

TWC/2014/1080

Land south and west of Tibberton Motor Repairs, Mill Lane, Tibberton, Newport, Shropshire

Outline application for residential development (up to 22 Houses) and construction of a modified vehicular access, with associated highways and drainage infrastructure and other accommodation works with all other matters reserved

APPLICANT

Seabridge Developments Limited, Adrian Seabridge

RECEIVED

02/12/2014

PARISH

Tibberton and Cherrington

WARD

Edgmond and Ercall Magna

OFFICER Vincent Maher

SUPPLEMENTARY REPORT

1. This is an update to the Planning Committee following the announcement that a five years' housing land supply exists for the Borough following the receipt and publication of "Telford and Wrekin Objectively Assessed Need Report" (Peter Brett Associates, March 2015). The consequences of having a five year housing supply are a new material consideration which requires officers to ask the Members to revisit applications which have resolutions to grant subject to signing of a S106 agreement, and to review the original decision in light of the change in the council's housing land supply figure.
2. The application was originally scheduled for re-consideration at the Committee's 22 June 2015 meeting but was deferred following the release of the appeal decision at 12 Tibberton (Council reference TWC/2014/0236) on that day.
3. The Committee's attention is also drawn to the introduction of certain provisions of the Community Infrastructure Levy Regulations 2010 which now restrict the pooling of s106 contributions. Section 106 agreements should seek to refer to specific infrastructure projects in order to help the Council use the restricted number of contributions to best effect.
4. The original report to the Planning Committee is attached to this report as is a copy of the appeal decision.

BACKGROUND

5. The Planning Committee resolved at its meeting of 25 February 2015 to grant outline planning permission for a development of up to 22 houses subject to the developer entering into a s106 legal agreement.

NEW CONSULTATION RESPONSES

6. Officers have consulted the applicant and all other interested parties on the relevance of the Peter Brett Associates report. All new comments received have been summarised below:

Applicant:

- The only reason why the case is being reported to the Committee is to report the relevance of the five year housing land supply. It is not an opportunity to re-run previously considered issues.
- The application must be considered in the context of the NPPF and the Core Strategy. Tibberton is one of three key settlements identified in Policy CS7.
- Policy H10 of the Wrekin Local Plan is of no weight in the light of the more recent Core Strategy.
- The site differs considerably from the 60 dwelling scheme at Tibberton that was subject to a recent appeal (TWC/2014/0236). This proposal is more modest, partly on brownfield land and does not adjoin a listed building. It is not prominent in the wider landscape. It will make a positive contribution by bringing forth economic, social and environmental benefits.
- The absence or presence of a five year housing land supply has no bearing on this application. The Peter Brett Associates report cannot be used unilaterally to redefine the adopted housing supply and it has not been independently scrutinised and tested. It is one of a number of documents that will go before the inspector at the Local Plan Examination in Public. It cannot be attributed any weight in determining this application.
- The inspector at a recent appeal suggested the Council only had 2.54 years' housing supply and therefore para 49 of the NPPF applies and the Council's housing supply development plan policies must be regarded as out of date.
- The scheme has considerable merits and should be supported. It will promote a good sustainable form of development on an appropriate partially brownfield site within a key settlement. It will not create demonstrable harm to interests of acknowledged importance. It accords with the development plan and other material considerations weigh in favour of it.
- The Committee minutes from February 2015 record that the application was considered to comply with relevant national and local planning policies.

Tibberton and Cherrington Parish Council:

- Reiterate their previous strong objection to the proposal.
- Flood information given to the previous meeting of the Planning Committee was based on very limited data. Actual levels could be much higher. The former National Rivers Authority used to do routine maintenance of the River Meese. This seems to have been discontinued by the Environment Agency. This will adversely affect flood levels over time as minor obstructions accumulate. These factors should be borne in mind when the decision on the future of this site is made. Development in the flood plain of a river should be avoided.

Environment Agency (EA)

- Reiterate previous comments (no objection subject to conditions). The EA has also given the following additional advice following the release of the five year housing land supply report.
- The NPPF requires local authorities to steer new development to areas at the lowest probability of flooding by applying a Sequential Test. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Only

where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test.

- The site is partially located within Flood Zone 2 and 3 based on the EA's flood map. Further detailed assessment undertaken to inform the Flood Risk Assessment confirms that all built development, including housing, are located outside the 100 year flood outline plus climate change.
 - Bearing in mind the scale and nature of the proposed development located within Flood Zones 2 and 3, which is considered non-major development in accordance with the Development Management Procedure Order (2010), the EA suggests the developer conduct a Sequential Test and invites the Council to consider this.
7. The EA has subsequently reviewed the Parish Council's comments and an additional report from the developer's agent. They confirm that the housing area is in Zone 1, the area at lowest risk. They have also considered the Parish Council's submissions regarding the maintenance of the River Meese and advise that the modelling carried out by the applicant takes account of existing management arrangements of the river. They have no flood risk or drainage objection to this application.

Local residents

8. Seven residents have written in objecting to the proposal. Three have stated that the five year housing land supply announcement means the development is not needed. One resident wishes to draw the Committee's attention to the fact that the site was not identified on the Proposed Housing and Employment Sites consultation document.
9. Other comments raised have reiterated objections to the proposal in relation to highway impact; the ecological value of the site; flood risk and the difficulties of getting home insurance; safety issues associated with new housing adjoining the River Meese; impacts on listed buildings in the village including the bridge over the River Meese and the parish church.

Other comments

10. The Council's highways, drainage and arboricultural services have responded to the consultation. Comments have also been received from the Shropshire Fire Service and Shropshire Archaeology Service. These do not raise any new matters.

PLANNING CONSIDERATIONS

11. Officers have reviewed the proposal and their advice to the Planning Committee in the light of the five year housing land supply statement and the fresh comments received.
12. The applicant has stated that the Committee should not review previously considered issues. However, the consequences of having a five year housing supply are a new material consideration which requires officers to ask the Members to revisit this application. The Committee is also entitled to review

its original decision in light of the changes and any other material considerations

13. The analysis of the comments received below covers the five year housing land supply position, the other comments received, the appeal decision at 12 Tibberton and the restriction in the pooling of s106 contributions which came into place in April 2015.

Five year housing land supply

14. The context of a lack of a five year housing land supply featured within the Planning Committee report. Specifically, it was identified that an inability to demonstrate 5 year housing land supply meant policies CS1 (Homes) which identify dwelling requirements for Telford, Newport and the rural area, and CS7 (Rural Area) which seek to direct housing into certain locations in line with the strategy, were not considered to be up-to-date. This meant that applications could not be refused on the grounds of housing supply alone and there would be a strong presumption in favour of sustainable development, taking account of paragraph 14 of the NPPF, where applications would be granted unless the adverse impacts of doing so would be significant and demonstrably outweigh the benefits when assessed against the NPPF as a whole.
15. The applicant's contention that the Council's housing supply development plan policies are still out of date and therefore not relevant is not accepted. The Council considers that with a published housing land supply figure and being able to apply its housing supply policies, in accordance with policy CS7, Tibberton remains one of the three key settlements in the rural area where new housing is expected to be focussed. It is therefore pertinent to consider whether a scheme with up to 22 dwellings would be consistent with Policy CS7. This approach was accepted by the Inspector in the 12 Tibberton appeal decision.
16. In the context of CS7 and the NPPF which includes an objective to boost significantly the supply of housing, it is considered that saved Wrekin Local Plan policy H10(a) which involves a restriction on residential development within villages to "one or two dwellings on a suitable infill plot..." no longer presents a defensible position as it is not consistent with Government policy.
17. Policy CS7 has to be read alongside Policy CS1 that the rural area is expected to accommodate 170 new homes. The rural area has exceeded this level of provision since the adoption of the Core Strategy in 2007 and a further development of up to 22 homes would further exceed this development plan target. Moreover, a planning approach that caps new housing numbers is inconsistent with the thrust of the NPPF. This factor on its own does not present sufficient justification for refusal and other factors which are referred to in the original Planning Committee report, which recommended a grant of planning permission, need to be taken into account. Local Plan Policy H10 (b), on the other hand, does have

18. Finally, the Committee is reminded that it has to consider all of its development plan policies in the light of the NPPF. The requirement to boost significantly housing supply remains a material consideration

OTHER MATERIAL CONSIDERATIONS

19. The two other material considerations in this application are the recent appeal decision at 12 Tibberton (TWC/2014/0236), and changes to the law with regard to the pooling of s106 contributions. Each consideration is discussed below.

12 Tibberton appeal

20. The Inspector supported the Planning Committee's decision to refuse outline planning permission for a scheme at the edge of Tibberton of up to 60 homes. The key findings from the Inspector's decision are as follows:
- The Council can demonstrate a five year housing land supply. Our housing supply policies (Core Strategy Policies CS1 and CS7) are not out of date.
 - Local Plan Policies H9 and H10 are not out of date either but they are subservient to the Core Strategy as they are older and not strategic. Neither the Core Strategy nor the Local Plan anticipates unlimited amounts of development in Tibberton. The appeal proposal would conflict in principle with Core Strategy Policy CS7 and Local Plan Policy H10 (b). By way of reminder, this confirms that the Council will permit development where: *"the site does not cause the loss of an important area of open space, nor cause an extension of the village into the open countryside"*
 - The scheme would harm the established form and character of Tibberton and encroach into open countryside contrary to Core Strategy Policy CS 7 and Local Plan Policy H10(b). The inevitable density of the scheme and overly urban form would harm the character and appearance of the area and fail to comply with the urban design objectives of Core Strategy Policy CS 15, Local Plan Policy UD2 and the NPPF.
21. Officers drew the Committee's attention to the differences between 12 Tibberton and the current proposal in February. It is worth stressing the differences again between the two schemes in the light of the Inspector's findings:
- The current proposal is significantly smaller (22 homes as opposed to 60). The inspector at the recent Tibberton appeal confirmed that CS7 should not be interpreted as being read as imposing an absolute policy limit on new housing.
 - The current application site is not as "virgin" an area of open land as 12 Tibberton. Part of it is previously developed land.
 - It does not have the same constraints as 12 Tibberton that would affect its final design and layout (for example, it would not adversely affect the setting of any nearby listed building).

- It does not represent the same level of encroachment into the open countryside. It is not as visually exposed as 12 Tibberton. It is significantly lower than other land to the south. There is a car repair yard to the north and a house to the east.
- Applying Local Plan Policy H10(b) to this site, parts of it have features associated with open countryside (for example, the vegetation associated with the River Meese) but this will be protected from development because it is in a flood plain. However, a good part of the site forms part of the garden of the existing house on the site and the footings of former commercial activity and overall the site can be read as forming part of the containment of the village.
- There is a greater level of information submitted with this application than with the scheme at 12 Tibberton. For example, the plans show how the site can be designed with the actual constraints on this site (for example, proximity to the River Meese and the functional flood plain). The plans will show, in principle, how the developer will be able to comply with Core Strategy Policy CS15 and Local Plan Policy UD2 in the detailed design of the scheme.

Pooling of s106 contributions

22. The original application was presented to the Committee with the following heads of terms:
- The provision of 40% on site affordable housing;
 - A contribution of up to £115,146 towards primary and secondary education;
 - A payment of up to £41,800 for local transport infrastructure;
 - A payment of up to £13,200 towards the enhancement of local play and recreational space locally;
 - A payment of £5,000 for financial management and monitoring of the legal agreement.
23. The Council no longer has the flexibility to pool s106 contributions to the same extent that it could before April 2015. A revised recommendation is set out below which specifies in detail where contributions should be applied. Officers are satisfied that contributions towards these projects are necessary and appropriate having regard to the requirements of the CIL 2010 Regulations.

CONCLUSIONS

24. Officers have carefully reviewed the application afresh against the development plan and all other material considerations. The following conclusions arise:
- The production of a robust five year housing land supply figure statement confirms that the Council can apply CS Policy CS7 Local Plan Policies H9 and H10 again. These policies are not out of date. An inspector at a recent appeal affirmed this
 - While CS7 can be applied to this site, it should not be read as setting a ceiling of new development.

- Local Plan Policy H10 (a) is not consistent with the NPPF's requirement that councils boost significantly the supply of housing.
 - By contrast, Local Plan Policy H10 (b) is still relevant. Assessed against this policy, officers consider on balance that this site cannot be considered as open countryside.
 - Notwithstanding this, when applying the tests of paragraph 14 of the NPPF, the loss of the parts of the site without buildings and which might be interpreted as open countryside are outweighed by the benefits of the scheme.
25. On this basis, officers still recommend the grant of planning permission and subject to the same conditions set out below.

RECOMMENDATIONS

(a) That DELEGATED AUTHORITY be granted to the Development Management Service Delivery Manager to GRANT PLANNING PERMISSION subject to the following:

The applicant entering into a section 106 legal agreement with the Local Planning Authority (terms to be agreed by the Development Management Service Delivery Manager) relation to:

- The provision of 40% on site affordable housing;
- A contribution of £5,233.91 per dwelling towards an extension of Tibberton Primary School and sports facilities provision at Burton Borough Secondary school (up to a total of £115,146);
- A payment of £250 per dwelling as a contribution towards a traffic and speed management scheme on the B5062 within the vicinity of Back Lane/B5062 Junction (up to a total of £5,500) ;
- A payment of £1650 per dwelling towards a highway safety improvement scheme on the B5062 and Cherrington Road junction (up to a total of £36,300);
- A payment of up to £600 per dwelling to be applied towards off site play and recreation at Tibberton Playing Fields (up to a total of £13,200);
- A payment of £5,000 for financial management and monitoring of the legal agreement.

(b) and the following conditions to be attached:

1. A01 Time limit outline
2. A02 Time limit – reserved matters
3. A03 Time limit – submission of reserved matters
4. B002 Standard outline some matters reserved (delete access).
5. B011 Samples of materials
6. B039 Visibility splay 2.4m x 43m
7. B042 Parking and turning
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11. B083 Noise attenuation from nearby workshop
12. B121 Landscaping
13. B130 Tree root protection
14. B145 Lighting plan
15. B149 Custom ecology – bird boxes
16. B150 Site Environmental Management Plan
17. B159 Custom archaeology
18. B Custom 1 Finished floor levels set no lower than 58.7m AOD
19. B Custom 2 No new structures or raising of ground levels on land below 58.1m AOD or within 8 metres of the River Meese or boundary of the site.
20. B Custom 3 Foul/ surface water drainage
21. B Custom 4 Access to attenuation and control features outside flood envelope for maintenance and inspection
22. C038 In accordance with deposited plans

Informatives:

I106 – Section 106 agreements

I32 – Fire Authority

ICustom – Ecology informatives (nesting birds, storage of materials, trenches)

ICustom – Environment Agency (proximity to River Meese, flooding from Knighton Reservoir, foul drainage, surface water drainage, pollution prevention)

I40 – Conditions

I41 – Reason for grant of permission

RANPPF - Approval – National Planning Policy Framework

1. This is an update to the Planning Committee following the announcement that a five years' housing land supply exists for the Borough following the receipt and publication of "Telford and Wrekin Objectively Assessed Need Report" (Peter Brett Associates, March 2015). The consequences of having a five year housing supply are a new material consideration which requires officers to ask the Members to revisit applications which have resolutions to grant subject to signing of a S106 agreement, and to review the original decision in light of the change in the council's housing land supply figure.
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Tibberton and Cherrington Parish Council:

- Reiterate their previous strong objection to the proposal.
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future of this site is made. Development in the flood plain of a river should be avoided.

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The EA has also given the following additional advice following the release of the five year housing land supply report.

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Other comments

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21. Officers drew the Committee's attention to the differences between 12 Tibberton and the current proposal in February. It is worth stressing the differences again between the two schemes in the light of the Inspector's findings:

- The current proposal is significantly smaller (22 homes as opposed to 60). The inspector at the recent Tibberton appeal confirmed that CS7 should not be interpreted as being read as imposing an absolute policy limit on new housing.
- The current application site is not as "virgin" an area of open land as 12 Tibberton. Part of it is previously developed land.

- It does not have the same constraints as 12 Tibberton that would affect its final design and layout (for example, it would not adversely affect the setting of any nearby listed building).
- It does not represent the same level of encroachment into the open countryside. It is not as visually exposed as 12 Tibberton. It is significantly lower than other land to the south. There is a car repair yard to the north and a house to the east.
- Applying Local Plan Policy H10(b) to this site, parts of it have features associated with open countryside (for example, the vegetation associated with the River Meese) but this will be protected from development because it is in a flood plain. However, a good part of the site forms part of the garden of the existing house on the site and the footings of former commercial activity and overall the site can be read as forming part of the containment of the village.
- There is a greater level of information submitted with this application than with the scheme at 12 Tibberton. For example, the plans show how the site can be designed with the actual constraints on this site (for example, proximity to the River Meese and the functional flood plain). The plans will show, in principle, how the developer will be able to comply with Core Strategy Policy CS15 and Local Plan Policy UD2 in the detailed design of the scheme.

Pooling of s106 contributions

25. The original application was presented to the Committee with the following heads of terms:

- The provision of 40% on site affordable housing;
- A contribution of up to £115,146 towards primary and secondary education;
- A payment of up to £41,800 for local transport infrastructure;
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26. The Council no longer has the flexibility to pool s106 contributions to the same extent that it could before April 2015. A revised recommendation is set out below which specifies in detail where contributions should be applied. Officers are satisfied that contributions towards these projects are necessary and appropriate having regard to the requirements of the CIL 2010 Regulations.

CONCLUSIONS

27. Officers have carefully reviewed the application afresh against the development plan and all other material considerations. The following conclusions arise:

- The production of a robust five year housing land supply figure statement confirms that the Council can apply CS Policy CS7 Local Plan Policies H9 and H10 again. These policies are not out of date. An inspector at a recent appeal affirmed this
- While CS7 can be applied to this site, it should not be read as setting a ceiling of new development.

- Local Plan Policy H10 (a) is not consistent with the NPPF's requirement that councils boost significantly the supply of housing.
- By contrast, Local Plan Policy H10 (b) is still relevant. Assessed against this policy, officers consider on balance that this site cannot be considered as open countryside.
- Notwithstanding this, when applying the tests of paragraph 14 of the NPPF, the loss of the parts of the site without buildings and which might be interpreted as open countryside are outweighed by the benefits of the scheme.

28. On this basis, officers still recommend the grant of planning permission and subject to the same conditions set out below.

29. RECOMMENDATIONS

(a) That DELEGATED AUTHORITY be granted to the Development Management Service Delivery Manager to GRANT PLANNING PERMISSION subject to the following:

The applicant entering into a section 106 legal agreement with the Local Planning Authority (terms to be agreed by the Development Management Service Delivery Manager) relation to:

- The provision of 40% on site affordable housing;
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(b) and the following conditions to be attached:

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2. A02 Time limit – reserved matters
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4. B002 Standard outline some matters reserved (delete access).
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13. B130 Tree root protection
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19. B Custom 2 No new structures or raising of ground levels on land below 58.1m AOD or within 8 metres of the River Meese or boundary of the site.
20. B Custom 3 Foul/ surface water drainage
21. B Custom 4 Access to attenuation and control features outside flood envelope for maintenance and inspection
22. C038 In accordance with deposited plans

Informatives:

I106 – Section 106 agreements

I32 – Fire Authority

ICustom – Ecology informatives (nesting birds, storage of materials, trenches)

ICustom – Environment Agency (proximity to River Meese, flooding from Knighton Reservoir, foul drainage, surface water drainage, pollution prevention)

I40 – Conditions

I41 – Reason for grant of permission

RANPPF - Approval – National Planning Policy Framework