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## Appeal Decision

Site visit made on 6 November 2017

**by Rachel Walmsley BSc MSc MA MRTPI**

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

**Decision date: 19<sup>th</sup> January 2018**

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**Appeal Ref: APP/R3705/W/17/3179922**

**Land east Pooley Lane, Polesworth B78 1JB**

- 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 Mr K Holloway, N P Holloway and Son against the decision of North Warwickshire Borough Council.
  - The application Ref PAP/2016/0213, dated 15 April 2016, was refused by notice dated 4 April 2017.
  - The development proposed is outline application (access only) for the residential development of up to 40 dwellings land east of Pooley Lane, Polesworth, B78 1JB.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The description of development referred to in the header above has been taken from the planning application form. This forms the basis on which the appellant applied for the development proposed. I note that the local planning authority altered this description for its decision notice, however, in the absence of any evidence to demonstrate that the appellant agreed to this wording, I have used the description on the planning application form.
3. The application was submitted for outline planning permission with matters relating to layout, appearance, landscaping and scale reserved. I have dealt with the appeal on that basis, treating all plans as illustrative, except where they deal with the matter of access.

### Main Issues

4. These are:
  - (i) whether appropriate provision is made for affordable housing; and,
  - (ii) the effect of the proposal on the character and appearance of the landscape and Polesworth Conservation Area.

## Reasons

### *Affordable housing*

5. Policy NW6 of the Core Strategy<sup>1</sup> seeks affordable housing, on site, for developments of 15 or more dwellings. There is no dispute between the parties that the appeal proposal should, and can, comply with this policy.
6. During the course of the appeal parties were in agreement to a planning condition to secure affordable housing. However, the Planning Practice Guidance (PPG) makes it clear that planning permission should not be granted subject to a condition that requires the applicant to enter into an obligation. Equally, a condition that leaves the method of securing affordable housing vague would not meet the tests set out in paragraph 205 of the National Planning Policy Framework (the Framework), not least because the condition would not be precise and, therefore, unenforceable.
7. For affordable housing to be provided effectively, arrangements must be made to, not least, transfer it to an affordable housing provider, ensure that appropriate occupancy criteria are defined and enforced, and ensure that the development remains affordable to first and subsequent occupiers. The legal certainty provided by a planning obligation makes it the best means of ensuring that these arrangements are effective. Prior to my determination of the appeal, I raised concerns about the use of a planning condition and gave parties the opportunity to provide a suitably robust planning obligation to address the above matters.
8. Consequently I received a signed and dated Unilateral Undertaking. However, this legal agreement is deficient in a number of details needed to secure affordable housing effectively, not least details on the distribution of affordable housing and a plan with regards to land transfer and measures required to secure a registered provider. The Unilateral Undertaking, therefore, would not make appropriate provision for affordable housing.
9. Given the above I must conclude that the development would not make an appropriate provision for affordable housing and as a result would be contrary to policy NW6 of the Core Strategy.

### *Character and appearance*

10. The appeal site is not afforded the protection of any landscape designation such as those referred to within paragraph 115 of the National Planning Policy Framework (the Framework). However the site is within the Anker Valley Character Area, as set out in the North Warwickshire Landscape Character Assessment (2010). This character area is described as being a visually open and broad valley landscape, becoming steeper and more defined closer to the urban area of Polesworth.
11. The appeal site is an open grassed area, bound by an area of housing, (The Lynch, to the south), Pooley Lane to the west and woodland to the north and east. Combined with the mature landscaping on its boundaries, the site is largely obscured from view, albeit that a footpath which runs through and

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<sup>1</sup> North Warwickshire Local Plan, Core Strategy, Adopted October 2014

- along the edge of the site provides public access into it. This context contributes to the wider verdant and rural character of the area, which is appreciated within immediate views, from surrounding roads and footpaths, and from longer distance views from Polesworth and its wider environs.
12. The visually open and broad valley landscape offers long distance views of the site, from positions beyond the urban area of Polesworth. The site forms a small part of a much larger panoramic composition; one of a broad valley tops, interspersed with verdant landscaping and housing. Within long distance views the development would be visible, most notably the rooftops of the houses which no degree of landscaping would obscure. However, the height of the rooftops would not exceed the line of the horizon or the height of the trees visible within long distance views, such that it could be considered an incongruous or dominant feature on the skyline. To the contrary, the development would be appreciated as an extension of The Lynch and, therefore, would not detract from the existing settlement pattern of small towns in a rural landscape.
  13. The Council refers to the area to the east of the site, which accommodates the canal, as being a natural barrier between Polesworth and the open countryside. Indeed, this area, covered with trees and on land that slopes steeply up to the appeal site, is a notable barrier between the settlement and open land further west. However, it was apparent from my site visit that the appeal site continues the steep gradient of this land, up to Pooley Lane, beyond which the land then falls away towards the motorway and Tamworth. Pooley Lane, therefore, serves as a more natural barrier between Polesworth and the open countryside beyond.
  14. In addition to this natural barrier, the appeal site is within an area which policy NW19 of the Core Strategy seeks development that respects the separate identities of Polesworth, Dordon and Tamworth and maintains a meaningful gap between them. The appeal site occupies an area between existing development, to the north and south, and would be set in from other areas of Polesworth that extend further west. Together with being east of Pooley Lane, as described above, the new housing would not encroach into the 'meaningful gap' or interject into the open countryside in a way that would undermine the separate identities of the settlements described or their separation from each other.
  15. I recognise the possibility that Tamworth's built envelope will be extended further east in the future. However, there is nothing within the evidence before me to suggest that the scale of this development would risk an amalgamation of Tamworth and Polesworth such that the retention of the appeal site in its current form becomes imperative.
  16. The natural barrier between settlements forms a backdrop to the Polesworth Conservation Area (PCA). The character and significance of the PCA derives, in part, from this 'green backdrop', defined by trees on higher ground. Interspersed amongst these trees are buildings, including those at The Lynch. The appeal site is outside the PCA and behind the natural barrier described and therefore does not contribute to the significance or character of the Polesworth Conservation Area (PCA) overall. Nevertheless, given the proximity of the

- development to the green backdrop, the development could impact on the setting of the PCA depending on the form of the development proposed.
17. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The National Planning Policy Framework (the Framework) states that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 137 of the Framework states that proposals that preserve elements of setting that makes a positive contribution to, or better reveal the significance of an asset, should be treated favourably. Equally, the Framework acknowledges that significance can be harmed or lost through development. The Council's policies on heritage within the Core Strategy, notably policies NW12 and NW14 support this approach, seeking development that sustains, conserves and enhances the historic environment.
  18. The new housing would not encroach physically onto the 'green backdrop' and nor, therefore, onto the setting of the PCA. A landscaped buffer along the eastern edge of the site would guarantee this. However, given the lie of the land, the houses would sit higher than the canal and behind existing trees. Being an application for outline consent, details of existing and proposed landscaping, to include heights and species of plants, are earmarked for the reserved matters stage of planning. Details of finished site and ground floor levels would also be for consideration at the reserved matters stage. The exact position of the houses in relation to the existing topography and trees, therefore, is unknown. Nevertheless, from my observations on site and the evidence before me, I consider that at worst, from within the PCA looking west, the housing would be seen on the skyline, against a foreground of trees and alongside existing built development, though in the winter time when the leaves have fallen from the trees, the development would be more noticeable.
  19. Taking the houses at The Lynch as a reference point, there is nothing before me to suggest that the development would exceed the height of these properties or existing trees to appear incongruous or overly dominant within the local landscape. Equally, given the presence of built form within local views, a more exposed view of the development in the winter would not have any greater visual effect.
  20. Nevertheless, this judgement is made on the assumption that the heights of the houses proposed would not be insensitive to the presence of existing built form and to local views from the PCA. This certainty will be borne out of details at the reserved matters stage concerning the heights of the houses in relation to site levels. The importance of this detail to the development proposed means that it would be reasonable to secure any planning permission with conditions to ensure the submission and approval of finished site and ground floor levels. It is on the basis of my findings and this condition proposed, together with the less than significant contribution the site makes to the PCA, that I conclude that the proposal would leave the character of the PCA and its setting unharmed, that is to say preserved. The proposal would not, therefore, be contrary to policies NW12 and NW14 of the Core Strategy, nor paragraphs 132 and 133 of the Framework.

21. Within shorter distance views, the development would be seen from Pooley Lane and surrounding footpaths. Pooley Lane has a semi-rural character, defined by built development along sections of the lane and noise from motorway traffic, complemented by verdant landscaping including hedges and trees. As an extension of The Lynch and with a landscaped buffer east and west of the site, the development would combine built form with landscaping to complement the semi-rural character of the area.
22. There is no doubt that developing the site would change its character to a more urban one, which would be most notable from Pooley Lane and the footpath along the eastern edge of the site. The layout plan shows that there would be space for an area of landscaping between the lane and the new housing so that the development would be congruent with the semi-rural character of the area.
23. Walkers would experience a material change in their surroundings. The impression of walking in the countryside would be undermined by the presence of houses. However, the illustrative layout plan before me shows that access along Pooley Lane and the footpath would be retained. This would comply with policy NW12 of the Core Strategy, which seeks to protect existing rights of way. Furthermore, the landscaped buffer proposed would create a pleasant walking environment and would ameliorate any adverse visual effects the development may have on walkers' experience of the local area.
24. Therefore, on the basis of my findings and a landscaping and levels condition, I find that the development would not be visually intrusive on the character and appearance of the PCA to cause harm, nor would the development be harmful to landscape character. The development would not, therefore, be contrary to policies NW12, NW14, NW19 or to policy NW13, which seeks development that protects and enhances the character of the natural environment.

### **Other matters**

25. Based on the evidence before me I am unable to come to a definitive conclusion on whether the Council has a 5 year housing land supply. Nevertheless, even if I were to conclude that there is a shortfall in the five-year housing land supply and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impact of granting permission, being the substantial harm arising from a lack of appropriate means of securing affordable housing provision, would significantly and demonstrably outweigh the benefits of any additional market housing provided.
26. The Council states that the development would have a harmful effect on a Grade 2 listed building, Pooley Hall, but it doesn't substantiate its claim. There is nothing within the evidence before me, nor was it apparent from my observations on site, that there is a physical, visual or historical connection between the appeal site and the listed building. As such the development would not have a harmful effect on the setting of the listed building and as a result does not influence my decision on the appeal in this regard.

### **Conclusion**

27. I have found that the development would not have an adverse impact on the character and appearance of the landscape or upon Polesworth Conservation Area. Nonetheless, these factors would be outweighed by the harm arising from the lack of appropriate provision for securing affordable housing. It is on

this basis that I find that the appeal proposal would fail to accord with the development plan when taken as a whole. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be dismissed

*R Walmsley*

INSPECTOR

Richborough Estates