupants would support local businesses and services. Whilst this would be a benefit it would only be a proportionate one, and I believe the likely expenditure of future occupants of the development has been over-estimated by the appellants. Nevertheless, there would clearly be a modest economic benefit. There would be no economic disbenefits.

### *Social*

54. The development would add 20 dwellings to Northwich's and the Borough's housing supply in an inherently sustainable location. It is important to re-emphasise that the housing requirement figures set out in LP Pt1 Policies STRAT2 and STRAT5 are minimum figures and so there is no policy restriction on over-supplying new dwellings. I also note that Policy STRAT2 allows the majority of new dwellings to be located within *or on the edge of* (my italics) the Borough's four main towns including greater Northwich.
55. Six of the dwellings would be affordable. The Council points out that there is no separate requirement within the LP Pt1 for affordable units. Rather it merely forms part of the overall 22,000 unit requirement over the plan period to be delivered as a proportionate amount in accordance with Policy SOC1.
56. However, whilst this is so, the Strategic Housing Market Assessment 2013 identified a need for an additional 714 net affordable dwellings per annum between 2013 and 2018 if the backlog for such dwellings are included and delivered within 5 years. Whilst I understand this figure would be considerably less if the backlog of affordable housing demand were to be cleared over a longer time period I do not understand the Council's justification for adopting such an approach, especially since it has adopted the 'Sedgefield' method in relation to dealing with its overall housing shortfall requirement.
57. Critically the level of affordable housing delivery in recent years is inadequate to address current needs despite a significant spike in the number of units completed in 2014/15. Whilst the proposal would not deliver the numbers of affordable units that the Top Hill Farm or Fountain Lane schemes would, the 6 units would comply with the 30% level of affordable housing required by LP Pt1 Policy SOC1 and would be proportionate. They would therefore constitute an

important social benefit in an area where there is an urgent demand for affordable housing and where there is a considerable backlog of unfulfilled need. There are no social disbenefits arising from the proposal.

### *Overall Planning Balance*

58. More generally the Council argues that the Hill Top Farm and Fountain Lane proposals provided greater benefits than this proposal because many more houses would be provided through those schemes compared to this one. It also claims that the Hill Top Farm scheme created improved traffic arrangements beneficial to pedestrian safety and that the Fountain Lane scheme would enhance the settlement edge of Davenham. However it seems to me that these benefits were site specific ones, which are comparable with the site specific landscaping improvements that this proposed scheme would provide.
59. In overall terms the proposal would result in significant social benefits, some economic benefits and no environmental harm. Although there would be conflict with the development plan overall due to the countryside location aspects of VRBLP Policy GS5 and LP Pt1 Policy STRAT9 and there has been recent considerable increases in rates of annual delivery of new dwellings<sup>6</sup>, the benefits would be material considerations which would outweigh the development plan conflict. Therefore, the proposed development would represent sustainable development.

### **Conditions**

60. Conditions have been agreed between the main parties as being necessary in the event of permission being granted<sup>7</sup>. I agree that these are all necessary, except the one relating to noise levels which was included in the list in error, although I have amalgamated some of them and slightly altered some of their wording in order to comply with Planning Practice Guidance. The conditions fall under several general themes as set out below:
- In the interests of the character and appearance of the area conditions dealing with materials to be used on site, landscaping including protection of existing trees, creation and future maintenance of the public open space;
  - In the interests of ecology and biodiversity conditions dealing with vegetation clearance times to protect breeding birds and reasonable avoidance measures for Great Crested Newts;
  - In the interests of highway safety and to encourage travel other than in private vehicles conditions dealing with the detailed design of highways, footways and cycleways, and details of cycle parking for each unit;
  - In order to protect the living conditions of on-site and neighbouring residents conditions dealing with the securing of an agreed Construction Method Statement, details of any external lighting, development to be undertaken in accordance with the submitted Phase 1 Contaminated Land Risk Report (and additional measures if necessary) and specification of obscure glazed windows to the gable elevation of House No 20 facing 30 Church Street

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<sup>6</sup> Amended agreed Table of Housing Forecasts and Annual Delivery 2010-2015

<sup>7</sup> As set out in the SoCG

- In order to ensure a satisfactory form of development in accordance with adopted planning policy conditions dealing with affordable housing, refuse and recycling storage, details of any works to The Grove footpath, sustainable construction and a programme of archaeological work in accordance with a written scheme of investigation

### **Planning Obligations**

61. I was handed on the last day of the Inquiry a S106 bilateral agreement signed by both parties dated 20 October 2015 obliging the owner to pay the Council an education contribution of £25,057 to provide primary school education and £28,563 to provide secondary school education both within 2 miles of the development, and an open space contribution of £10,300 before occupation of the first completed dwelling.
62. VRBLP Policy BE4 requires developers to provide new or enhanced infrastructure, where necessary through financial contributions in accordance with adopted Supplementary Planning Document 3 (SPD3). For this development the catchment primary school is Davenham CE Primary School and the secondary school is the County High School at Leftwich. The former has no surplus places and the latter will have no forecast surplus places by September 2009. Both these schools are within two miles of the site.
63. VBRLP Policy RT3 sets a standard for each additional new dwelling for formal recreation space and play space. Where such provision is not possible on site, as in this case, a financial contribution will be sought to secure additional recreation and play space nearby or to enhance nearby existing facilities (including a maintenance addition) on a scale of charges set out in SPD3.
64. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regs) and NPPF paragraph 204 requires planning obligations to be 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. For the above reasons the above obligations would comply with these statutory requirements.
65. Regulation 123 of the CIL Regs does not allow the pooling of more than five such financial contributions since 2010. The Council has confirmed that it has not received five such contributions and the appellants do not dispute this. I have no reason to disagree with the Council's statement on this point. The obligations would meet the requirements of adopted development plan policy.

### **Conclusion**

66. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions below.

*Nick Fagan*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: All Refs A2A.14.592\_: 001 Revision B – Existing OS Plan; 101 Revision C – Site Plan (showing landscaping); 101 Revision C – Site Plan (showing areas of open space); 103 Revision A – Contextual Elevations; SK01 – Sketch Section through Footpath; Housing Typologies 501, 503, 504, 505, 506 & 507; and additionally c-1162-01 ‘Structural Landscape proposals’.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwelling to which it relates is first occupied. Development shall be carried out in accordance with the approved details.
- 5) The construction of the dwellings shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - the numbers, type, tenure, and location of the site of the affordable housing provision to be made which shall consist of not less than six (6) of the total number of units;
  - the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - the arrangements for the transfer of the affordable housing to an affordable housing provider, or for the management of the affordable housing;
  - the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 6) All highways, footways and cycleways within the approved development, including the access onto Church Street, shall be designed and constructed in complete accordance with a specification to be approved by the local planning authority and following the details contained in submitted Transport Statement. No dwelling shall be occupied until that part of the highway/footway/cycleway network which provides access to it has been constructed in this way and up to binder-course level. The

- surface course shall then be completed within a timescale which has been agreed in writing by the local planning authority.
- 7) No dwelling shall be occupied until space has been laid out within the plot of that dwelling for at least two (2) bicycles to be parked such space to be retained thereafter.
  - 8) No development shall take place until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
    - i) the parking of vehicles of site operatives and visitors
    - ii) details of the construction traffic for the development including temporary highway vehicle and pedestrian routings, times and days of large vehicle movements to and from the site, suitable off-highway parking for all construction related vehicles
    - iii) the hours of construction work and deliveries
    - iv) the location of the site office
    - v) details of the responsible person (e.g. site manager) who could be contacted in the event of complaint
    - vi) loading and unloading of plant and materials
    - vii) storage of plant and materials used in constructing the development
    - viii) details of any piling required including method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties
    - ix) wheel washing facilities including for construction vehicles to prevent the deposition of mud and other debris onto the public highway
    - x) measures to control the emission of dust and dirt during construction to include details of all dust suppression measures and methods to monitor emissions of dust arising from the construction of the development
    - xi) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - 9) No vegetation clearance works shall be carried out on the site in the bird-nesting season (1<sup>st</sup> March to 31<sup>st</sup> August inclusive), unless the site is surveyed for breeding birds, and a scheme to protect them has been submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.
  - 10) Prior to commencement of development a detailed statement of Reasonable Avoidance Measures for Great Crested Newts shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the approved statement.
  - 11) No site clearance, preparatory work or development shall take place until a scheme for the protection of retained trees and the appropriate working methods (in accordance with the revised Arboricultural Impact Statement dated 14<sup>th</sup> July 2014) has been submitted to and agreed in writing by the

- local planning authority. These measures shall be carried out as described and approved.
- 12) No development shall commence until full details of the soft landscaping works (including the public open space areas and wildflower planting on the eastern boundary) have been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. The areas identified as open space on the eastern side of the site shall be retained as public open space thereafter.
  - 13) Prior to the laying out of the public open space a management plan for its future management shall be submitted to and approved in writing by the local planning authority. The management plan shall identify the maintenance requirements including all ongoing maintenance operations, and shall be thereafter implemented in perpetuity.
  - 14) Prior to its installation details of the location, height, design and levels of luminance of any proposed external lighting in the public open space and communal parking areas shall be submitted to and approved in writing by the local planning authority. The details shall ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties, as well as in relation to minimising the impact on protected species. The lighting shall thereafter be installed and operated in accordance with the approved details.
  - 15) The development shall be undertaken in accordance with the recommendations and methodology set out in the Phase 1 Contaminated Land Risk Report submitted with the planning application. If, during the course of development, any contamination is found which has not been identified in the site investigation additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
  - 16) No development shall take place until the implementation of a programme of archaeological work, in accordance with a written scheme of investigation, has been secured by the applicant (or their agents or successors in title) and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.
  - 17) No development for that phase of the scheme shall commence until details of the design and location of refuse disposal and recycling facilities has been submitted to and approved in writing by the local planning authority for that particular phase or part of the development. The scheme for each phase shall be implemented in accordance with the approved details prior to first occupation of that phase or part and adhered to thereafter.

- 18) Notwithstanding the approved details, before any works to the footpath (The Grove, public footpath No 12, Davenham) are undertaken, further details of the intended widening and improvement works shall be submitted to and approved in writing by the local planning authority, and the approved works shall have been completed prior to the occupation of the dwellings. The details for approval shall include:
- works to the sandstone wall fronting Church Street at the northern end of the footpath;
  - any altered surfacing materials;
  - boundary treatments to be erected;
  - a maintenance and management plan regarding the treatment of planting adjacent to the footpath; and
  - a schedule for the timing of the footpath works relative to the construction and occupation of the development.
- 19) The windows in the side gable wall of House No 20 facing towards 30 Church Street shall be obscure glazed.
- 20) Prior to the development commencing a detailed scheme for the securing of the sustainability measures as set out at paragraph 4.16 of the submitted Planning Statement accompanying the original application shall be submitted to and approved in writing by the local planning authority. The approved sustainability measures shall be incorporated in full prior to first occupation of the development.

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*End of Conditions*

## **APPEARANCES**

### FOR THE APPELLANTS:

John Barrett                      Counsel, Kings Chambers, Manchester *instructed by*  
Richard Gee

*Called:*

Richard Gee                      Roman Summer

Richard Purser                      DPP Planning, Manchester  
BA (Hons) MRTPI

Graeme Ives                      Turley Heritage  
MRTPI

### FOR THE LOCAL PLANNING AUTHORITY:

Thea Osmund-Smith              Counsel, No 5 Chambers *instructed by* Vanessa Whiting,  
Head of Governance, Cheshire West and Chester Council

*Called:*

Beth Fletcher                      Planning Officer, Cheshire West and Chester Council  
BSc (Hons) MSc

Bethany Brown                      Planning Officer, Cheshire West and Chester Council  
BA (Hons) MRTPI

### INTERESTED PERSONS:

Dr Gareth Peel, PhD, MBA              Local resident

Cllr Helen Weltman                      Local Councillor

Margaret Stock                      Local resident

John & Barbara Bleasby              Local residents

Cllr Arthur Wood                      Davenham Parish Council

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*End of Appearances List*

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Opening on behalf of Appellants
2. Opening on behalf of LPA
3. Application for Costs on behalf of Appellants
4. Note on Build Rates Ref 1735ma/N004m by DPP
5. Letter from Indigo to CWaC 25/9/15
6. Letter from Emery Planning to CWaC 27/8/15

7. Letter from Barton Willmore to CWaC 24/9/15
8. Letter from HBF to CWaC 24/9/15
9. Wenman High Court Judgement 21/4/15
10. CWaC LDS July 2013
11. Photos of cars in Church Street submitted by Mr Bleasby
12. S106 Agreement 20/10/15
13. Appeal decision 2217578 – Ashflats Lane, Stafford (Core Document C16)
14. Revised Table of Housing Forecasts & Annual Delivery 2010-2015 (agreed update of Richard Purser Proof Appendix A1)
15. Beth Fisher response to DPP Note on Build Rates
16. LPA response to appellants' application for Costs
17. Updated main Statement of Common Ground 20/10/15 (SoCG)
18. Colour copy of Davenham settlement boundary & Conservation Area boundary including key, from VRBLP
19. Suggested additional condition re. sustainable construction agreed between main parties
20. Statement of Planning Obligations' compliance with CIL Regs by LPA 22/10/15
21. Updated Table of Disputed Sites
22. Updated SoCG re: Housing Land Supply
23. Written evidence of Cllr Wood on behalf of Davenham Parish Council presented on Day 3 of Inquiry
24. Written evidence of Dr Gareth peel presented on Day 3 of Inquiry
25. Closing submissions on behalf of LPA
26. Closing submissions on behalf of appellants.

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*End of Documents List*