



Committee and Date
North Planning Committee
7th July 2015

Item
9
Public

ADDENDUM TO PREVIOUS OFFICER REPORTS – Re: Affordable Housing and the SAMDev Plan Main Modifications

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Summary of Application

<u>Application Number:</u> 13/04868/OUT	<u>Parish:</u>	Cockshutt
<u>Proposal:</u> Outline application for the erection of five dwellings and formation of vehicular access (all matters reserved)		
<u>SSSite Address:</u> Development Land East Of Shrewsbury Road, Cockshutt, Shropshire		
<u>Applicant:</u> Mrs W Crabb		
<u>Case Officer:</u> Jane Preece	<u>email:</u> planningdmne@shropshire.gov.uk	

1.0 Background

- 1.1 On the 1st July 2014 it was resolved by Northern Planning Committee to grant outline planning permission for the erection of five dwellings and formation of vehicular access at the above site, subject to conditions and to the signing and completion of a Section 106 Legal Agreement to secure the affordable housing financial contribution in line with Core Strategy policy CS11 and the Councils' adopted SPD on the 'Type and Affordability of Housing'.
- 1.2 As an outstanding application subject to a S106 resolution the application was referred back to the Committee on 1st October 2014 having regard to the Council's published 5 years housing supply Land Supply Statement of 12th August 2014. Having reconsidered that 5 year land supply issue the resolution of the committee remained one to grant outline planning permission, subject to conditions and the prior completion of a S106 agreement to secure the affordable housing contribution.
- 1.3 In November 2014 there was a change in policy guidance at a national level with the issue of the Written Ministerial Statement (WMS) regarding affordable housing contributions. The WMS stated that affordable housing contributions should not be sought for sites of 10 dwellings and under and under 1000m², with lower thresholds for sites in AONBs and designated rural areas. Given the impact this would have on the level of affordable housing contributions in Shropshire the

Council considered its position with regard to the WMS. In the meantime the application was effectively on hold. Following on from the Cabinet decision of 21st January 2015, the Council's position on the WMS to continue to give full weight to this Council's policies on affordable housing, was published on 30th January 2015. In light of the WMS and the Cabinet decision Members of the North Planning Committee resolved to delegate authority to planning officers to review and determine this planning application at their meeting of 17th March 2015. Notwithstanding the WMS, officers maintained the resolution that planning permission be granted only subject to the satisfactory completion of a legal agreement to secure the provision of affordable housing in accordance with the terms of local policy. With the agreement of the applicant, the processing of the S106 was therefore reactivated.

1.4 Since that time there have been further developments with the affordable housing contributions issue, together with advances with the Site Allocations and Management of Development (SAMDev) Plan. The matters are discussed below.

2.0 **Affordable Housing**

2.1 Core Strategy Policy CS11 requires all open market residential development to contribute to the provision of affordable housing. If this development is considered to be acceptable then in accordance with the adopted Policy any consent would need to be subject to a Section 106 Agreement requiring an affordable housing contribution. The contribution will need to accord with the requirements of the SPD Type and Affordability of Housing and will be set at the prevailing percentage target rate at the date of a full application or the Reserved Matters application.

2.2 Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In respect of S106 agreements and affordable housing contributions officers acknowledge the following as material considerations in determining this planning application:

- a) The Written Ministerial Statement (WMS) issued in November 2014 and amendments to the National Planning Practice Guidance (NPPG) which set out a threshold below which affordable housing contributions should not be sought (ie 10 dwellings or less);
- b) A recent appeal decision (APP/L3245/A/14/2218662 - Vashlyn, Kelsalls Lane, Copthorne, Shrewsbury, Shropshire, which commented on the Councils' affordable housing contribution position. The Inspector was of the opinion that the WMS provides more up to date national policy and effectively supersedes Policy CS11 of the development plan.

2.3 However, in response to a) and following a subsequent decision by the Cabinet of the Council in January, the Council continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites – (please see the public statement attached as appendix A).

2.4 In response to b) Shropshire Council published a further statement confirming its position in May. A copy of that public statement is also attached as appendix B.

- 2.5 A resolution to grant planning permission, subject to the prior completion of a S106 agreement to secure the affordable housing contribution consistent with CS11 and the Housing SPD was originally reached on 1st July 2014. Whilst the applicant was agreeable to proceed with the signing of a S106 to secure planning permission, the processing of the S106 has been held in abeyance pending a review of the Councils' position as outlined in a) and b) above. Since the issue of the Public Statement in May the S106 has now been signed and the application can progress for approval.
- 2.6 Although the applicant has signed the S106 considered necessary by Shropshire Council, for completeness officers set out below changes in material considerations which affect the current application in light of the Vashlyn appeal decision, including the following clarification:
- The Vashlyn decision is a material planning consideration but it was taken without full consideration of arguments and evidence with regard to the impact of the WMS on the provision of affordable housing in Shropshire, and the Council is seeking to make those arguments in another case before an Inspector on 1 July as a test case, the outcome of which will then become material.
 - The Councils' policy is linked to an adopted core strategy policy (CS11) based on evidence presented to an independent Planning Inspector and tested through an examination process.
 - The policy has been applied and in place since 2012 and there is no compelling evidence to suggest that its application is adversely affecting the delivery of smaller sites.
 - The policy was developed in conjunction with a developer panel to determine a dynamic viability rate relevant to Shropshire.
- 2.7 In summary, therefore material considerations have been identified in the form of the WMS, the NPPG and the Vashlyn appeal decision which affect development plan policy and the ability to seek affordable housing contributions in respect of developments involving 10 dwellings and under. However, as is evident from the discussion above, including appendix a) and b), Shropshire Council maintains its stance at this point in time that the greater weight should be given to adopted development plan policy CS11 and the Housing SPD in decision making. The Council is advancing this argument to the Inspectorate as part of an appeal case which is yet to be heard in July. Until the outcome of that appeal is known as a material test case, then the recommendation therefore remains that planning permission be granted only subject to the satisfactory completion of a legal agreement to secure the provision of affordable housing in accordance with the terms of adopted development plan policy.
- 3.0 **The SAMDev Plan Main Modifications**
- 3.1 The following is a review of the 'Principle and Policy of Development' previously presented to Committee for re-consideration in light of the publications of the SAMDev Plan main modifications and updates to the 5 year land supply issue.
- 3.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point for decision taking is therefore the development plan. Proposals that accord with an up-to-

date plan should be approved, whilst proposals that conflict with the plan should be refused, unless other material considerations indicate otherwise (para 12 of the National Planning Policy Framework (NPPF) refers).

- 3.3 The NPPF in itself constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications. At para 14 the NPPF sets out the presumption in favour of sustainable development as a golden thread running through plan-making and decision-taking. At para. 197 the NPPF reiterates that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development. These considerations have to be weighed alongside the provisions of the development plan.
- 3.4 The Development Plan
For the purposes of the assessment of this application the development plan presently comprises of the adopted Shropshire Core Strategy 2011, certain saved policies of the North Shropshire Local Plan 2005 and a range of Supplementary Planning Documents.
- 3.5 Following on from the adoption of the Core Strategy the Council has also been progressing the Site Allocations and Management of Development Plan (SAMDev Plan) and that plan is now at an advanced stage. The SAMDev Plan Inspector has recently confirmed the proposed main modifications to the plan following the examination sessions held in November & December 2014. The main modifications were published on 1st June 2015 for a 6 week consultation period. This means that any plan content not included in the schedule of proposed main modifications may be considered to be sound in principle in accordance with NPPF paragraph 216. Therefore significant weight can now be given to SAMDev policies in planning decisions where these are not subject to modifications.
- 3.6 Development plan policies of particular relevance to assessing the acceptability of this housing application in principle are discussed below:
- 3.7 Saved local plan policy H5 - Within the former North Shropshire Local Plan Cockshutt is described a main service village with a wide range of facilities and centre serving its surrounding rural area. Under the 'saved' policies of the Local Plan the settlement has a development boundary, where in accordance with policy H5 and in accordance with Shropshire Core Strategy policies CS6 and CS11, together with the Council's adopted Supplementary Planning Document on the Type and Affordability of Housing, infilling and groups of houses is acceptable – subject to sustainable objectives, general development control criteria and environmental expectations.
- 3.8 However, at the time of writing it is recognised that the saved Local Plan policy H5 can only be given limited weight. This policy essentially seeks to restrict housing development to within settlement boundaries and so, in essence, applies a more restrictive approach that is not entirely consistent with the NPPF's presumption in favour of sustainable development. This reduces the weight that can be attached to policy H5 in the assessment of this case.
- 3.9 Shropshire Core Strategy policies CS1 and CS4 - Policies CS1 and CS4 of the

Core Strategy set out the strategic approach to housing provision in the rural areas. It is envisaged that rural areas will become more sustainable through a 'rural rebalance' approach to residential development and that locating development predominantly in community hubs and community clusters will contribute to social and economic vitality. Policies CS1 and CS4 are consistent with the objectives of the NPPF to focus new development in sustainable locations.

- 3.10 Although contiguous with the built form of the settlement the site lies outside the development boundary. Therefore, the proposal conflicts with adopted Core Strategy policies CS1 and CS4 and falls to be assessed against adopted Core Strategy policy CS5. Policy CS5 states that new development will be strictly controlled in the countryside and only allows for exceptions in housing needs, including those to meet an essential rural business need or local need, none of which apply to this proposal. The proposal therefore also conflicts with CS5. It is considered that policy CS5 is consistent with the objectives of the NPPF to protect the intrinsic character and beauty of the countryside.
- 3.11 (NB: In view of the forgoing the application was advertised as a departure from the adopted development plan, which would indicate that the proposal should not normally be supported for development).
- 3.12 SAMDev policy S8.2 - In terms of the SAMdev Plan Cockshutt has been identified as a Community Hub, where policy S8.2 will apply. The housing guideline and development strategy for the village was previously reported to Members, ie '*The housing guideline for the village is of around 50 additional dwellings over the plan period. It is envisaged that this will be delivered through the development of 5 allocated sites of up to 5 dwellings (delivering around 20 homes) which are all located to the west of the A528 'so as to provide some balance to the village'. In addition to identified site allocations, there are existing commitments of around 18 dwellings and it is envisaged that the remainder of the target will be delivered with development by infilling, conversions and small groups (again up to 5 dwellings) on suitable sites within the identified development boundary.*'
- 3.13 The only main modifications in relation to Cockshutt relate to impacts on protected sites arising from our Statement of Common Ground with Natural England. There are no modifications proposed to the allocated sites or to the development boundary in the location of the application site. Officers are therefore of the view that significant weight can now be given to policy S8.2 of the SAMDev Plan in this regard. As a development outside the development boundary the proposal would conflict with policy S8.2.
- 3.15 The SAMDev guidelines are for around 50 dwellings, it is noted that around 20 will be provided on allocated sites and there are committed sites providing 18 dwellings. As such there would be a windfall allowance of around 12 dwellings. The Council have granted consent for 1 dwelling, outside the development boundary. There are 2 applications, including this site, pending S106, both outside the development boundary and both resolved to approve which would provide a total of 7 dwellings between them. There are also two other applications pending determination, one of which is one of the allocated sites and one of which is outside the development boundary. The one outside the development boundary

is for 7 dwellings. As such the applications approved or pending would amount to 14 new dwellings (not including the SAMDev allocated site as this is already counted). As such it is officer's advice that the current proposal would not amount to significant housing above the guideline number of new houses proposed in the SAMDev.

- 3.16 The NPPF and emerging SAMDev policies - As previously mentioned the NPPF sets out the presumption in favour of sustainable development as a golden thread running plan-making and decision-taking and is a material consideration to which significant weight should be attributed. As part of the overall planning balance, it is therefore appropriate to assess this site within the context of the 'presumption in favour of sustainable development'.
- 3.17 At para 10 the NPPF states that policies in local plans should follow the approach of the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.
- 3.18 Ultimately the policies contained in the SAMDev Plan will therefore need to comply with the sustainable guidance set out in the Framework in order to proceed to adoption. In this context SAMDev policy MD3 is also of relevance to the assessment of this application. Policy MD3 is concerned with 'Managing Housing Development' and sets out some scope for approving sustainable residential development outside development boundaries, subject to certain criteria and compliance with other policies of the development plan. Policy MD3 has been modified to allow for a more flexible approach in line with the Framework. However, as policy MD3 is subject to modifications then, whilst it can be given some weight it cannot be given full weight. Therefore, the presumption in favour of sustainable development as advanced by the NPPF remains as a material consideration. Under the NPPF sustainable sites for housing where the adverse impacts do not outweigh the benefits of the development will still have a strong presumption in favour of permission when considered against the NPPF as a whole.
- 3.19 As a Community Hub it is accepted in principle that Cockshutt is a sustainable settlement and capable of accommodating an appropriate level of new housing development. Whilst it remains to be acknowledged that the approach to direct housing land allocation only to the western side of the village may reflect the preferences of the Parish Councils' and the wishes of the community, the site is considered contiguous with the built form of the settlement and does not represent isolated development. On this basis it is considered that the proposal can continue to be supported as occupying a sustainable location in principle consistent with the objectives of the NPPF.
- 3.20 Furthermore, officers would highlight the advanced stage of the application and the following factors which reinforce the sustainable credentials in favour of the application at this point in time:
- The S106 has been signed. The planning permission can therefore be released without delay with affordable housing contribution secured.
 - The draft planning permission is limited to a 12 month consent to bring the application to early delivery and contribute to the housing supply.
 - Bearing in mind the all the above and until the SAMDev Plan is adopted,

officers are of the opinion that the balance of planning considerations still tips in favour of permission.

- 3.21 Housing Land Supply – The National Planning Policy Framework (NPPF) paragraph 47 sets out an aim of boosting significantly the supply of housing, and the measures how local planning authorities will achieve this. One of those measures is a requirement for LPA's to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. NPPF Paragraph 49 then 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 sites.
- 3.22 In August 2014 the Council published an updated Shropshire Five Year Housing Land Supply Statement confirming the ability to demonstrate a 5 years' supply. This means that the Council's housing supply policies are not considered out of date under paragraph 49 of the NPPF.
- 3.23 The issue of the 5 year land supply has been the subject of challenge through the appeal process.
- 3.24 Shropshire Council's position that it has a demonstrable 5 year supply of deliverable housing land has been supported by recent appeal decisions at land adjacent to The Larches, Shawbury Road, Wem (APP/L3245/W/14/3000672) and land south of Brook Cottages, Ford (APP/L3245/A/14/2228348), both of which were determined on the 19th May 2015.
- 3.25 During these Appeals, the inspector undertook a detailed appraisal of the Shropshire Council 5 Year Housing Land Supply, considering extensive submissions from both Shropshire Council and representatives of the relevant appellants. The Inspector concluded that "it appears that from the Council's perspective, they are able to demonstrate a 5 years supply of deliverable housing land. Consequently paragraph 49 of the Framework is not engaged and local plan policies relevant to the supply of housing land are up-to-date, subject to their consistency with the Framework as set out in paragraph 215".
- 3.26 Since these comprehensive reviews of the Shropshire Council 5 year housing land supply, there have been a number of other recent appeal decisions within which the 5 year supply has been assessed without the consideration of the detailed evidence, as provided in support of The Larches and Brook Cottages appeals. For this reason those other appeal decisions are not considered definitive and Shropshire Council maintains that it has a 5 year supply of housing, as evidenced in The Larches and Brook Cottages appeal decisions and appendices attached to the appeal cases.
- 3.27 Consequently Shropshire Council maintains that it has a demonstrable 5 year supply of deliverable housing land and paragraph 49 of the NPPF is not engaged.

4.0 Conclusion

- 4.1 Officers note the recent Ministerial Statement and amendments to the National Planning Practice Guidance, together with the recent Vashlyn appeal decision as material considerations in determining a planning application. However, the

Council continues to give greater weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites for the reasons discussed in this report. The applicant has already signed the necessary S106 agreement to secure the affordable housing contribution.

- 4.2 The site is located outside the current Cockshutt development boundary and is therefore classed as a departure from the development plan, contrary to Core Strategy policies CS1, CS4 and CS5. Furthermore, the site has not been identified as a site for future residential development within the emerging SAMDev Plan, and will therefore be contrary to policy S8.2 when SAMDev is adopted. However, whilst SAMDev is at a stage where significant weight can be given to policy S8.2, the requirements of this emerging policy and those of adopted policies CS1, CS4 and CS5 must be balanced against the NPPF. The NPPF sets out the presumption in favour of sustainable development as a golden thread running plan-making and decision-taking and is a material consideration to which significant weight should be attributed. Ultimately SAMDev policies will need to comply with the sustainable guidance of the Framework in order to proceed to adoption. In this context SAMDev policy MD3 is also of relevance as it sets out some scope for approving sustainable residential development outside development boundaries and the local criteria that should be applied. However, Policy MD3 is the subject of modification and as such can only be given some weight. The presumption in favour of sustainable development as advanced by the NPPF therefore remains as a material consideration. Taking into consideration the designation of Cockshutt as a Community Cluster and the close relationship of the site with the existing built form of the settlement together with the advanced stage of the application whereby the S106 has been signed and a draft 12 month permission agreed, it is accepted that the site is in a sustainable location and is available now to deliver additional local housing supply in accord with national planning policy priorities relating housing provision and sustainable development.

4.0 Recommendation

- 4.1 The application remains recommended for approval, subject to the prior completion of a Section 106 agreement in relation to the financial contribution for affordable housing and to the conditions set out in Appendix 1 of the original committee report. As the Section 106 agreement has already been signed by the applicant the completion of the Section 106 rests with the Council.

APPENDIX A

Shropshire Council Statement with regard to: Ministerial Statement of 28th November 2014

Support for small scale developers, custom and self builders

In a Written Ministerial Statement on 28th November 2014, Brandon Lewis MP, Minister of State for Housing and Planning, announced that the Government was making a number of changes to the national Planning Practice Guidance (PPG) with regard to Section 106 planning obligations. These included the introduction of a threshold beneath which affordable housing contributions should not be sought.

The Ministerial statement confirms that:

- (a) For sites of 10 units or less and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought.
- (b) In designated rural areas (under Section 157 of the Housing Act 1985), authorities may choose to implement a lower threshold of five units or less, beneath which affordable housing and tariff style contributions should not be sought.
- (c) Affordable housing and tariff style contributions should not be sought in relation to residential annexes and extensions.
- (d) A financial credit, equivalent to the existing gross floor space of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes.

Shropshire Council was particularly concerned by proposals a), b) and d) and through the consultation process in April 2014, put forward a comprehensive evidence response on how these changes would fundamentally affect the Council's ability to deliver much needed rural affordable housing directly on site or indirectly through financial support for Registered Providers (RP's) and as a consequence it would undermine its housing and community sustainability aspirations enshrined within its adopted Core Strategy.

This statement has been met with much consternation from Local Authorities, particularly rural authorities and other respected national organisations representing rural communities and rural housing.

Following the Ministerial Statement and update to the National Planning Practice Guidance the Council placed a report before the Council's Cabinet on 21st January 2015. The Council's Cabinet met and considered a report outlining the consequences of applying the Ministerial Statement of 28th November and the Council's current Type and Affordability of Housing SPD which sets out the Council's policy on the provision of affordable housing on open market developments in Shropshire .

The following decision was made:-

- (a) That the Council lobbies the Minister to review his statement to take account of differing conditions nationally and locally.
- (b) That the Council notes the Ministerial statement and amendments to the National Planning Practice Guidance as a material consideration in determining a planning application.

- (c) That the Council continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and **continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites.**”

Following the decision of the Council's Cabinet to continue to give full weight to Policy CS11 of the adopted Core Strategy and the Type and Affordability of Housing SPD the Council will continue to seek provision of on-site affordable housing and/or affordable housing contributions for all residential developments of 10 dwellings or less within the Shropshire area and will continue to require developers to enter into s.106 agreements for this purpose.

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APPENDIX B

Council Statement – Ministerial statement 28th Nov 2014 and Appeal decision Vashlyn, Kelsalls Lane, Copthorne.

The Minister of State for Housing and Planning, Brandon Lewis MP issued a Written Ministerial Statement (WMS) on 28th November announcing that Local Authorities should not request affordable housing contributions on sites of 10 units or less (and which have a maximum combined gross floor space of 1,000 m²), or 5 units or less in designated protected rural areas, the aim being to boost housing supply on smaller sites by removing “burdensome obligations”.

This statement and the subsequent adoption into the National Planning Practice Guidance is a material consideration that the Local Planning Authority now has to take into consideration and is clearly at odds with Shropshire’s adopted Core Strategy (Policy CS11) which requires that all new open market residential development makes an appropriate contribution to the provision of affordable housing.

A report was submitted to the Cabinet of the Council on the 21st Jan 2015 and the Council’s unanimous decision was to take into account the WMS as a material planning consideration but to continue to apply the adopted Core Strategy and SPD.

The Council notes that the High Court is currently considering its judgement in the judicial review of the WMS brought by West Berks/Reading Councils, which may further inform Shropshire Council’s position.

A recent appeal decision (APP/L3245/A/14/2218662 - Vashlyn, Kelsalls Lane, Copthorne, Shrewsbury, Shropshire, SY3 8LU, unexpectedly considered and commented on the Councils position which has since been widely propagated as a defining judgement. This is arguable and these are overly simplistic and subjective views on a decision where the Council had not provided detailed narrative, evidence or reasoning as the applicant had agreed to the Affordable Housing Contribution and was not challenging the Council on this particular issue. The Council considers therefore that although this is an important case, it is not a binding precedent and it is a potentially flawed decision against which the Council is considering a formal challenge. As a consequence, the Council’s current position, based upon a robust policy position endorsed by Cabinet, will continue.

The Copthorne planning decision and subsequent public observations from various self interests have added considerable uncertainty and hesitation into the planning approval process that the Council is considering options to address as a matter of urgency.

In the event that after a full examination of the Council’s position, an Appeal or Judicial Review challenge leads to the Council changing its current stance, it is important to note that resolutions to approve that are subject to outstanding s106 agreements at that time, will have to be fully reconsidered afresh by Council in light of current local and national policies.