The Planning Inspectorate

Appeal Decision

Site visit made on 25 April 2017

by Mrs A L Fairclough MA BSc(Hons) LLB(Hons) PGDipLP (Barrister) IHBC MRTPI

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

Decision date: 24 July 2017

Appeal Ref: APP/R0660/W/17/3167669
Land East of Whitchurch Road, Aston, Nantwich, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Cranford Estates against the decision of Cheshire East Council.
- The application Ref: 16/3974N, dated 12 August 2016, was refused by notice dated 21 December 2016.
- The development is described as "development of up to 24 dwellings with all matters reserved except access".

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Procedural Matters

1. The originating planning application was made in outline with all matters reserved for future consideration except for access. The layout plans submitted with the planning application are for indicative purposes only. It is on this basis that I determine the appeal.

Decision

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Cranford Estates against Cheshire East Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this case is the effect of the proposed access to the development on the safe and efficient operation of the highway in the vicinity of the appeal site.

Reasons

5. The proposed development includes the provision of up to 24 dwellings. The appeal site, a parcel of land previously used for the grazing of animals, is enclosed by trees, hedgerows and fencing. It is situated to the south of the settlement of Aston and to the north of the hamlet of New Hall. There is residential development to the north east and south of it. Along the western boundary of the site is Whitchurch Road (A530). The carriageway is around 6.7m wide and there are central markings. It has a speed limit of 40mph and there is street lighting.

6. The proposed access, a priority controlled junction, would be positioned close to a bend on Whitchurch Road. It would be located 145m south of the

Whitchurch Road/Wrenbury Road intersection. It would have a carriageway width of 5.5m and corner radii of 6m.

7. The appellant states that the Highway Authority accepted revised visibility splays of 2.4m ('x' distance[1]) x 85m ('y' distance[2]) in both directions on the basis of the observed vehicle speeds on Whitchurch Road. The originating planning application was recommended for approval by the planning officers. However, the Members of the Council disagreed with this conclusion.

8. The appellant has based his 'y' distance on the recommended visibility distances in Manual for Streets (MFS). However, the Council considers that Design Manual for Roads and Bridges (DMRB) is more relevant. I note that the appellant has referred to lengthy discussions between their highway specialists and the Highway Authority. Other than copies of several emails, I have not been provided with full details of these discussions or any revised calculations. The appellant's Transport Statement provides calculations confirming a Sight Stopping Distance (SSD)[3] of 67.94m such that 85m would be an acceptable visibility distance.

9. Therefore, I will need to assess the appeal on the basis of the evidence before me, the observations on site and the documents to which I have been referred. I have been referred to several advisory documents: MFS, Manual for Streets 2 (MFS2) and DMRB. These are material considerations.

MFS

10. MFS focuses on lightly traffic residential streets. MFS goes on to define streets in paragraph 1.1.7. It states that a street is defined as a highway that has important public realm functions beyond movement of traffic. It goes on to say that most critically streets should have a sense of place, which means local distinctiveness and sensitivity in design. They also provide direct access to the buildings and spaces that line them. Most highways in built up areas can therefore be defined as streets. MFS also states that many of its key principles may be applicable to other types of streets including lightly trafficked lanes in rural areas.

11. The applicability of advice derived from the principles of MFS, such as SSD, depends on local context. The appellant defines Whitchurch Road as a primary route to the town of Nantwich to the north and to the town of Whitchurch to the south. It is a major rural road in the open countryside. Based on my site visit and the evidence before me, I do not consider that Whitchurch Road, in the vicinity of the appeal site, is a street in a built up area. Moreover, I do not consider it to be classed as lightly-trafficked. On this basis, I consider that the guidance in MFS does apply to the appeal before me and because it does not have a public realm function beyond the movement of traffic.

MFS2

12. MFS2 builds on the guidance in MFS and its principles can be applied to busier streets and non-trunk roads in all areas. It is intended to bridge the gap

[1] X distance is the distance back along the minor arm from which visibility is measured.
[2] Y distance represents the distance that a driver about to exit the minor arm can see left or right along the main alignment.
[3] SSD is the distance drivers need to be able to see ahead and they can stop within a given speed. It is calculated from the speed of the vehicle, the time required for a driver to identify a hazard and then begin to brake, and the vehicles rate of deceleration. For existing streets the 85th percentile of wet weather speed is used.

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between MFS and DMRB. DMRB is the design standard for trunk roads (and motorways) in England, Scotland, Wales and Northern Ireland.

13. MFS2 provides recommended values for 'x' and 'y' distances at priority controlled junctions. The SSD of traffic determines the necessary visibility distances (y distance). The appellant has undertaken a speed survey as part of the Automated Traffic Count (ATC) to provide 85th percentile speeds of traffic. These were taken from two locations on Whitchurch Road close to the proposed junction. The information indicates dry weather speeds of around 41.2mph (northbound vehicles) and 40.8mph (southbound vehicles) on Whitchurch Road in the vicinity of the proposed access. I note that both of these 85th percentile dry weather speeds exceed the speed limit of 40mph and that 15% of traffic was recorded as traveling in excess of these speeds. I also note that this speed limit was lowered to 40mph in 2013 to improve highway safety.

14. Although full details of the appellant's calculations have not been provided, the appellant states that the 85th percentile (dry weather) of 41mph should be used and that the driver perception time-reaction time used should be taken from Table 7.1 of MFS[4]. The appellant has produced a SSD result of 67.94m for both northbound and southbound vehicles. However, the figures used to calculate in Table 7.1 are based on lower perception reaction times and deceleration times than is recommended for speeds that exceed 60kph (37mph).

15. MFS2 guidance relates to SSD for streets where the 85th percentile speeds are both below and above 60kph (37mph). The relevant factor here is that the 85th percentile speeds on Whitchurch Road have been recorded to be in excess 60kph. The visibility calculation in this appeal should be based on Table 10.1 of MFS2 where all vehicles on roads with speeds above 60kph should be calculated using a 2-second reaction time and either a deceleration rate of 0.375g (Absolute Minimum SSD) or 0.25g (Desirable Minimum SSD).

16. MfS2 estimates SSD on the basis of factors appropriate for cars and other light vehicles but advises the alternative of a lower deceleration rate for all vehicles travelling in excess of 60kph and lower still for HGVs and buses, because they decelerate more gradually than light vehicles. MfS2 suggests[4] that HGV/bus deceleration checks should not be necessary where the combined proportion of HGV and bus traffic is less than 5% of traffic flow, subject to consideration of local circumstances. MFS2 includes the basic formula for calculating SSD.

17. Although the appellant has provided figures for the 85% percentile dry weather speed, the appellant has not referred to the percentage of HGV's or buses in the ATC statistics recorded in the vicinity of the proposed access. Moreover, the relevant speed in this case is above 60kph, I consider that the appellant has not taken into account the relevant figures in the SSD calculations, such as the reaction time of 2 seconds or the relevant deceleration rates dependant on the presence of HGV's/buses. To my mind the submitted calculations are flawed. Therefore, I accord little weight to the calculations, the suggested SSD and the recommended visibility figure in the Transport Document submitted by the appellant.

18. I realise that the calculation uses dry weather recordings. I also acknowledge that the appellant refers to a recent planning permission on Whitchurch Road in

[4] I have stated that this document does not apply to the appeal scheme.

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Aston for 33 dwellings (Elan case Ref: APP/R0660/W/14/3001328)). The appellant indicates that a blanket reduction of 2.5mph was taken away from the dry weather 85th percentile speeds for the Elan case to arrive at a wet weather figure. If this reduction was applied to the appeal before me, the appellant contends that it would reduce the speeds to below 40mph. I have not been provided with full details of the Elan case or any of the traffic statistics. Additionally, the site is located to the north of the junction of Whitchurch Road/Wrenbury Road where the road conditions including the overall character of the road as well as the road alignment are significantly different to the appeal before me. I am required to determine each case on its own merits in the light of current policy. Notwithstanding these points, if the dry speed results were to be reduced by 2.5mph, the traffic speeds would be below 40mph but they would still be in excess of 60kph and the slower reaction and deceleration times from Table 10.1 of MFS2 would still need to be applied.

19. In the absence of robust data, I cannot conclude that the actual SSD using MFS2 calculations would fall within the proposed 85m visibility splay using either recorded dry weather or adjusted wet weather speeds. On that basis the appellant has not demonstrated that the visibility distances would accord with MFS2.

DMRB

20. I have been referred to DMRB. The introduction of DMRB notes that the manual sets a standard of good practice principally for trunk roads. It may also be applicable in part to other roads with similar characteristics. Where it is used for local road schemes, it is for the local highway authority to decide on the extent to which the documents in the manual are appropriate in any particular situation. DMRB goes on to say that it is further recommended that DMRB is only used when the guidance in MFS is not sufficient or when MFS is not applicable. On the basis that MFS is not applicable in this case and that the guidance in MFS2 is not sufficient in that the appellant has not demonstrated that the SSD, as required by MFS2 falls within the proposed 85m visibility distance, I will assess the proposal in terms of DMRB.

21. DMRB advises an 'x' distance of 9m or in lightly trafficked simple junctions, it can be reduced to 4.5m. Only in exceptionally difficult circumstances should it be reduced to 2.4m. DMRB advises that for roads with a speed limit of 40mph, the 'y' distance should be 120m (desirable minimum) reducing to 90m (one step down)[5] from the minor arm. The measured traffic speed figures submitted lies between 60kph and 70kph. On the basis of DMRB, the proposed 'x' and 'y' distances of 2.4m x 85m in both directions would be substandard. I note the appellant argues that the lower figure of 90m should be used and that this 'one stepdown' figure is appropriate as Whitchurch Road is not a trunk road to which DMRB usually applies. However, the visibility at the appeal site would fall short of the 'one step down' figure of 90m. Therefore, I consider the proposed junction visibility would be substandard and would not comply with DMRB.

22. I note the appellant refers to paragraph 1.3.3 of MFS, which states that when applying DMRB that MFS key principles should be considered and DMRB should be applied in a way that respects local context. I have done this.

[5]Table 7/1 from TD42/95

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23. Given the horizontal alignment of the road, the bend, close to the proposed junction when combined with the fact many of the vehicles in the locality travel around or in excess of the speed limit, it is my view that the proposal would not provide a safe access and would create a highway hazard in this location. This would be detrimental to highway safety.

24. I am aware of the appellant's offer to fund measures to control/reduce speeds. However, I have not been provided with details of this or a mechanism to secure it. Also I note the appellant states that the tendency for drivers to exceed the speed limit along this stretch of Whitchurch Road should be enforced but this is not a planning matter or a matter on which I can comment.

25. I note the appellant states that the impact of the proposed junction would not be severe and refers to paragraph 32 of the National Planning Policy Framework (The Framework). However, the reference to 'severe' relates to highway capacity and congestion in the context of severe residual cumulative impact of the development rather than highway safety[6].

26. The Council has also referred to the width of the proposed footway of some 1.5m being too narrow. The appellant's rebuttal statement refers to a footway width of 1.8m based on Drawing Reference 1488-F01 Revision D. However, Drawing Reference: 1488-F01 Revision E indicates a footway width of some 2m, which is the preferred width. This is the drawing on which the decision was based. On that basis the footway width of 2m is acceptable

Conclusion on the Main Issue

27. The proposed development would not provide a safe and suitable access for road users and those accessing and entering the site. It would adversely affect highway safety. This would be contrary to saved Policies BE.2 and BE.3 of the *Crewe and Nantwich Replacement Local Plan 2011* adopted in 2005 (LP). LP Policy BE.2 states, amongst other things that proposals should provide a layout of roads that increase public safety. Policy BE.3 states that proposals for new development will be permitted provided that the provide safe vehicular access and egress and safe pedestrian access. The proposal would also be contrary to the Framework, which states at paragraph 32 that developments provide safe and suitable access to the site for all people. These policies are consistent with the Framework and as such carry substantial weight in the consideration of this appeal.

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Other Considerations

28. The proposed development of 24 dwellings would be located outside the settlement boundary of Aston. Such housing development would conflict with saved LP Policies NE.2[7] and RES.5[8] and emerging Policies PG2[9] and PG5[10] of the Emerging Cheshire East Local Plan Strategy (CELPS).

[6] See paragraph 29 0f Mayowa-Emmanual v Royal Borough of Greenwich [2015] EWHC 4076
[7] LP Policy NE.2 states that all land outside of the settlement boundaries will be treated as open countryside where development is restricted to specified uses which do not include housing, with an exception of infilling of a gap in a built up frontage.
[8] LP Policy RES.5 restricts new dwellings in open countryside to those that meet the criteria for infilling in Policy NE.2 or for persons engaged in full time agriculture subject to several criteria.
[9] Emerging CELPS Policy PG2 is a settlement hierarchy policy that defines Aston as an 'other settlement and rural area'
[10] Emerging CELPS Policy seeks to restrict residential development within the open countryside to a limited range of purposes rather than protect specific attributes of the countryside.

29. These settlement pattern policies, both LP Policies NE.2 and RES.5 broadly follow the Framework and are broadly consistent with it. Similarly CELPS Policies PG2 and PG5 also follow the thrust of the Framework.

30. However, the appellant and the Council agree that the Council cannot demonstrate a five-year supply of housing land as required by paragraph 47 of the Framework. This paragraph states that particular emphasis should be given to the need to boost significantly the supply of housing. On this basis, both the appellant and the Council state that paragraphs 14 and 49 of the Framework are engaged. I have no reason to disagree with this.

31. Paragraph 14 states that there is a presumption in favour of sustainable development, which should be seen as the golden thread running through both plan-making and decision-taking. In terms of decision-taking this means that where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

32. The Local Authority cannot demonstrate a five- year housing supply. Paragraph 49 of the Framework 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. In this appeal the settlement boundaries are fundamental to delivering housing numbers for the plan period which was up to 2011. LP Policies NE.2 and RES.5 and emerging CELPS Policies PG2 and PG5 are restrictive policies which work together to prevent housing development outside settlement boundaries as defined on the proposals map. Thus these policies can be described as general policies that seek to restrict development in the wider countryside rather than those which seek to protect specific attributes of the countryside. As such these policies can be attributed only limited weight.

33. The important issue in this situation is that there is a shortfall in the 5-year supply of housing land as defined in paragraph 47 of the Framework. Thus, I am required to determine this case in the light of paragraph 14 of the Framework in terms of whether the proposal would represent sustainable development.

34. The appellant also submits that the proposed development would be sustainable. Paragraph 7 of the Framework states that there are three dimensions of sustainable development: economic, social and environmental. It goes on to say that these dimensions give rise to the need for planning system to perform a number of roles. Paragraph 8 states that these roles should not be undertaken in isolation because they are mutually dependant and should be sought jointly and simultaneously through the planning system.

35. In terms of economic sustainability, I acknowledge that it would provide economic benefits including housing as well as employment opportunities during the construction phase.

36. Although, the appeal site is located outside the settlement boundary, it is only a short distance to Wrenbury and it is served by a regular accessible bus service to nearby villages and towns as well as to a train station in Wrenbury, which makes it accessible to other towns. Thus, I consider it would help to support services and facilities in nearby settlements. This would accord with

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paragraph 55 of the Framework as it would promote sustainable development in rural areas and would enhance or maintain the vitality of rural areas on the basis the proposal would bring occupiers that would contribute to the economy in terms of supporting the local services and facilities.

37. In terms of social sustainability it would provide both market housing and some 30% affordable housing. This would contribute towards the undersupply of housing in the plan area to help meet the needs of present and future generations.

38. The appeal proposal would also provide an area of open space and education provision through the submitted a s106 Planning Obligation. In addition, employment would be created in terms of the construction phase of the development as well as increased workforce. The occupiers of the dwellings would contribute to social cohesiveness and would support the community and local shops and services. Therefore, the proposal would provide both economic and social benefits that would accord with the economic and social dimensions of sustainability.

39. In terms of environmental sustainability, the appeal site would result in the loss of greenfield land in the open countryside. I note that it would utilise a parcel of best and most versatile agricultural land in the countryside. However, the appeal site is relatively small. It is located on the edge of a settlement. It does not appear part of the wider landscape as it is enclosed with established trees and hedgerows and is surrounded on 3 sides by residential development. To my mind it does not appear as part of a wider open area of countryside or part of the agricultural landscape. Thus, it would not materially harm the intrinsic character and beauty of the open countryside in accordance with paragraph 17 of the Framework. Nor would it materially change the existing setting of the village in terms of its overall character and appearance. Moreover, the loss of agricultural land would not erode the benefits of the land to agricultural production in the area.

40. With regard to the Agreement under s106, 30% of the dwellings would be affordable housing. This would be consistent with the development plan and would help meet the need for affordable housing within Cheshire east. It would also be consistent with paragraph 50 of the Framework, which seeks to deliver a wide choice of quality homes and create sustainable, inclusive and mixed communities.

41. The provision of an area of public open space and arrangements for its future management is consistent with the development plan and is necessary to meet the recreational needs of future residents. The educational needs are required to meet any secondary education needs residing within the scheme.

42. In each case I am satisfied that the obligations are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to it. They would therefore comply with the tests within the Framework and the Community Infrastructure Levy (CIL) Regulations 122 and 123(3) and I have taken them into account in my decision.

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Overall Planning Balance and Conclusion

43. Paragraph 14 of the Framework states that where the development plan is absent, silent or the relevant policies are out-of-date, permission should be granted for development unless any adverse impacts of doing so would demonstrably outweigh the benefits when assessed against the policies within the Framework as a whole, or specific policies within it suggest that development should be restricted.

44. Although the provision of additional dwellings would meet the criteria for sustainability in the Framework and would deliver a number of benefits, including the provision of affordable and market housing, I have demonstrated above that the proposed development would not provide a safe access for vehicles in terms of visibility for vehicles exiting the appeal site onto Whitchurch Road. This would result in harm. This adverse impact on highway safety would significantly and demonstrably outweigh any benefits when assessed against the saved development plan as a whole. Therefore, the safety of vehicles using the proposed access junction and on Whitchurch Road is the determining factor in this case.

45. For the reason given above the appeal should be dismissed.

Mrs A Fairclough

INSPECTOR

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