The Planning Inspectorate

# Appeal Decision

Site visit made on 31 July 2018

**by Paul Singleton BSc (Hons) MA MRTPI**

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

**Decision date: 21 August 2018**

**Appeal Ref: APP/B4215/W/18/3196113**
**Land off Cringle Road, Levenshulme, Manchester M19 2RW**

- 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 Towerhouse Systems Ltd against the decision of Manchester City Council.
- The application Ref 116474/OO/2017, dated 26 May 2017, was refused by notice dated 25 August 2017.
- The development proposed is erection of up to 57 dwellings, provision of a vehicular access off Cringle Road, creation of new footpath links and connection to adjoining network, car parking, ancillary greenspace, landscaping and other associated works including surface water drainage attenuation.

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The Council's decision notice uses a different description of development to that in the planning application. As the appellant has not agreed an amended wording, I have adopted the description as it appears in the application.

3. The proposal is in outline form with all detailed matters, other than means of access, reserved for subsequent approval. I have considered the appeal on this basis and have treated the site layout drawing as being indicative only at this stage.

4. In July 2018 the Government published a revised version of the National Planning Policy Framework (Framework) which has replaced and superseded that issued in 2012. As the new Framework was published after the written statements had been submitted, the main parties were given the opportunity to comment on what bearing if any, policies in the revised Framework have on the matters before me. I have taken the comments received into account in my consideration of the appeal.

5. Reference is made in both appeal statements to the possibility of the appellant entering into a planning obligation in relation to the improvement of public greenspace within the local area but no Unilateral Undertaking or Legal Agreement has been submitted. In response to my request for clarification on this matter the appellant submitted draft Heads of Terms for a possible form of legal agreement but the Council advises that these have not been discussed between the parties. I deal with these matters later in my decision.

## Main Issues

6. The main issues are: (a) whether the proposal would conflict with the development plan policies with regard to the protection of open and recreational land; and (b) the effects on the landscape and visual amenity of the site and surrounding area.

## Reasons

*Presumption in favour of sustainable development*

7. The Council is unable to demonstrate a 5 year forward housing land supply as required by paragraph 73 of the Framework.

8. Paragraph 11 of the Framework states that planning decisions should apply a presumption in favour of sustainable development. Sub-paragraph (d) sets out the approach to be taken where the policies which are the most important for determining the application (or appeal) are out-of-date. Footnote 7[1] advises that, for applications for the provision of housing, the lack of a 5 year supply renders those policies out-of-date.

9. Paragraph 11 (d) states that, in these circumstances, planning permission should be granted unless:

   i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

   ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

10. The appeal site does not include land which is subject to any of the designations listed in Footnote 6. The appeal, therefore, falls to be considered with regard to sub paragraph ii above and the tilted balance in favour of a grant of permission.

*Land use*

11. There is some disagreement as to the use of the appeal site. From the written evidence and the observations made on my site visit I consider that it can reasonably be described as having a mixed use comprising two main elements. The larger part of the site is primarily used for the stabling, grazing and exercising of horses. Some riding tuition appears to take place in the exercise area but this seems to be limited in scope and ancillary to the primary stabling and grazing activities. The balance of the land is used for caring for a range of small animals with this use being operated as a small 'community farm'.

12. Both in its scale and nature, the community farm is clearly a secondary activity for the site operator and might possibly be described as a 'hobby' farm. It provides an environment in which children and other visitors can see, handle and feed the animals. This is evidenced by the presence of a reception counter, the sale of animal feed and refreshments, the provision of picnic tables, play areas, and information about the animals. However, the limited opening hours and low admission prices strongly suggest that the farm is not

[1] Until such time as the Housing Delivery Test comes into effect.

run as a leisure or visitor attraction on a commercial basis. Despite the limited opening hours the farm appears to be popular with people in the local area.

13. I consider that the farm provides some limited opportunities for informal recreation but is primarily an agricultural use. Grazing of animals is also an agricultural use but the keeping and exercising of horses does not usually fall into that use class. That categorisation is not, however, determinative in relation to the issues in the appeal. The stables, pens and other buildings are sited in the southern portion of the site fronting onto Cringle Road and the balance of the site is largely open land.

*Planning policy*

14. Saved Policy LL3 of the Manchester Unitary Development Plan 2005 (UDP) states that the Council will "*protect from development and improve the major area of open land on the boundary with Stockport*". The appeal site is included in the area of land to which this policy applies. The loss of the land to housing development would, therefore, conflict with Policy LL3.

15. Policy EN10 of the Manchester Core Strategy (2012) (CS) seeks to retain and improve existing open spaces, sports and recreational facilities and states that proposals on an existing open space, sports or recreational facility will only be permitted in a limited range of circumstances. The grazing land that forms the larger part of the site is not accessible to the public and has no use or value as open space or recreational land. The community farm is open to the public for a nominal fee and there is limited public access, again on a fee paying basis, to the exercise area for riding tuition. These elements of the mixed use provide opportunities for recreation but, in view of the limited extent of those opportunities, I do not consider that the site should properly be regarded as a recreational facility for the purposes of Policy EN10.

16. Policies LL3 and EN10 are the most important policies for the determination of the appeal and, having regard to Footnote 7 of the Framework, are to be treated as being out-of-date due to the Council's inability to demonstrate a 5 year housing land supply. The weight to be given to the policies is, however, a matter for the decision maker.

17. Paragraph 96 of the Framework states that planning policies should be based on robust and up-to-date assessments of the need for open space and other recreational provision. Given its age, the Council's City Wide Open Spaces, Sport and Recreation Study of August 2009 (2009 Study) is not fully up-to-date but is material to how CS Policy EN10 should be applied.

18. It is pertinent that the appeal site is not identified either as an area of open space or a recreational facility in the 2009 Study which was produced as part of the Core Strategy evidence base. Paragraph 2.38 states that the omission of a site does not necessarily mean that it is not considered to be green space and that the policies relating to green space are not applicable. However, the 2009 Study sought to undertake a full audit of existing open space, sports and recreational facilities within the City as required by the relevant national guidance at that time.[2] It seems highly likely that the land use designations in the UDP formed one of the main inputs into that audit.

[2] Planning Policy Guidance Note 17 which was superseded by the Framework in March 2012.

19. The remainder of the land designated under LL3 is identified in the 2009 Study as an area of open space but the appeal site is not. It is reasonable to conclude that those undertaking the audit considered that the appeal site does not include any open space warranting such designation, notwithstanding its limited use for riding tuition. The Council has given weight to the 2009 Study in determining other applications and some significance can, therefore, be attached to that outcome of that audit. Given that the stated purpose of Policy LL3 is to "*protect valuable open space*", the decision not to designate the appeal site as open space in the 2009 Study leads me to conclude that only limited weight should be given to the conflict with that policy.

20. The community farm was in operation in 2009 and those undertaking the audit would likely have been aware of its existence. As the 2009 Study's definition of the '*Allotments*' typology can include urban farms (page 13) it would have been possible to identify the community farm as a recreational facility but this was not done. Given that its site formed part of the Policy LL3 open land allocation it seems likely that there was a positive decision not to designate it either as open space or a recreational facility. This supports my conclusion that the community farm should not be regarded as a recreational facility and that the redevelopment of the site does not give rise to any conflict with Policy EN10.

21. I note the Council's reference to paragraph 97 of the Framework. However, the very limited recreational activity that I have identified does not, in my judgement, mean that the site should be classified as recreational land or buildings which are subject to this level of protection. The decision taken, when carrying out the 2009 Study, not to designate any part of the site as open space or recreational land supports that conclusion.

22. The Council's decision notice asserts conflict with Core Strategy Policy SP1. SP1 is a strategic spatial policy and I do not consider that there would be any direct conflict with it.

*Landscape and visual effects*

23. The Landscape and Visual Assessment (LVIA) identifies a local character area (LCA) comprising the appeal site and the grazing land immediately to the east which it classifies as 'Urban Farmland'. This reasonably reflects the use of that land and its landscape features. The site is contained in landscape and visual terms by built settlement to the south and a substantial belt of mature trees and vegetation to its western and northern boundaries. This acts as a visual barrier between the appeal site and the adjacent Country Park. In my assessment, the appeal site makes no meaningful contribution to the landscape character of the Country Park, which is defined in the LVIA as comprising a separate 'Parkland/Recreation' LCA.

24. As an area of rough grazing including an assortment of basic and largely low quality buildings and structures, the landscape quality and value of the site is fairly described in the LVIA as poor-ordinary. I agree that it would have a low to medium landscape susceptibility and sensitivity. The development of this largely open land with new housing and associated infrastructure would represent a substantial change to the landscape but the effects of that change would be very localised. With appropriate mitigation planting to the site boundaries and within the proposed development, the effect on the local landscape would be softened over time. Due to the containment of the site, its proximity to the existing settlement, and its distinct character the proposal

would not affect the adjacent Parkland/Recreation LCA and would have no adverse impact on the landscape character of the surrounding area.

25. Because of its landscape and visual containment there are no long distance views of the site and only a small number of local viewpoints from which it can be seen. From the public footpath and cycle route that abuts its eastern boundary (Nelstrop Road) there are clear views into and across the site through a series of gaps in the boundary hedge. From here, the development would have a high level of visibility but would be seen in the context of the roofscape of existing dwellings on Cringle Road. The development would represent a substantial change in what pedestrians and cyclists see and, as they are likely to be using the route primarily for recreational purposes, they would have a high sensitivity to change. The impact on those receptors would be substantial in the short term but would be reduced to moderate-substantial as new boundary planting becomes established.

26. Occupiers of some houses to the east of Nelstrop Road would have views of the development but these would mainly be from upper floor windows and across the intervening grazing land. Given the separation distances that would be achieved and the orientation of those houses, I consider that the susceptibility of those receptors would be medium-low and that the scale of change would be moderate. Houses to the south and south east of the site would have mainly oblique views of the development. Many of these views would be filtered by new and proposed vegetation. The residents of properties with more open views would experience a substantial change in those views, resulting in a moderate-substantial impact on those receptors.

27. The removal of part of the existing vegetation to the front boundary for the proposed site access would open up direct views of the development for users of Cringle Road. The proposal would introduce built development on the north side of the road where none currently exists and this change would be substantial. However, the development would be experienced in the context of the extensive area of development to the south and would not be incongruous in that context. The visual effect would be softened over time as new planting within the site becomes established and would be restricted to a relatively short section of the road. There would be no detriment to views into the Country Park; nor would public perception of the extent of open land within the Country Park be affected by the proposal.

28. Taking these considerations into account the proposal would cause minimal harm to the landscape of the site and no harm to the landscape character of the wider area. The effect on views from a small number of viewpoints would be moderate or substantial but these would be localised and the overall harm to the visual amenity of the area would be moderate. Given the absence of any harm to landscape character and the localised visual effects, the proposal would cause no detriment to the Southern Character Area identified in Core Strategy Policy EN1 and would not give rise to any conflict with that policy.

29. Detailed design matters are not before me. However, there is nothing in the evidence to suggest that an appropriate layout and design, which is sympathetic to and in keeping with other residential development in the area, could not be achieved. I have no reason to conclude that the proposal conflicts with Core Strategy Policy DM1, which seeks that all development should be of acceptable and appropriate design, or with the core development principles in

Policy SP1. I find no conflict with the Framework in respect of the landscape and visual effects of the proposal.

30. Reason 2 alleges conflict with Core Strategy H1 but I am unclear as to the basis of that assertion. The provision of up to 57 new homes would help meet the SO3 Objective of achieving a significant increase in high quality housing in sustainable locations and the targets for new housing provision both in the City as a whole and in the South Manchester sub area. I see no conflict with the criteria under the various bullet points within the policy and find that the proposal complies with and derives support from Policy H1.

**Other Matters**

31. Concerns have been raised about the effect on the local highway network. The appellant's transport assessment has been reviewed by the Council's highways services officers who have concluded that the additional traffic movements can safely be accommodated on the network. I have no technical evidence that challenges that conclusion. The Flood Risk Management team have deemed the proposal acceptable subject to appropriate planning conditions with regard to surface water drainage. No protected species were found in the site assessment and an appropriate range of ecological mitigation measures could be secured through planning conditions.

32. There is no public access to the majority of the site and the proposal would not lead to any loss of public open space or affect public access to the Country Park. Matters relating to design and detailed layout are not for determination as part of the appeal and would need to be considered by the Council as part of a future reserved matters application.

**Planning Obligation**

33. In view of my finding that the proposal would not result in the loss of any public open space there is no requirement for any mitigation of such loss. The Council suggests the need for a financial contribution towards the improvement of local public greenspace. The appellant has indicated a willingness to make such a contribution and has submitted draft Heads of Terms for a S106 Agreement or Unilateral Undertaking which could secure that contribution.

34. That note states that the contribution is offered on a voluntary basis but both the appeal and planning statements appear to accept that some contribution to the improvement of the Country Park is necessary because the development would result in additional use of that greenspace. They also set out the view that a planning obligation to secure such a contribution would meet the relevant tests in the Community Infrastructure Regulations 2010 (as amended) and the Framework. Paragraph 56 of the Framework states that planning obligations should only be sought where they meet all of the following tests:

    a) necessary to make the development acceptable in planning terms;

    b) directly related to the development;

    c) fairly and reasonably related in scale and kind to the development.

35. The 2009 Study designates the Country Park as an area of Natural and Semi-Natural Open Space. Table 16.5 records a significant shortfall of such space in South Manchester with the majority of residents in the eastern part of the area,

including Levenshulme, unable to access such facilities. Although the overall quality score of such spaces compared favourably with other parts of the City, six sites scored below 70% and only one achieved a quality score within the top quartile level. The Study recommended that focus be placed on enhancing the quality of natural and semi natural open space in South Manchester.

36. The Planning Statement confirms that the Country Park is in need of improvement and includes photographic evidence of a range of problems including poor signage and route marking, litter and inadequate seating. The Statement also confirms the intention that the footpath network should provide residents of the proposed development with direct access to the Country Park and its leisure and recreational benefits.

37. The provision of up to 57 new family homes on the boundary of the Country Park would lead to a large number of additional visits to that facility on a frequent basis and put pressure on facilities within the Park. Without improvement or upgrading of those facilities that increased usage would result in the deterioration of the Country Park to the detriment of other users. The making of some financial contribution to the improvement/upgrading of those facilities is, therefore, necessary to render the proposal acceptable in planning terms and is directly related to the development.

38. I see no reason in principle why agreement should not be reached between the parties on a level of financial contribution which would be fairly related in scale and kind to the development. However, the £57,500 contribution suggested in the draft Heads of Terms has neither been discussed nor agreed by the Council. Hence, I have insufficient information to form any conclusion as to whether it would meet the third test set out in the Framework.

39. The parties have suggested the possibility of a planning condition which would require the appellant to enter into a legally binding agreement to provide an agreed contribution prior to commencing development. I do not consider that this would be appropriate. Planning Practice Guidance (PPG) states that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation.

40. PPG does provide for the use of a negatively worded condition requiring a planning obligation in exceptional circumstances; for example in respect of a more complex and strategically important development where delivery of the development would otherwise be at serious risk. It goes on to advise that, in those circumstances, heads of terms need to be agreed in advance. The appeal proposal does not constitute a complex or strategic development and there has been no discussion or agreement of the Heads of Terms. The exceptional circumstances required for this option to be adopted do not, therefore, apply.

41. In the absence of a signed agreement or undertaking the financial contribution needed to offset the adverse effects of the proposal on the Country Park cannot be secured. A grant of planning permission without the necessary planning obligations in place would result in significant harm to the Country Park through additional use of that area and the consequential pressure on facilities that are already in need of improvement. This would result in a conflict with CS Policy EN10, as the proposal would not safeguard the existing green space within the Country Park, and with EN9 which states that development will be

expected to maintain existing green infrastructure in terms of quantity and quality.

**Conditions**

42. I have reviewed the Council's draft conditions and the appellant's comments on these. I am satisfied that an appropriate set of conditions would deal satisfactorily with the various matters raised by statutory consultees and ensure an appropriate standard of development, having regard to the outline form of the application.

**The Planning Balance**

43. The proposal would provide up to 57 new family homes in a range of sizes to meet varying needs on a site which is well located in relation to local services and facilities. In light of the Council's inability to demonstrate a 5 year supply of housing sites, and the appellant's evidence that there has been considerable under-delivery against the development plan housing targets over the past few years, this provision is a social benefit of substantial weight.

44. The investment and employment generated by the construction works would be positive economic benefits of the proposal and the development would have the potential to increase consumer expenditure by some £1.2m each year. There can be no guarantee that all of the construction workers would live locally or that all of the additional consumer expenditure would be spent with local businesses but these are important economic benefits to which I attach significant weight. Additional planting would be carried out but this would be required mainly to minimise the visual and landscape effects of the development. I do not regard this as an environmental benefit.

45. Some harm would result from the loss of the limited recreational opportunities provided by the community farm and riding tuition. However, in the absence of evidence of the level of need for such facilities in the area, only limited weight can be given to that harm. I have also identified limited harm to the landscape of the site and moderate harm to the visual amenity of the area immediately adjoining the appeal site.

46. In isolation, these adverse impacts would not outweigh the benefits of the proposal. However, in the absence of any firm means of securing the necessary planning obligation, regard must also be had to the significant harm to the Country Park. When this is taken into account, the adverse impacts of granting permission would, in my view, significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. For this reason I conclude that the tilted balance in favour of a grant of planning permission does not apply in this case.

**Conclusions**

47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications and appeals should be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

48. The proposal complies with CS Policy H1. However, it conflicts with Policies EN9 and EN10 as a result of the harm to the Country Park and with UDP Policy LL3. Although I attach only limited weight to the conflict with Policy LL3 I find

that the proposal would conflict with the development plan as a whole. It would also cause limited harm through the loss of existing recreational opportunities, limited harm to the landscape of the site and moderate harm to the visual amenity of the area immediately adjoining the appeal site.

49. The significant harm that would be caused to the Country Park, through the absence of a signed undertaking or agreement, must also be added into the balance. It is for this reason that I find that the benefits of the proposal would neither outweigh the harm that would be caused nor justify a decision other than in accordance with the provisions of the development plan.

50. Accordingly I conclude that the appeal should fail.

*Paul Singleton*

INSPECTOR