



---

# Appeal Decision

Site visit made on 31 May 2023

**by H Smith BSc (Hons) MSc MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 June 2023**

---

**Appeal Ref: APP/R3705/W/22/3312660**

**Land off Curlew Close, Warton, Tamworth, Warwickshire**

- 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 Mr Piper (Barley Developments) against the decision of North Warwickshire Borough Council.
  - The application Ref PAP/2020/0246, dated 6 May 2020, was refused by notice dated 8 June 2022.
  - The development proposed is described as erection of 34 dwellings including associated landscaping, car parking and other ancillary works.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The description of the proposed development in the banner heading above is taken from the planning application form. However, during the application stage the number of proposed dwellings changed from 34 to 28 affordable dwellings. The above description therefore differs from that on the decision notice which is 'erection of 28 affordable dwellings including associated landscaping, car parking and other ancillary works.' My decision is based on this description from the decision notice, since it more accurately described the proposal. It is also shown on the appeal form, so the appellant would not be prejudiced by my use of it.
3. The Council's decision notice refers to Policy LP29(6), which relates to highways. However, the Council has confirmed that this was a typographical error, which should have referenced Policy LP29(9). The appellant is aware of this issue and referred to it in paragraph 74 of their statement of case. As such, I have proceeded on this basis, and no parties would be prejudiced by my use of Policy LP29(9).

## Main Issues

4. The main issues are:
  - whether the site is a suitable location for the proposed dwellings having regard to the development plan policy;
  - the proposal's effect on the character and appearance of the area; and
  - the proposal's effect on living conditions of neighbouring occupiers.

## Reasons

### *Suitability of location*

5. Policy LP2 of the North Warwickshire Local Plan (2021) (Local Plan) defines the borough's settlement hierarchy and steers most development to the main towns, with a cascade approach in other settlements and with very little development directed towards the countryside. This is to ensure that development is provided in accessible locations in accordance with its range of services and facilities, and to protect the countryside. Warton is identified by Policy LP2 as a Category 4 settlement where development adjacent to its settlement boundary may be acceptable. Policy LP2 goes on to state, 'All development will be considered on its merits; having regard to other policies in the plan and will cater for windfall housing developments usually on sites of no more than 10 units at any one time depending on viability, services and infrastructure deliverability.'
6. The appeal site comprises agricultural land, located off Curlew Close. The proposed development would result in an extension of the village beyond the development boundary into open countryside.
7. The reason for the limitation of 10 dwellings in Category 4 settlements is to ensure that small communities are not swamped by new developments but could grow organically and naturally to be sustainable. I accept that the policy states that windfall housing would be catered for *usually* on sites no more than 10 units at any one time and therefore allows for exceptions. Indeed, some of the allocations are in excess of this amount.
8. However, in this instance, the proposal of 28 dwellings would exceed the 10 units of housing by more than double. The proposed development would therefore result in a significant expansion on the outskirts of a small village. Furthermore, while the village does offer a few services and facilities, they are insufficient to cater for the daily living requirements of residents. Although I acknowledge that the presence of additional residents could potentially support and enhance the existing services and facilities, I find that easy access to shops, services and job opportunities would heavily rely on the use of private motor vehicles.
9. Although there is a bus service nearby, I have not been provided with a timetable and so cannot be certain that the routes of timings would be viable for the typical daily needs of future occupiers. In the absence of alternative sustainable modes of transport such as regular bus or train services, future occupants are more likely to rely on private vehicles to access services and facilities as well as employment undermining the development strategy.
10. Consequently, the proposal would be in conflict with Policies LP1 and LP2 of the North Warwickshire Local Plan (2021) (Local Plan). Amongst other things, these policies restrict development outside development boundaries and focus new development within a defined settlement hierarchy, and seek to secure sustainable development with access to a range of services and facilities. In addition, the proposal would fail to accord with the National Planning Policy Framework (Framework) in respect of achieving sustainable development.

### *Character and Appearance*

11. The appeal site is located within the 'No Man's Heath to Warton – Lowlands' Landscape Character Area, as defined in the Council's Landscape Character Assessment (LCA). This describes the area as being a mixed open agricultural landscape, with a scattering of small red brick nucleated hill-top villages of which Warton is an example. The LCA identifies the need to conserve and strengthen the rural character and dispersed settlement pattern recommending that new developments should reinforce the existing settlement pattern of the existing villages. The undeveloped and rural character of the appeal site contributes positively to that landscape character.
12. The prevailing pattern of development near to the appeal site is characterised by residential properties with long private rear gardens positioned along and to either side of Austrey Road. There are also some small cul-de-sac developments leading off Austrey Road, with the existing dwellings fronting the road.
13. The proposal would be accessed off a small cul-de-sac known as Curlew Close, and therefore not directly from Austrey Road. This detached relationship would be a marked change from the existing built form fronting Austrey Road, and the existing cul-de-sac being accessed directly off Austrey Road. The proposal would therefore appear as an add-on to the village, rather than an integral component of it.
14. Although the proposal would be adjacent to existing development along Austrey Road and Curlew Close, most of the proposed development would abut long rear gardens of adjacent dwellings. It would extend deeper into the plot beyond the existing built form and into open countryside, altering the established linear built form and rear garden environment. As such, the proposal would not be contained by existing built form and would not infill a gap in an existing built-up part of the village. Furthermore, the site's undeveloped open nature emphasises a transition from the built form to the rural context beyond.
15. The proposal would provide a range of dwelling sizes and layout. Nevertheless, the siting and mass of the proposed development would be out of keeping with the prevailing pattern of the existing residential development in the area. The proposal would create an incongruous form of development adjacent to a well-established rear garden environment and would not respond positively to the overriding spacious character of the area.
16. During my site visit I observed open views across the site and from the surrounding area, despite the presence of some boundary vegetation. These included views from Curlew Close. Whilst landscape planting could be designed to provide some degree of screening, the proposal would nevertheless be visible from the site entrance, and in views from neighbouring properties. Therefore, the proposal would be a visually intrusive form of development that would unacceptably detract from the character and appearance of the surrounding area.
17. For the reasons given, the proposal would cause unacceptable harm to the character and appearance of the area. Accordingly, it would fail to accord with Policies LP1 and LP14 of the Local Plan. These policies, amongst other things, require development to conserve, enhance and where appropriate, restore

landscape character, and positively improve the individual settlement's character and appearance. Given these identified Local Plan conflicts, the proposal would not be supported by Policy LP2. In addition, the proposal would fail to accord with the design objectives of the Framework.

### *Living Conditions*

18. Due to the sufficient separation distances between the proposed dwellings and the existing neighbouring dwellings, the proposal would not cause an unacceptable loss of privacy through overlooking to neighbouring residents. Similarly, adequate outlook for existing residents would be maintained, due to the scheme's layout and positioning of rear gardens adjacent to existing built form.
19. As such, for this main issue, the proposal would accord with Policy LP29(9) of the Local Plan. Amongst other things, this policy seeks to ensure new development avoids and addresses unacceptable impacts upon neighbouring amenities.

### **Planning Balance and Conclusion**

20. Although the Council is able to demonstrate a five year supply of housing the proposal would contribute towards the Government's objective of significantly boosting that supply. In that context I give the provision of 28 units moderate weight.
21. It is proposed that the housing would be provided as 100% affordable. This would contribute to the social aspect of sustainability and the need for affordable housing within the area which has been confirmed by the Council. The appellant's Financial Viability Assessment states that it is imperative that only the policy compliant level of affordable housing be secured by a S106 agreement to allow the housing association to raise stronger capital on the homes over and above the 40%. However, I do not have any signed Section 106 legal agreement before me to secure any provision.
22. I have had regard to the advice in the Planning Practice Guidance on whether it would be appropriate to secure provision via a condition<sup>1</sup>. It confirms that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. It goes on to state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
23. I am not convinced that the development is complex or strategically important or that its delivery would otherwise be at serious risk. Furthermore, neither party has suggested such a condition. While the delivery of affordable housing would be a benefit of the scheme, given the overall shortfall, I cannot be sure that it would be delivered at 100%. I therefore attach only moderate weight to this benefit.

---

<sup>1</sup> Paragraph: 010 Reference ID: 21a-010-20190723

24. The proposal would deliver bungalows that would make a small contribution to a need for this type of accommodation and would enable housing choice in this respect. However, these benefits are modest relating to only a small number of proposed bungalows.
25. The proposal would make an economic contribution during the construction period and subsequently from future occupiers in terms of spending in the local area, which would help to support local businesses, facilities, and services.
26. The proposed scheme would not have an adverse impact with regard to residential amenity, highway safety, flooding and drainage. I also note the suggested biodiversity enhancements. However, these are neutral factors and do not weigh in favour of the proposal.
27. The proposal would be at odds with the spatial strategy in the development plan. It would also result in harm to the character and appearance of the area for the reasons given. It would therefore be contrary to the development plan as a whole. These matters I have outlined above, while of some benefit would not outweigh that conflict.
28. The appeal is therefore dismissed.

*H Smith*

INSPECTOR