Appeal Decisions

Inquiry held on 26 & 27 August 2015 and 12 January 2016

Site visit made on 27 August 2015

by Anthony Lyman BSc (Hons) DipTP MRTPI

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

Decision date: 03 March 2016

Appeal A - Ref: APP/A0665/W/14/3001271
Delamere Forest School, Blakemere Lane, Norley, Cheshire, WA6 6NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Delamere School Ltd against the decision of Cheshire West & Chester Council.
- The application Ref 13/04519/FUL, dated 11 October 2013, was refused by notice dated 1 October 2014.
- The development proposed is the demolition of existing school buildings and associated structures and their proposed replacement with 26 two storey dwellings (6 of which being affordable housing), and associated facilities, the retention of the existing swimming pool, provision of 3 No. play areas, a 5-a-side football pitch and car parking for 22 vehicles and the partial regrading of the application site and landscape enhancement measures.

Appeal B - Ref: APP/A0665/W/15/3013647
Delamere Forest School, Blakemere Lane, Norley, Cheshire, WA6 6NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Delamere School Ltd against the decision of Cheshire West & Chester Council.
- The application Ref 14/04353/FUL, dated 8 October 2014, was refused by notice dated 16 February 2015.
- The development proposed is the demolition of existing school buildings and associated structures and their replacement with 26 two storey dwellings (6 of which being affordable housing), and associated facilities, the retention of the existing swimming pool, provision of 2 No. play areas, and car parking for 20 vehicles and the partial regrading of the application site and landscape enhancement measures.

Preliminary Matters

1. The description of the proposed development in relation to Appeal A above, is taken from the application form, and was the basis on which the Council considered and refused the application. After the Council's decision, but before the appeal was submitted, a Written Ministerial Statement made on 28 November 2014 introduced, amongst other things, Vacant Building Credit (VBC), whereby a financial credit equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for redevelopment, was to be deducted from the calculation of any affordable housing contribution sought from development schemes.

2. In the light of this change, the appellant sought to amend the proposal to be dealt with on appeal, by removing the six on-site affordable houses from Appeal A, and, instead, offering a financial contribution for one off-site affordable house. Subsequently, following a High Court Judgement on 31 July 2015[1], the paragraphs relating to VBC in Planning Practice Guidance were removed. The appellant then sought a further amendment to the appeal proposal to make a financial contribution towards six, off-site affordable houses.

3. The appellant notified local residents and other interested parties about the proposed deletion of the six on-site affordable houses from Appeal A. It was this element of the scheme that had prompted objections from local residents at the application stage. Very few interested parties attended the start of the Inquiry and no-one raised this issue. I was satisfied, therefore, that no-one's interests would be prejudiced by proceeding with Appeal A, on the basis of a contribution to six affordable homes off-site, rather than the affordable houses originally proposed on Ashton Road.

4. In view of this change, the Council confirmed that the second reason for refusal of the Appeal A application, relating to the detrimental visual impact of the proposed houses on Ashton Road, would not be pursued at the Inquiry.

5. The appellant had previously confirmed that VBC would not be pursued with regard to Appeal B. Therefore, that appeal proceeded on the basis of the description above, including six affordable homes on-site, albeit in a different location to those originally included in Appeal A.

6. During the Inquiry, the appellant withdrew the previously submitted s106 Obligations by way of Unilateral Undertakings. The Inquiry was adjourned on 27 August and a timetable agreed for revised s106 Obligations to be submitted, and potentially, for the Inquiry to be closed in writing following the receipt of closing submissions by the parties on agreed sequential dates. In the event, following further disagreement between the parties about the resubmitted Unilateral Undertakings dated 16 September 2015, the Inquiry resumed on the 12 January 2016 and was concluded on that day. Following a further exchange of correspondence and discussions at the Inquiry, the appellants submitted further revised s106 Unilateral Undertakings both dated 14 January 2016.

7. The s106 Obligation submitted in relation to Appeal A makes provision for i) a contribution to off-site affordable housing, ii) ongoing provision and maintenance of the swimming pool and associated facilities currently on the site, and iii) provision and ongoing maintenance of the formal and informal leisure and recreation spaces at the site including a sports pitch. The Appeal B s106 Obligation includes provision for ii) and iii) above, but omits i) as the affordable housing would be provided on the appeal site under Appeal B.

8. Insofar as many of the planning issues are germane to both proposals, to avoid repetition, I will deal with both appeals accordingly, except where a matter is specific to one or other of the appeals.

9. In the appellant's submissions there is a reference to the fact that the emerging Norley Neighbourhood Plan identifies the on-site swimming pool as a community facility. At the resumed Inquiry, I was advised that the referendum

[1] West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin)

on the Neighbourhood Plan had been held during the Inquiry adjournment, and that it was due to be considered by the Council in the following month. I understand that on 3 February 2016 the Council confirmed the making of the Norley Neighbourhood Plan, which now forms part of the development plan for the area.

Decisions

10. Appeal A is dismissed.

11. Appeal B is dismissed.

Application for Costs

12. At the Inquiry an application for costs was made by Cheshire West & Chester Council against Delamere School Ltd. This application is the subject of a separate Decision.

Main Issues

13. The main issues to be considered in both appeals are, i) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework, any relevant development plan policies, and the openness of the Green Belt, ii) the effect of the proposed development on the character and appearance of the area with particular regard to the potential impact on trees, iii) if inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the provision of affordable housing either on-site or by way of contribution, and the retention of the swimming pool, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Background

14. The former privately run Delamere Forest School comprises a disparate cluster of buildings and structures located on the edge of the small settlement of Hatchmere within the North Cheshire Green Belt. The school buildings front onto Blakemere Lane from which access to the site for both appeals would be taken. To the west of the school buildings the open ground slopes down by approximately 10m to the Delamere Forest beyond the boundary. To the south of the proposed market housing, a timber clad building contains the former school's swimming pool, which is currently used by a small number of groups including the local primary school and mother and toddler groups, with some community use during school holidays. Both of the proposals in Appeal A and Appeal B include the retention of the swimming pool as a community facility.

15. The proposals involve the demolition of all of the school buildings, (with the exception of the swimming pool), and the erection of twenty open market dwellings. Predominantly, the houses would be fairly substantial five bedroom detached properties, with a couple of four bedroom detached dwellings and a pair of smaller semi-detached homes. Appeal A includes the provision of three play areas, a 5-a-side football pitch and a car park to serve the swimming pool. Appeal B includes the provision of two play areas, an area for informal recreation, and a slightly smaller car park.

16. The key difference between the two appeal proposals relates to the provision of affordable houses. Appeal A, as finally amended, now proposes a contribution of £344,020.00 towards the provision of six off-site affordable houses secured by way of a s106 Unilateral Undertaking. In Appeal B the proposal includes six affordable homes to be built within the appeal site boundary, albeit separated from the open market housing and served by a different access from Blakemere Lane. These affordable houses would be outside the settlement boundary of Hatchmere.

Development in the Green Belt

17. The National Planning Policy Framework (the Framework) confirms that the essential characteristics of Green Belts are their openness and permanence and that substantial weight should be given to any harm to the Green Belt. Paragraph 89 of the Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate unless the proposal falls into one of a number of exceptions criteria. Limited affordable housing for local community needs under policies set out in the Local Plan is one exception. Another exception is the partial or complete redevelopment of previously developed land (PDL) whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it, than the existing development.

18. The Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (Local Plan) was adopted in January 2015. Policy STRAT 9 seeks to protect the intrinsic character and beauty of the Cheshire countryside and, amongst other things, confirms that in settlements and areas of countryside within the Green Belt, restrictions will apply to development in line with the Framework. The appellant argues that limited weight should be attached to this Policy as it is claimed to be inconsistent with the Framework.

19. The basis of the appellant's argument is that the Policy's list of developments to be permitted in the countryside and the Green Belt fails to include the redevelopment of PLD sites in accordance with the Framework. I am not persuaded by this argument. The sentence in the body of the Policy that includes the list of development to be permitted, starts with the words '*Within the Countryside'*. It does not include the Green Belt, as claimed by the appellant. Development to be permitted in the North Cheshire Green Belt is dealt with separately in the last paragraph of the Policy which states that *'within the Green Belt additional restrictions will apply to development in line with the National Planning Policy Framework'.* The wording of Policy STRAT 9 is therefore, consistent with the Framework, and carries weight. Although paragraph 5.76 of the supporting text to the Policy, in listing developments that are not inappropriate in the Green Belt, does not include the 'complete' development of previously developed sites, this does not outweigh the wording of the Policy which relies on the provisions of the Framework.

20. The appellant contends that the proposed houses and associated developments relating to either Appeal would all take place within the former school's curtilage on PDL, and that, as neither proposal would have a greater impact on the openness than the existing buildings, the developments would not be inappropriate in the Green Belt.

21. The Framework's definition of PDL includes *land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it*

should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes…land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

22. Clearly, the occupied parts of the site including the school buildings, paths, roadways, parking areas and playing field would be PDL within the curtilage of the property. The evidence relating to the open land to the west of the main complex is, however, less certain. On my site visit, there did not appear to be clearly defined boundaries to parts of the area shown as curtilage on the appellant's Plan AP1. On part of the lower grassland to the west of the school buildings, there used to be a very small area of children's play equipment, which has since been removed, although the footings for the equipment were still evident. The appellant also refers to the presence of a brick sewage structure in the open parts of the land. However, in the submitted photographs, the structure does not appear to be substantial, and at the time of my site visit, it was untraceable as it had been completely subsumed by the overgrown vegetation spreading across that part of the site.

23. On the basis of the above features, the appellant contends, with reference to a high court judgement[2], that there was a meaningful connection between the school and the open land to the west, which should all be considered as PDL. With regard to other court cases referred to by the Council [3] I am not convinced by this argument. The open land to the west of the buildings, due to its undulating/sloping topography, does not appear to have had a substantial connection to the activities of the school, or to have been so intimately associated with it, so as to enable a firm conclusion to be reached that the two distinctly separate areas operated as one entity. It is my conclusion that not all of the land on which the twenty open market houses are proposed is PDL and, therefore, would not benefit from the exception referred to in paragraph 17 above.

24. I turn now to consider the effect of the proposals on the openness of the Green Belt. The existing complex comprises a mixture of single and two storey buildings and is prominent in views from Blakemere Lane. The appellant confirms that the gross external area of the buildings, excluding the swimming pool structure, amounts to about 4,026sq.m. The Council use a slightly lower figure, but this excludes structures such as existing oil tanks which I consider should be included.

25. According to the appellant, the gross external area of the twenty open market houses, adds up to about 5,009sq.m in Appeal A, and increases to 5,569sq.m in Appeal B including the on-site affordable houses. However, the detailed plans show that many of the detached houses would have substantial traditional conservatories/sun rooms. These have not been included in the calculations as the appellant claims they would be transparent and would not impact on openness. I am not persuaded by this argument as the structures are shown as having low brick walls, with the sun rooms having tiled roofs. When these structures are added to the calculations, the built form in Appeal A would be about 5,244sq.m and approximately 5,827sq.m for Appeal B.

[2] Denis Lowe v FSS [2003] EWHC 537
[3] Methuen-Campbell v Walters [1979] 1 Q.B. 525 and Sumption v Greenwich LBC [2007] EWHC 2776 9Admin)

26. It is evident that either proposal would result in a significant increase built area which would reduce openness. Furthermore, all of the new houses would be two storey with pitched roofs, compared to the existing mix of single storey and two storey buildings, some of which have less obtrusive flat roofs. The new houses would also be spread over a larger area extending into the open land to the west of the school complex. The impact of the Appeal B proposal would be particularly harmful as the affordable houses would be built beyond the settlement boundary, on land not currently occupied by buildings. Overall, taking into account all of these elements, the developments would significantly fail to preserve the openness of the Green Belt.

27. Accordingly, by having a greater impact on the openness of the Green Belt, the exception allowed in paragraph 89 of the Framework for the partial or complete redevelopment of previously developed sites, would not apply. Either proposal would therefore, be inappropriate development which, by definition, is harmful the Green Belt, contrary to the Framework and Local Plan Policy STRAT9.

Character and Appearance -Trees

28. A full tree survey and impact assessment was submitted by the appellant. Although the layout of the twenty market dwellings is the same in both appeals, only the refusal of the Appeal B application included a reason relating to the detrimental impact of the development on trees. Nevertheless, the Council's submissions related to both appeals. Essentially, the Council's concerns related to the impact on trees fronting Blakemore Lane, and on two trees within the site identified as T10 and T11.

29. The trees adjacent to Blakemore Lane comprise a cedar, a copper beech and a group including elm, holly, oak, apple, cherry and maple, and are described in the survey as being mostly in good condition with an estimated life span of between 40 and 60 years. These trees make an important positive contribution to the street scene and help to screen development on the site. They are not protected by a tree preservation order.

30. The proposed development would not impinge on the root protection area (RPA) of these trees. Nevertheless, the concern is that they would overshadow the facades of three of the proposed dwellings fronting Blakemere Lane, and that this could lead to pressure from future occupants to have the trees pruned or removed. I am not convinced that the impact of these trees on the living conditions of future residents would be so detrimental as to lead to pressure for their removal, as the trees are to the east of the plots and would only shade morning sunlight for a few hours each day. The private rear gardens and sun room/conservatories to these houses would continue to enjoy southern and western sunlight.

31. Trees T10 and T11 are said to be in good condition with an expected life span in excess of 30 years. They would remain between two proposed detached houses within the site. However, as they would be between a gable wall of plot 7 and the garage of plot 8, their impact on these dwellings in terms of shading and leaf drop would be limited. Their canopy spread would be reduced by up to 20% to leave a balanced crown, and I am satisfied that the distance between the trees and the houses would be sufficient to ensure their survival.

32. The development would necessitate some intrusion into their RPA, through the construction of retaining walls to maintain existing ground levels within the

RPA. BS 5837[4] advises that intrusion into soil within an RPA is generally not acceptable. However, these two trees are mature and in good health and should be capable of withstanding the limited intrusion into their RPAs subject to the construction work being controlled by an Arboricultural/Tree Protection Method Statement which could be the subject of a condition, if the appeals were to succeed.

33. Overall, I conclude that the proposals would not have an adverse impact on the landscape value of important trees on the site. These retained trees would continue to make a positive contribution to the sylvan character and appearance of the area, in accordance with Policy NE8 of the Vale Royal Local Plan which seeks, amongst other things, to protect features of landscape value both during construction and after a development has been completed.

Other Considerations – Affordable Housing

34. As set out above, Appeal A proposes a financial contribution towards the provision of six affordable houses to be built off-site. Appeal B includes six affordable homes to be built as part of the proposal, on land adjacent to, but separate from, the open market housing.

35. Policy SOC1 of the Local Plan requires affordable housing to be provided within all new residential developments, and states that the housing provision will be sought on-site, unless there are exceptional circumstances. The Policy also confirms that 30% of a new housing development should be affordable homes that must be dispersed throughout the site unless there are specific circumstances or benefits that warrant otherwise. The market and affordable homes on-site should also be indistinguishable and achieve the same high standard of design. The Council's contention is that for a development of this scale, eight affordable houses would be required, and that inadequate evidence has been put forward to justify the offer of only six affordable dwellings or the location and layout of the houses.

36. The appellant's viability appraisals sought to demonstrate that the scheme could not afford eight affordable dwellings and would not proceed on that basis. According to the detailed appraisal, the gross development value of the scheme would be £11,851,000 and the total development costs would amount to £10,320,444. This would yield a development profit of £1,531,056 or 12.9% of gross development value, which the appellant claimed was below the minimum level of 20% profit that would be required for bank funding. Nevertheless, the appellant appears to be prepared to proceed at that claimed lower profit level.

37. The Council's expert witness disputed a number of the variables used in the appellant's appraisal, including the entries for base build costs which were considered to be too high, preliminaries, the allowance of 5.3% for New Construction Output Price Increase January 2014 to January 2015, the cost of builder's NHBC, and the allowance of £150,000 for additional professional fees. Adjusting these elements, the residual valuation appraisal by the Council's expert witness resulted in a gross development value of £13,243,440.00. Allowing for a 17.5% profit on costs, the Council's appraisal resulted in a development cost including profits of £10,616,132, leaving a residual of £2,627,308. The Council considered that, in this desirable area of Cheshire, the development would be low risk and that, therefore, a profit level of 17.5%

[4] British Standard 5837:2012 "Trees in relation to design, demolition and construction – Recommendations"

was 'generous'. On the basis of this appraisal, the Council contended that eight affordable houses could be afforded and that the scheme would still remain viable.

38. I do not doubt the integrity or ability of the parties' expert witnesses on viability issues. However, having considered both parties' response to the disputed figures in each others' appraisals, I consider that, in reality, it is likely that the outcome would be somewhere between these two extremes, as slight variations in any of the inputs would affect the end result. For instance, although the appellant states that the use of 20% developer profit is the industry standard, which I accept, in my experience developers of schemes with a lower risk factor have proceeded with less than the 20% norm, as demonstrated by the appellant's apparent willingness to proceed with this scheme, despite a claimed developer profit of only 12.9%.

39. Furthermore, in the Council's appraisal, the gross development value is based on the advertised asking price for similar dwellings on nearby developments. The appellant argues that this is not appropriate and that the actual price achieved should be used which, in the appellant's appraisal is a significantly lower figure, resulting in the reduced development value of the scheme. I do not dispute the logic of this argument. However, the need for developers to undertake such heavy discounting of their asking prices, in order to achieve sales, seems to me to be at odds with the appellant's claim that there is a shortage of large family homes in this desirable part of Cheshire. Although discounting was a common practice during the recession, and despite the specific examples in the appellant's appraisal, the circumstances of which are not detailed, I am not convinced that in the current 2016 market, such heavy discounting is prevalent or necessary given the present economic climate and recent national publicity about the increase in house prices generally.

40. Given the very different outcomes of the viability appraisals, I am not persuaded it has been adequately demonstrated that the viability of either proposal is so marginal as to preclude the provision of affordable housing in accordance with the requirements of Policy SOC1.

41. Notwithstanding the matter of viability and the number of affordable homes to be provided, neither proposal would satisfy the other requirements of Policy SOC1 as set out above. Exceptional circumstances necessary to justify off-site affordable homes, as proposed in Appeal A, have not been demonstrated. The appellant's contention that the alternative to a commuted sum would be to reinstate the six affordable houses remotely on Ashton Road, to which local residents objected, appears to me to be illogical particularly as the subsequent Appeal B includes the provision of such homes on the appeal site adjacent to the market houses. However, the affordable dwellings included in Appeal B would not be policy compliant as they would be not be dispersed through the market housing, but would be self contained on an adjacent part of the site served by a separate access from Blakemere Lane.

42. The Policy also requires the affordable housing to be indistinguishable from the market housing. Although the appellant argues that they would be built to the same design standards using similar materials, the affordable homes would be readily identifiable, remote and detached from the larger executive family homes with no vehicular access between them. This would be contrary to the requirements of Policy SOC1.

43. Therefore, although the provision of some affordable housing would be a benefit, the weight attached to that benefit in the planning balance would be limited due to the harm arising from the lack of policy compliance.

44. The appellant referred me to a 2015 Appeal Decision that approved a housing development at Neston Cheshire[5], and claimed that in that case, the Council adopted the same criteria used in the submitted viability appraisal to this appeal. However, that appeal was dealt with by written representations and the Decision does not go into financial details other than to confirm the contribution of £118,000 towards two off-site affordable units. I attach minimal weight to that Decision as, in accordance with Policy SOC1, 30% affordable housing was to be provided, most of which would be on-site and integrated throughout the market housing. That Inspector concluded that the market and affordable houses would be indistinguishable and that the proposal would create a mixed and balanced community. The proposals before me achieve none of these policy requirements.

Other considerations- Swimming Pool

45. Both proposals include the retention of the on-site swimming pool as a community facility. The s106 Obligations relating to each appeal provides for a Swimming Pool Management Plan to be agreed with the Council for the management and maintenance of the facility for a period of ten years through a management company. The undertakings also require the owner to procure a bond in the sum of £50,000 to guarantee the maintenance of the swimming pool as may be required by the Management Plan. The appellant states that the retention of the pool is compliant with Local Plan Policy SOC6 which seeks to protect and enhance existing sports and recreation facilities.

46. The swimming pool is mentioned in a list of community facilities in Hatchmere in the Norley Neighbourhood Plan. It has been operating for a number of years since the closure of the school, and is used by a local school, mother and toddler groups, and by local residents on a limited basis during holidays. In the year ending November 2014, the pool is said to have made an operating profit of just under £3000. The pool and building are said by the appellant to be in good condition, although quotations have also been submitted for repairs/improvements that may become necessary, for which the appellant claims that the bond could be used. However, little evidence has been supplied to confirm the necessity of the works or to what extent they could be met out of existing maintenance budgets. In the absence of a management plan, it is unclear how the bond would be drawn down, or what would happen if the management company ceased to exist.

47. The Council argue that, as the on-site swimming pool is operating at a profit, albeit a small profit, there is no clear justification for permitting the proposed housing development in order to secure the future of the pool, with which I agree, on the evidence before me. Given that the pool has been open for a number of years and is now operating at a profit, I am not persuaded by the appellant's claim that in the absence of the housing development the pool will have an uncertain future. The housing scheme is not necessary to ensure the pool's continued operation. Furthermore, there are other pools within about six miles of the site. Although, no evidence as to the current capacity of these other pools has been submitted, some are said to be used by the same mother

[5] APP/A0665/W/14/3001859

and toddler group franchise, and one pool previously accommodated the local school that currently uses the Hatchmere pool on one morning each week.

48. Although the on-site swimming pool may be a desirable local facility, for the reasons given above, I attach little weight to this consideration in the planning balance.

Other matters

49. The Council state that a five year supply of housing land (HLS) can be demonstrated. The appellant asserts that the Council's HLS situation is currently 'at large', although no evidence was submitted to challenge the Council's figures. As I have no reason to doubt that a five year HLS exists, the Council's policies relevant to the supply of housing are up-to-date. Although the Framework confirms the need to boost significantly the supply of housing, the development is not required in order to achieve a five year HLS.

50. The Framework confirms a presumption in favour of sustainable development, which can be achieved only if economic, social and environmental gains are sought jointly and simultaneously. The proposals would generate significant economic benefits during the construction phase and potentially through increased spending in local businesses by future occupants. The provision of a mix of houses would go some way to satisfying the social role, although the benefit would be reduced by the failure of either scheme to integrate the market and affordable housing, so as to produce a strong, vibrant and healthy community, and by the proposed level of provision. The environmental role requires, amongst other things, development to protect and enhance the natural environment. Although the partial use of PDL would be an environmental benefit, given the significant harm that I have identified arising from the inappropriate development and the reduction in openness of the Green Belt, the environmental dimension would not be satisfied. Accordingly the proposals would not represent sustainable development and the presumption in favour of such development would not apply.

51. The appellant refers to a letter dated 9 November 2015 from the Minister of State for Housing and Planning, Brandon Lewis MP to local planning authorities. In the letter the Minister urges Councils, amongst other things, to take a flexible approach to requests to renegotiate s106 Obligations where there is evidence that the affordable housing element is making the scheme unviable and is stalling development. I consider that this request relates to renegotiating existing s106 Obligations for developments that already have permission. In any case, I have concluded that the evidence before me does not demonstrate the non-viability of the scheme with regard to affordable housing.

Planning Balance and Conclusions

52. The Framework confirms that substantial weight should be given to any harm to the Green Belt, and that inappropriate development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

53. In this case, the inappropriate developments, by definition, would cause substantial harm and there would be further significant harm arising from the reduction in one of the Green Belt's essential characteristics, openness.

54. There is no dispute that the redevelopment of the disused school buildings would be acceptable in principle. Nevertheless, for the reasons set out above, the other considerations would not clearly outweigh the substantial harm to the Green Belt. Therefore, the very special circumstances necessary to permit inappropriate development in the Green Belt do not exist.

55. Accordingly, for the reasons given, both appeals are dismissed. In the circumstances, there is no need for me to consider further the s106 Obligations or their compliance with Regulation 122 of the Community Infrastructure Regulations.

Anthony Lyman

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Scott Lyness of Counsel
He called

Jill Stephens BA(Hons) DiP MRTPI	Senior Planning Officer
Nick Edwards BSC (Hons) MRICS RICS Registered Valuer	Viability Officer
Peter Murray	Tree Officer

FOR THE APPELLANT:

David Manley Queen's Counsel
He called

Philip Kelly FRICS	Eddisons Chartered Surveyors
Alistair McLeod	Ascerta
Susan Annette Jones BA(Hons) BPL MISOCARP MEWI Affiliate Member RIBA	ADS PLAN Ltd

INTERESTED PERSON:

Terry Harvey	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's notification letter dated 12 March 2015, advising the change in procedure
2. Letter dated 25 August 2015, Susan Jones to David Manley QC
3. Appeal decision APP/N1920/W/15/3002849
4. Emails to Adrian Crowther dated 2 May 2014 and 15 July 2014
5. Email dated 5 December 2014 re Development Finance
6. Costs schedule for the purchase of Delamere Forest School
7. Schedule of Net Sales Prices achieved at Forest Rise, Mouldsworth
8. Council's comments on original s106 Obligations
9. List of additional plans considered relevant by the appellant
10. Property sales particulars for the Delamere Forest School
11. Copy of Policy SOC6
12. Delamere Pool Itinerary
13. Schedules of gross external areas of existing and proposed buildings
14. Delamere School Project Development Costs Analysis – June 2015
15. Emails between LPA and ADSPlan – December 2014 – various dates
16. Lists of conditions for both developments
17. s106 Unilateral Undertakings for each appeal, both dated 16 September 2015, together with Community Infrastructure Levy Compliance Statements
18. Draft Section 106A Agreement Deed of Variation
19. Correspondence from the appellant re Ministerial letter date 9 November 2015
20. Council's notification letter dated 15 December 2015 re resumption date of the Inquiry
21. Council's supplemental comments dated 11 January 2015 re revised s106s.
22. Appellant's consideration dated 11 January 2016 of Council's comments, enclosing copy of an entry from Companies House re appellant's name
23. Closing submissions on behalf of the Council including copy of High Court Judgement [2007] EWHC 2776 (Admin)
24. Appellant's Closing Submissions
25. Council's application for Costs

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

26. Appellant's response to Council's Costs Application

27. Email correspondence between Council's and appellant's solicitors dated 12 and 13 January 2016 re s106 Obligations

28. s106 Unilateral Undertaking dated 14 January 2016 - re Appeal A

29. s106 Unilateral Undertaking dated 14 January 2016 - re Appeal B

The Planning Inspectorate

Costs Decision

Inquiry held on 26 & 27 August 2015 and 12 January 2016

Site visit made on 27 August 2015

by Anthony Lyman BSc (Hons) DipTP MRTPI

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

Decision date: 03 March 2016

Costs application in relation to Appeals Ref: APP/A0665/W/14/3001271 and APP/A0665/W/15/3013647
Delamere Forest School, Blakemere Lane, Norley, Cheshire, WA6 6NP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Cheshire West & Chester Council for a partial award of costs against Delamere School Ltd.
- The inquiry was in connection with conjoined appeals against the refusal of planning permission for:- **Appeal A** - the demolition of existing school buildings and associated structures and their proposed replacement with 26 two storey dwellings (6 of which being affordable housing), and associated facilities, the retention of the existing swimming pool, provision of 3 No. play areas, a 5-a-side football pitch and car parking for 22 vehicles and the partial regrading of the application site and landscape enhancement measures; and **Appeal B** - the demolition of existing school buildings and associated structures and their replacement with 26 two storey dwellings (6 of which being affordable housing), and associated facilities, the retention of the existing swimming pool, provision of 2 No. play areas, and car parking for 20 vehicles and the partial regrading of the application site and landscape enhancement measures.

Preliminary Matter

1. The development proposed under Appeal A was amended to remove the 6 affordable houses on Ashton Road and to offer instead, a financial contribution towards the provision of six off-site affordable homes.

Decision

2. The application for an award of costs is refused.

The submissions for Cheshire West & Chester Council

3. The Council seek a partial award of costs in relation to both appeals. The appellant revised both schemes in an effort to reduce the amount of affordable housing to be provided. In relation to Appeal A, the appellant used the objections to the affordable housing on Ashton Road to justify providing an off-site contribution but failed to explore alternative measures or to provide substantial evidence to justify the off-site provision contrary to local plan policy. The appellant failed to submit any substantial evidence or information to enable the Council to fully consider the alternative scheme. The Council have had to spend additional time dealing with the variations to the appeal schemes, and the appellant's submission of late evidence up to and including the day of the Inquiry.

4. At the Inquiry, the appellant's advocate withdrew all previously submitted s106 obligations as being defective and not fit for purpose. The Council had spent significant wasted time drafting a 14 page response to these original s106 agreements, and have also spent time dealing with the subsequent new versions of the unilateral undertakings, which will be revised yet again after the close of the Inquiry.

The response by Delamere School Ltd.

5. The costs application, being made on the last day of the Inquiry, without notice and following a lengthy adjournment, was in breach of good practice guidance. The Council have sought to frustrate the appeal process and have failed to adopt a positive approach to the changes brought about by the introduction of vacant building credit. The appellant had to amend the proposals to reflect vacant building credit and then to change them again following the court's declaration that the changes to Planning Practice Guidance (PPG) were unlawful. Any expenses incurred by the Council reflect no more than, i) the Council's normal duty to consider amendments to schemes following changes to national policy, ii) the consequence of its own conduct in addressing the s106 obligations received only late on the day preceding the Inquiry, and iii) in refusing to allow the viability experts to meet to refine the areas of disagreement.

6. In the absence of any prior indication as to whether the revised scheme relating to Appeal A would be acceptable to the Inspector, the appellant could do no more than await the start of the Inquiry.

7. Had the Council engaged proactively with the s106 process from the outset, much confusion and wasted time could have been avoided.

Reasons

8. PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

9. An appeal must be considered on the basis of the policy context and relevant material considerations existing at the time of determination. Therefore, faced with the significant and relevant introduction of vacant building credit (VBC), it was not unreasonable for the appellant to seek to amend the proposals to take advantage of the changes introduced by Government to boost housing delivery. It is also understandable that following the subsequent court ruling that the introduction of VBC had been unlawful[1], it was necessary for the appellant to amend the proposal yet again to increase the provision for affordable housing.

10. With regard to the issues about the s106 agreements, the appellant states that the Council's very late response, on the day before the Inquiry, left no time for the appellant to do anything before the start of the Inquiry. I attach some weight to this argument as it does appear that the draft s106 documents were available well in advance of the Inquiry, although the flaws in the documents should have been obvious to the appellant before they were withdrawn on the

[1] West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin)

first day of the Inquiry. The appellant submitted a revised set of s106 unilateral undertakings signed and dated 15 September 2015 during the lengthy Inquiry adjournment, and then submitted a further pair of Unilateral Undertakings dated 14 January 2016, after the close of the Inquiry. I can understand the Council's concerns at the time officers have spent in dealing with these different obligation documents. However, as these were Unilateral Undertakings, it was in the Council's interests to have as much input as possible to the final documents. I do not consider that the appellant's behaviour was sufficiently unreasonable as to justify an award of costs.

11. Each party claims that the other contributed to the delays and difficulties in progressing the appeals, through the failure to submit necessary information or evidence and/or allegedly avoiding meetings. The email trails submitted to me by both parties suggest some unhelpful behaviour on the part of both parties. I do not consider that the appellant's behaviour crossed the threshold into unreasonableness.

12. For the reasons given I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. An award of costs is not justified and the application is refused.

Anthony Lyman

INSPECTOR