

# DAVENHAM PARISH COUNCIL

Clerk: Vicky Stock . 6 Grove Mount . Davenham . Northwich . CW9 8LY 07443 579057  
Email: clerk@davenhampc.org.uk

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*Ref. draught .28 Ch St. lett CW&C.dpcarw.v4.*

**Mr Steve Robinson**  
**Chief Executive**  
**Cheshire West and Chester Council**  
**HQ Building**  
**58 Nicolas Street**  
**Chester CH1 2NP**

24 Feb 2016

Dear sir,

**Re: PLANNING APPEAL, PROPOSED DEVELOPMENT BY TESNI Homes.**  
**LAND ADJ 28 CHURCH STREET . DAVENHAM**

Planning application ref: 14/02349/FUL

Appeal ref: APP/A0665/W/15/3005148 – *hearing 20.10.15. decision notice 21.1.16*

## RESPONSE TO THE INSPECTORS REPORT

We write to express our deep concern and dismay at the recent Planning Inspectors decision on the above planning application. We understand that the only course of action to get what we consider an appalling decision, reconsidered is for the Cheshire West & Chester Council as the planning authority to make a legal challenge to the High Court.

Besides our alarm at the inspectors decision we understand that our local Cheshire West & Chester Councillors have expressed a similar concern and that Cheshire West & Chester Council planning officers too are surprised at the Inspectors decision. We are aware that any challenge has to be factually based within planning law and believe there is a case to be made on this appeal decision.

As far as we understand, the Planning Inspectorate in considering an appeal against a local planning authority planning decision has:

No remit to change or ignore a policy of a local planning authority.

No remit to override an adopted Local Plan.

No remit to ignore, or fail to give weight to, an emerging Neighbourhood Plan.

We set out in **Appendix A**, attached to this letter, our general analysis of the decision statement highlighting several issues in which we believe the document is in default.

The main issues we would draw to you attention are as follows:

*[numbers in the text refer to those in the inspectors report]*

### Point 1

- 7 It is not a 'former agricultural field' it still is an area of grazing land [known locally as the donkey field] that has been neglected for years. It is a key part of the conservation area and land affecting the environment of a listed building.

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11 The report accepts that in current Local Plans, **'it is not in area where residential development is permitted'**.

The inspector accepts that the Local Plan examining inspector **specifically supported the policies in local plans contrary to claims by the developer** [referred to in 12 and 14].

15 The Inspector accepts that recognition of the **'intrinsic character and beauty of the countryside'** is part of the National Planning Policy Framework [NPPF].

## Point 2

### **'Housing Land Supply;**

The Inspector quite clearly and unambiguously concludes [in para 35] that: **'the Council was indeed able to 'demonstrate a current 5 year supply of Housing Land'**.

## Point 3

### **'Character and appearance'**

There could be some misinterpretation by the Inspector in this section, with insufficient weight being given to the Impact this development would have on the surrounding environment.

44 the Inspector 'considers [without any apparent evidence or other justification] that replacement of the Leylandii with the proposed dwellings: **'would actually enhance the character of the conservation area'**. No information was presented to the Appeal Hearing to show how this unlikely prospect was to be achieved.

Interestingly the Inspector then, in 45, **seems to contradict himself** in concluding:

**' 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 STRAT 9'.**

Despite this clear statement and planning policy he does however return to the development **enhancing' [?]** the street scene with **'no impact on Davenham Hall or its parkland setting'**

This is followed by the unsupported claim that **'its landscape scheme would comprise a net environmental benefit'**.

His conclusion – ..... **the proposed development would** ..... **'therefore be acceptable'**. To who ? To the developer ? Presumably not to CW&C as the Local Planning Authority who refused the original planning application? And certainly not our community.

## Point 4

46 The traffic issues in the village , particularly Church Street, are dismissed in a few lines despite being **'a major local concern which was fully covered in the Parish Council's submissions'** - and those of residents who appeared at the Appeal Hearing

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## Point 5

### Our Neighbourhood plan

47 At this point the inspector states:: **‘The neighbourhood Plan is no barrier to the development as it has not reached a stage which can be attributed any weight’.**

He then claims he was not given a copy. So how could he have assessed what weight to give it ? The inquiry was advised by the Parish Council [in correcting the Appellant] that our Neighbourhood Plan was at an advanced stage having been through several public consultation exercises and discussions with Cheshire West & Chester Council and following advice from an independent planning consultant. The Inspector could of course, have requested a copy had he considered it appropriate, so that he could assess its status for himself, but he did not !

Our neighbour hood plan was referred to extensively in our presentation to the Inquiry.

With regard to the claim that, **‘it had not reached a stage at which it can be attributed any weight’.** Neighbourhood plans are a statutory planning document. We would draw attention to a recent letter from the Department for Communities and Local Government [Neighbourhood Planning Team] to another Cheshire Parish Council which clearly States: **‘an emerging neighbourhood plan may be a material consideration’.** We understand this has long been the case with other statutory planning documents such as Local Plans and County Structure Plans.

This being the case, it follows that the Inquiry failed to take our advanced, emerging Neighbourhood Plan into account when it should have been a ‘material’ consideration.

## Point 6

### PLANNING BALANCE *environmental*

52 Reference to **‘good public transport links’.** We have seen no evidence as to what the Inspector has based this statement on. Yes, Davenham is on one of the most frequently serviced local bus routes but rarely are more than a handful of passengers seen using them. The buses have limited destinations and curtailed evening frequency. Few people leading even moderately active lives can get around a rural area relying on such public transport.

As ‘sustainability’ has come to mean ‘near a bus route’ we would contend that the whole concept of ‘good public transport is meaningless’ to most people.

## Point 7

Building on green fields is inherently, not sustainable, especially when there is a significant amount of brownfield land in the Northwich area. Not using this land makes building on green fields even less sustainable.

## Point 8

59 How can there possibly be **‘no environment harm’?** Such a conclusion cannot be justified. We in Davenham will lose an important green space within our conservation area, there will be

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even more traffic congestion and an elevated row of poorly related, incongruous houses dominating one of the oldest parts of our village.  
What more environmental harm can they inflict on such a sensitive area?

## CONCLUSION

We are deeply concerned at what we consider a blatant disregard for the policies contained in the Cheshire West & Chester Local Plan and of our emerging Neighbourhood Plan. It would seem that

the standard of analysis of factual evidence in this Appeal decision is far from that we should be able to expect in such an important planning decision.

As noted above, several statements in the report appear contradictory. Others seem not to be based on either factual evidence or the benefit of a full knowledge of the site in the context of the village.

Given the small scale of the site, the benefit in housing gain and temporary construction jobs, is way below the level of the damage done to the village environment in this sensitive location. Indeed, most would consider this proposal to be a prime example of the 'bad planning' resulting from other recent planning appeal decisions.

We understand that any legal challenge by Cheshire West & Chester Council has to be submitted by **3 March**.

We trust that your Authority will this time be prepared to mount a legal challenge to this Appeal decision. Not just for Davenham but the many rural communities and Planning Authorities across the UK who find themselves blighted by the overturning by the Planning Inspectorate of valid local planning decisions. What ever happened to the governments much trumpeted concept of **Localism** ?

Yours faithfully,

Cllr Arthur Wood  
For and on behalf of Davenham Parish council

*Attached: Our critical assessment of the Inspectors report - **APPENDIX A**.*

*Copies to:  
CW&C Local Ward Councillors [Helen Weltman, Gaynor Sinar & James Pearson]  
Nial Casseldon CW&C Planning*

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## APPENDIX A

Ref: draught crit.28 ChSt.arw.v2dFIN2  
11 Feb 2016

### CRITICAL RESPONSE TO INSPECTORS REPORT v2d.

Planning application ref: 14/02349/FUL – 31 May 2014 Refused by notice dated 7 November 2015  
Appeal ref: APP/A0665/W/15/3005148

#### **PLEASE READ IN CONJUNCTION WITH THE INSPECTORS REPORT DATED 21 JANUARY 2016**

The paragraph numbering in the appeal decision are used as reference points in this response.

Main issues highlighted by the Inspector:

- A) whether 5 yr housing land supply can be demonstrated by CW&C,
- B) If so, whether there are other material issues to indicate Planning permission should be granted and
- C) If a 5 yr supply cannot be demonstrated whether there are any adverse impacts [including those raised by local people] that would significantly and demonstrably out weigh the benefits.

- 8 It is not a 'former agricultural field' it still is an area of grazing land [known locally as - the donkey field] that has been neglected for years. It is a key part of the conservation area and land affecting the environment of a listed building.
- 11 The report accepts that in current Local Plans, 'it is not in area where residential development is permitted'.
- 12 The inspector accepts that the Local Plan examining inspector specifically supported the policies in local plans contrary to claims by the developer [referred to in 12 and 14].
- 15 Here it is pointed out that the NPPF specifically recognises the 'intrinsic character and beauty of the countryside'.

#### **Housing Land supply**

There here follows what was a long discourse on whether or not there is a valid 5 year supply.

This same issue has been raised at four recent inquires and usually becomes a long session and verbal 'battle' between CW&C officers and the Appellant. To the observer it seems that the legislation is so poor and complex that the participants and observers are left battling with interpreting the resultant ambiguities.

Whilst not the responsibility of individual inspectors it does seem that there is a case for proper clarification [presumably from government] of how the provision of the 5 year Housing Land Supply is to be interpreted. This would greatly simplify planning for both local authority planning officers and inspectors. It would also bring some reassurance to the communities who end up living with the results.

In this appeal the Inspector quite clearly and unambiguously concludes [in para 35] that the Council was indeed able to 'demonstrate a current 5 year supply of Housing Land'.

The Inspector then proceeds [para 36] to consider what other considerations would indicate that planning permission could nonetheless be granted.

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## Character and appearance

There could be some misinterpretation by the Inspector in this section, with insufficient weight being given to the Impact this development would have on the surrounding environment.

In particular the current and past status of the land and its relationship to the conservation area. Contrary to the impression given in the Inspectors report, the Parish Council has never sought to retain the Leylandii hedge. It is this that has blighted the site and surroundings since they were originally planted by the land owner following an early planning refusal on the land.

The existence of these inappropriate trees should surely not be used as a reason to allow development of the site on the rather flimsy argument that it would be better than the present planting. [NB a few years ago the Leylandii was cut down to the legal level of a hedge, we believe, on the instruction of CW&C. True to form the leylandii has again rapidly sprung up, way above this level.

In 44 the Inspector 'considers [without any apparent evidence or other justification] that replacement of the Leylandii with the proposed dwellings would actually enhance the character of the conservation area'. No information was presented to the Appeal Hearing to show how this was to be achieved.

It is difficult to see how a row of inappropriate houses, unrelated to those adjacent or opposite to the site, and on a raised bank could possibly enhance either the street scene or the conservation area. Nor is there any 'obvious 'rounding off' of built development'. This could have been lifted straight out of a developers sales brochure.

Interestingly the Inspector then in 45, seems to contradict himself in concluding, ' 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 VRBLP Policy GS5 and LP Pt1 policy STRAT 9'.

Despite this clear statement and planning policy he does however return to the development 'enhancing' [?] the street scene with 'no impact on Davenham Hall or its parkland setting'. This is followed by the unsupported claim that 'its landscape scheme would comprise a net environmental benefit'. His conclusion – ..... the proposed development would ..... 'therefore be acceptable'. To who ? The developer ? not our community.

## Other Matters Raised by Interested Parties

46 The traffic issues in the village , particularly Church Street, are dismissed in a few lines despite being a major local concern and fully covered in the Parish Council's submissions. In this we are concerned about the highway assessment by CW&C.

No traffic study is in evidence despite the long standing concerns of the Parish Council and residents. No consideration has been given to other recent developments to the east of the village which are likely to further impact on current traffic problems.

These are, [1] A Crematorium – recently completed but likely to affect Church St as its business builds up. [2] Two canal marinas being built along Davenham Rd but not yet operational.

This is in addition to the Parish Church and a Theatre in Church St both with limited off street parking .

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If we add in the lack of off-street parking along most of Church St, turning it into a single track road during most of the 24 hour period and a congested village centre with no public parking and any casual observer would accept we have a traffic problem which should not be made worse. It is indeed laughable to us that the inspector can write: '... 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 Quote: 'The neighbourhood Plan is no barrier to the development as it has not reached a stage which can be attributed any weight'. He then says he was not given a copy. So how could he have assessed what weight to give it. The inquiry was told, in correcting the Appellant, that our Neighbourhood Plan was at an advanced stage having been through several public consultation exercises and discussions with CW&C and advice from an independent planning consultant. The Inspector could of course, have requested a copy had he considered it appropriate, so that he could assess its status for himself.

With regard to the claim that, 'it had not reached a stage at which it can be attributed any weight'. Neighbourhood plans are a statutory planning document. We would draw attention to a recent letter from the Department for Communities and Local Government [Neighbourhood Planning Team] to another Cheshire Parish Council which clearly States: 'an emerging neighbourhood plan may be a material consideration'. We understand this has long been the case with other statutory planning documents such as Local Plans and County Structure Plans

This being the case, it follows that the Inquiry failed to take our advanced, emerging Neighbourhood Plan into account when it should have been a 'material' consideration.

48 This apparently claims that Local Plan policies are only the 'starting point' for decision making. Can recently approved Local Plan policies after years of preparation, public consultation and a public Inquiry, be so easily dismissed ? This is new to us.

## PLANNING BALANCE

What is 'planning balance' ? Why not '**Sustainability issues**'?

### *Environmental*

51 See previous comments

52 reference to 'good public transport links' – these are diminishing as subsidies are cut and in any event, even if available, few people use buses. Davenham has long been on one of the most frequently serviced routes but rarely are more than a handful of passengers on them. Few people leading even moderately active lives can get around a rural area relying on public transport. Reducing car parking in housing areas [a current trend] merely creates more on road parking – or worse, churning up grass verges. It already happens in Davenham ! As 'sustainability' has come to mean 'near a bus route' the whole concept is meaningless. Building on green fields is inherently, not sustainable.

There is a significant amount of brownfield land in the area. Not using it makes building on green fields even less sustainable.

### *Economic*

Creating Jobs during building works on sites this size is essentially short term and often employs few local people. What we really need is long term employment. 'Expenditure by future occupants'

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these days does not necessarily help the local economy and could result in considerable extra car journeys – using up more scarce resources and increasing pollution.

## *Social.*

55 'Affordable' does not necessarily make houses available to 'local' residents nor are they always truly 'affordable'. A maximum discounted rate of £250,000 is way above the local low end of the housing market.

## *Overall planning balance*

58 The proposed improved traffic arrangements at Hill Top Farm were not an improvement for Davenham. It is likely to recreate the traffic problems we got rid of some 20 years ago and once again increase traffic along Hartford Road and Mount Pleasant Road.

Yes, it will make it safer for pedestrians to cross the A556 at that point but the development will also mean that more pedestrians [including more unsupervised children] will be crossing. Therefore whether it will reduce accident figures remains to be seen. One thing certain is that it is a definite dis-benefit to Davenham and its residents.

60 How can there possibly be 'no environment harm'. We will lose an important green space within our conservation area, there will be more traffic congestion and an elevated row of poorly related incongruous houses dominating one of the oldest part of our village. What more environmental harm can they inflict on such a sensitive area?

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## Summary Overview.

We consider that in reality this proposal is a prime example of bad planning that is being imposed on our community, damaging to our community and against the wishes of our local borough council and our parish council [both elected bodies] by a single unelected individual. This is not appear to be an assessment based on interpreting our planning policies but the overturning of our planning policies.

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