



Appeal Decision

Hearing held on 27 November 2024

Site visit made on 28 November 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2025

Appeal Ref: APP/T3725/W/24/3347138

Land south of Chesterton Gardens, Sydenham, Leamington Spa

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by AC Lloyd against Warwick District Council.
 - The application Ref is W/23/1746.
 - The development proposed is outline planning application for a residential development of up to 190 dwellings with associated access, landscaping and public open space.
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Decision

1. The appeal is allowed and planning permission is granted for outline planning application for a residential development of up to 190 dwellings with associated access, landscaping and public open space at land south of Chesterton Gardens, Sydenham, Leamington Spa in accordance with the terms of the application, Ref W/23/1746, subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved except for access. It was considered by Warwick District Council's planning committee on 16 April 2024 where it was resolved to approve the application subject to the satisfactory completion of a planning obligation and further work demonstrating compliance with the then emerging Net Zero Carbon Development Plan Document. On 30 May 2024, a direction under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 was issued, directing the Council to not grant permission.
3. An appeal against non-determination was submitted to the Planning Inspectorate on 27 June 2024. There is no reason that an appeal against the failure to give notice within the prescribed period of a decision on an application cannot be submitted while an application is subject to a direction under Article 31. I am therefore satisfied that I can proceed to determine this appeal.
4. The Council screened the proposed development under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Notwithstanding, the appeal was screened of the Secretary of State's own volition which also concluded that the development was not EIA development.

5. A draft planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted prior to the Hearing. At the Hearing, the appellant advised it would be necessary to make some amendments to that obligation. I agreed that an amended and completed version could be submitted after the close of the Hearing. A completed planning obligation by deed of agreement, dated 6 December 2024, was subsequently submitted. It was signed by the appellant, the Council and Warwickshire County Council who also participated at the Hearing. I will return to this in due course.
6. I was made aware that the pre-Hearing note, which offered the opportunity for all parties to respond on limited issues, was not circulated to the interested parties until the day before the deadline for responses. However, in this note, it was clear that further comments would be accepted at the Hearing. All parties were provided with the opportunity to make comments at the Hearing and I am satisfied that there has not been prejudice to any party in respect of this matter. Any concerns interested parties may have with respect to the wider conduct of the Council are not within the remit of the appeal process and are not material to my assessment of the proposed development on its planning merits.
7. On 12 December 2024, a revised National Planning Policy Framework (the Framework) was published. I have sought further views from the parties on this and have taken those comments into account in reaching my decision. I will refer to the updated paragraph numbers.

Main Issues

8. The Council and the appellant agreed a final Statement of Common Ground (SoCG) in November 2024. This confirmed that there were no areas of disagreement between them. Having had regard to the written evidence before me and the representations made to both the application and the appeal, I consider the main issues to be whether:
 - the proposed development would be in accordance with the policies of the Net Zero Carbon Development Plan Document;
 - the proposed development would provide a safe and suitable access and have an acceptable effect on the operation of the highway network;
 - the proposed development would have an acceptable effect on the living conditions of existing and future occupiers with respect to noise and disturbance; and
 - the contributions sought with respect to affordable housing, first homes, open space, drainage, employment, healthcare, outdoor sports, indoor sports, grass pitches, air quality, education, highways, libraries, public rights of way, and bus stops, are reasonable and necessary to make the development acceptable.

Reasons

9. Section 39(2) of the Planning and Compulsory Purchase Act 2004 (as amended) requires the development plan to be prepared with the objective of contributing to the achievement of sustainable development. Warwick District Local Plan 2011-2019 (September 2017) (LP) Policy DS2 commits to providing

housing to meet the objectively assessed housing need for the district and for unmet housing need outside the district where this has been agreed. There is no substantive evidence before me of any oversupply, and in any event national policy is to boost significantly the supply of housing. LP Policy DS11 allocates sites for housing development. The supporting text confirms that sites were allocated following a process of appraisal against a range of criteria.

10. The appeal site forms part of the wider H03 allocation which has an identified capacity for 500 dwellings. The policy does not identify any other infrastructure requirements or uses to be provided, which it does for other allocations. The supporting text does indicate that there should be an ecology and landscape corridor adjacent to Whitenash Brook and that access could be provided following a partial rebuild and extension of Campion School. However, this is not a requirement of the policy.
11. Whitenash Neighbourhood Plan (NP) was made in January 2016. NP Policy W 6 protects a Wildlife Buffer along Whitenash Brook from inappropriate development. It sets out a number of enhancements to be sought within this land.
12. There is a history of applications and appeals on the site, and I have taken these into account where material to my decision. Outline planning permission on the site was granted on appeal¹ for up to 200 dwellings. It was confirmed in the SoCG that an application for reserved matters² pursuant to that outline for 185 dwellings has been approved by the Council. The Council is satisfied that this represents a realistic fallback position. Having regard to the tests set out in Gambone³, I have no reason to reach a different conclusion.

Net Zero Carbon Development Plan Document (NZCDPD)

13. LP Policies CC1, CC2 and CC3, along with NP Policy W 14 require development to have regard to climate change and optimise energy and resource efficiency through siting, design and layout. The Council declared a climate emergency on 27 June 2019 and subsequently identified that planning decisions had an important influence in tackling climate change. The NZCDPD was not adopted at the time the planning committee considered the application however it was at a very advanced stage. The Council confirmed at the Hearing it was in receipt of the Inspector's report at that time and had updated Members accordingly. It would have been a matter for the decision makers how much weight to attach to the NZCDPD at that time.
14. In any event, the NZCDPD was adopted on 15 May 2024 and now forms part of the development plan for Warwick District. Its policies set out how to achieve net zero carbon development (NZC1), targets for making buildings energy efficient (Policy NZC2(A)), the use of zero or low carbon energy sources (Policy NZC2(B)) and carbon offsetting (Policy NZC2(C)). It also requires consideration to be given to the embodied carbon in materials (Policy NZC3)). As a large, major development, the policies of the NZCDPD clearly apply to this proposal.

¹ APP/T3725/W/21/3270663 allowed 12 August 2021

² W/23/1766 allowed 31 October 2024

³ Gambone v Secretary of State for Communities and Local Government & Wolverhampton City Council [2014] EWHC 952 (Admin)

15. An Energy and Sustainability Statement was submitted with the application which had regard to the then emerging NZCDPD. It assessed which types of low and zero carbon energy sources would be suitable within this type of development and that a level of carbon reduction could be achieved which would exceed that set out in NZCDPD Policy NZC1. It also demonstrated that an improvement in excess of the target set in NZCDPD Policy NZC2(A) could be achieved.
16. However, given the outline nature of the proposal and the detailed nature of the policies, compliance can only be fully assessed at the reserved matters stage. It would be necessary for such measures to be secured by condition as they go beyond what is identified as falling within the definition of appearance and layout in the Town and Country Planning (Development Management Procedure) (England) Order 2015. I will return to the detail of the conditions.
17. I am therefore satisfied that the proposal could be delivered in a manner which would be in accordance with the policies of NZCDPD and would therefore comply with Policies NZC1, NZC2(A) NZC2(B), NZC2(C) and Policy NZC3. It would also be in accordance with NP Policy W 14.

Highway Safety

18. The application was accompanied by a Transport Assessment (TA) which assessed the effects of a 200 dwelling development utilising a single access via Brimstone End. It was based on the TA submitted with the previous outline permission, with relevant updates. The comments of the local highway authority (LHA) also referred to the use of a more recent model. I have no reason to reach a different conclusion with respect to the estimated traffic levels that would be generated by the proposed development.
19. The proposed access would cross a bridleway. As noted in the previous appeal, this is not an uncommon access arrangement. Vehicles can use the bridleway which serves a small number of properties beyond the site. The access would be single width where it would cross the bridleway, with priority given to vehicles entering the site. Bollards would be installed to limit the potential for vehicles to turn onto the bridleway from the access. Concerns were raised about the maintenance of these bollards, but this matter could be addressed through the relevant highway legislation. The existing width of the bridleway would be maintained as the bollards would not be placed within it.
20. The Road Safety Audit included within the TA identified concerns with respect to the crossing of the bridleway. While one recommendation was not accepted due to the existing width of the bridleway, the others have either been addressed in the access plan before me or will be addressed during the detailed highways design stage. Passing places are to be provided along the bridleway either side of the access which would reduce the potential for conflict.
21. Other access points to the site include a pedestrian and cycle access onto the bridleway, and the provision of an emergency access. As in the previous appeal, full details of these can be secured through the reserved matters.
22. Access to the bridleway is provided via Church Lane and a bridge over the railway line. This serves a small number of existing properties beyond the appeal site. It is single width but it was stated at the Hearing that large

vehicles do use the route to access those properties it serves. There are other controls to restrict which vehicles can use this, and enforcement of those controls would be for those regimes. There are no restrictions preventing people from being dropped off on Church Lane and then using the bridleway to access other development. Vehicles cannot access the existing Chesterton Gardens housing development from the bridleway and it is not proposed for this to change. Concerns regarding street naming affecting use were also raised however this is a matter not within the control of the planning system.

23. The access works will involve the loss of some of the boundary hedge around the site, however this loss would be a foreseeable consequence of the site being allocated. There is no objection to the proposal from the rights of way officer subject to suitable surfacing of the bridleway for equestrians and the provision of suitable landscaping. These matters would be addressed at the relevant highways approval or the reserved matters stage of the development. Any works which would involve the closure of or works to the bridleway would require separate consents, irrespective of the grant of planning permission. The bridleway does lead to the wider highway network, and it is reasonable to expect riders to be sufficiently experienced and to ride horses which can respond to the typical conditions of their route which would include some car use. There is reference in the evidence before me to the bridleway being used by dog walkers, which is consistent with my observations at my site visit. While there would be the potential for more dog walking along this route were the site to be developed, or dogs getting loose, there is no substantive evidence before me this would create an unacceptable hazard to horse riders beyond those to be expected when riding in proximity to a built up area.
24. The TA concluded that the junctions at Chesterton Drive/ St Fremund Way and Chesterton Drive/ Sydenham Drive would continue to operate well within their designed capacity including in the AM and PM peak times. This is not disputed by the LHA. While concerns were cited by interested parties as to the assessment of the Chesterton Drive/ St Fremund Way as a T junction, there is no substantive evidence before me to indicate that a different approach should have been taken. Concerns about the operation of the junction were also raised, including difficulties buses have in turning and drivers failing to observe the give way. However, the junction is typical of that found in residential areas. It is not uncommon for large vehicles such as buses to have to turn using the opposite carriageway. The junction would not pose any undue difficulties to drivers exercising due care and attention.
25. A number of accidents have been brought to my attention particularly those affecting 61 St Fremund Way. At my site visit, I observed the bollards and railings erected along Chesterton Drive. However, while upsetting for those involved, there is no substantive evidence before me suggesting that traffic volume or that the additional traffic generated by the proposed development would be the cause of accidents. The effects of construction traffic would be limited to the lifetime of the development process and could be partially mitigated by restricting delivery times to the site. This could be secured by condition.
26. The TA also identified that traffic speeds of 20mph help to support the opportunity for on-carriageway cycling. At the Hearing, concerns from people who cycle on the surrounding road network about the behaviour of drivers and the effects of large vehicles such as construction traffic were set out. It was

also suggested that there are episodes of drivers speeding round the estate roads. While the TA acknowledges that the road network is designed to encourage driving at lower speeds, it also sets out a proposed traffic calming scheme for part of St Fremund Way. The walking route I took at my site visit utilised Moncrieff Drive, which would allow pedestrians and cyclists to use a route which would not be supporting through traffic.

27. There are existing services and facilities on Chesterton Drive and Calder Walk with the Asda Superstore, Sydenham Community Centre, the Shire Grill, Croft Medical Centre and Sydenham Primary School. The walking route took me past Calder Walk where the Croft Medical Centre and Sydenham Primary School are located. The school is identified as being just beyond the 1200m walking isochrone. Campion School is shown as being closer via the footway that leads from the bridleway, however at my site visit, it was unlit and quite overgrown. At this time, it would not appear to form a route that would be attractive. The TA sets out that Sydenham Primary would be within the distance where 80% of pupils are more likely to walk to school than be driven. While this was challenged, my attention has not been drawn to any specific recommendations with respect to walking distances. While it may be challenging for younger children at the school to walk that distance, from my observations at my site visit, walking to these facilities would be a reasonable option for many people from the appeal site.
28. There would also be options for people to access services in Whitenash via the bridleway and railway bridge. While this may be less attractive during inclement weather and in hours of darkness, at other times it would be a pleasant walking route.
29. The LHA identified increased delays on the wider highway network, with journey time and queue length increases. The Infrastructure Delivery Plan (IDP) identifies projects which would contribute to tackling those delays and the Council have set out that a proportionate contribution would be sought towards those projects.
30. The local bus operator has made clear they would not extend the existing service that serves St Fremund Way into this site. However, their reservations regarding the site were made clear during the preparation of the LP, and the site was allocated nonetheless. The existing bus stop on St Fremund Way is not an insurmountable walking distance from the site and a contribution towards its enhancement and maintenance is proposed via the planning obligation.
31. The planning obligation would also require at least three bus stops within the site, the position of which would be secured at the reserved matters stage. While this would not guarantee the provision of a bus service, it would ensure that the necessary infrastructure would be in place were one to be provided. Although the representation from Stagecoach refers to the need for an expansion of the bus service to be funded, at this stage there is not sufficient certainty of this so as to require such funding to be secured on this permission. Interested parties raised concerns as to what would happen if the bus service is not extended to serve the site. While this would be unfortunate, it would not justify failing to make provision for a service which may occur. I will return to the matters to be secured by the planning obligation.

32. There is no substantive evidence before me that on-street parking is causing particular issues with the operation of the highway network. Were that to be the case, it is a matter that could be addressed by the LHA. It may be that cars are generally larger than in the past, but the layout of the road network is such that there is no reason it will not continue to operate acceptably. Pavements are of sufficient width that pedestrians can walk with ease. It is not unusual for minor roads not to be gritted. Adoption of roads by the LHA would not affect my assessment of the proposed development.
33. It was set out that a previous appeal decision said there should be no further development using St Fremund Way as an access. However, it was confirmed at the Hearing that this decision related to a different site to that before me and there is no evidence of any binding mechanism to prevent further development. Furthermore, there is the 2021 permission with an extant reserved matters approval which is specific to this site.
34. I therefore conclude that the proposed development would provide a safe and suitable access and have an acceptable effect on the operation of the highway network. It would therefore be in accordance with LP Policy TR1 which requires proposals to provide safe, suitable and attractive access routes, not be detrimental to highway safety and consider the needs of public transport.

Living Conditions

35. The noise and vibration assessment submitted with the proposal identified the potential for there to be adverse effects on the living conditions of future residents were development to be located in proximity to the railway line. In particular, four potential properties were identified. Mitigation measures were set out which could address this and that overheating would be taken into account through this. It also confirmed that a scheme was approved to discharge the relevant condition in relation to the outline and extant reserved matters. There is no reason that suitable living conditions for future occupiers of the site could not be achieved.
36. Interested parties raised concerns regarding the effect of noise and disturbance from the increase in traffic having an adverse effect on the living conditions of existing residents. It was identified in the previous appeal that there would be adverse noise effects to a limited number of properties arising from the proposal. Mitigation works were required as part of the extant permission. The Council confirmed at the Hearing those works had been carried out. The noise assessment demonstrates that there would not be adverse effects from noise arising to other properties as a result of the proposed development. In the absence of substantive evidence to demonstrate otherwise, I have no reason to find differently in this regard.
37. Residents made reference to an 'amphitheatre' effect experienced by occupiers living around the open space on St Fremund Way. There is no substantiated evidence of this effect, or any explanation as to how the noise generated by the additional vehicle movements would exacerbate any effect. In any event, other legislation exists to address noise issues. A suitable condition can provide controls to mitigate the effect of the development process on the living conditions of surrounding occupiers.

38. Other, detailed considerations of the effect of the development on the living conditions of neighbouring occupiers would be considered at the reserved matters stage by the Council in the first instance.
39. The proposal would therefore have an acceptable effect on the living conditions of existing and future occupiers with respect to noise and disturbance. It would therefore be in accordance with LP Policy BE3 which requires development to provide an acceptable standard of amenity for future occupiers and not have an unacceptable adverse impact on the amenity of nearby residents.

Whether the contributions sought are reasonable and necessary

40. A completed planning obligation by deed of agreement was submitted after the close of the Hearing. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations) and paragraph 58 of the Framework set out three tests that planning obligations must meet.
41. LP Policy DM1 confirms that appropriate infrastructure contributions will be sought, and further guidance on this is set out in the Developer Contributions Supplementary Planning Document (DCSPD). The Council provided a comprehensive CIL Compliance Statement which sets out supporting policies of the development plan and, where appropriate, supplementary planning documents, that set out the context in which the provisions were sought.
42. Affordable Housing and First Homes: The obligation requires 40% affordable housing which is compliant with LP Policy H2 and the advice in the Affordable Housing Supplementary Planning Document and the DCSPD. As drafted, the obligation allows the tenure mix to be negotiated. In light of the advice at footnotes 31 and 90 of the Framework regarding First Homes, I am satisfied this is a reasonable approach and would not allow for re-negotiation of the overall contribution.
43. There is no merit to the argument that because the numerical need for affordable housing is high, the numerical contribution of this proposal would be so limited that it would not be a benefit of the proposal. The location of the affordable housing would be determined at the reserved matters stage and so is beyond the scope of this permission.
44. Highways: It is necessary to secure an off-site contribution to mitigate effects on the wider highway network as a result of the proposed development. This would be a proportional contribution towards a wider scheme.
45. Open Space: LP Policy HS4 confirms that contributions will be necessary to provide, improve and maintain appropriate open space and recreation facilities. NP Policy W 6 seeks to protect a buffer strip along Whitnash Brook from inappropriate development. The proposed parameters plan secures the provision of this strip as open space.
46. As the proposal is in outline other than access, the precise details of the open space would fall to be considered as part of the reserved matters. However, as the principle of development is established through the outline, it is reasonable for the future arrangements for the management of that land to be secured.
47. Healthcare: LP Policy HS6 seeks to create healthy communities and the DCSPD confirms that both primary and secondary health care contributions

will be sought. The representations from each body, along with the Council's CIL compliance statement set out the rationale for the contributions.

48. Concern was raised regarding where the contributions for medical facilities would be spent. The CIL Compliance Statement sets out how it is intended to spend the contributions, and this would be reported in due course through the Infrastructure Funding Statement.
49. Drainage: LP Policy FW2 requires development to incorporate sustainable urban drainage systems, with further detail on the implementation of this provided by the Public Open Space Supplementary Planning Document. The obligation would secure the design, long term management and maintenance of this.
50. Sports Facilities: LP Policy HS4 seeks improvements to sport and recreation facilities. The DCSPD expands on this, informed by a number of relevant evidence base studies. The Sports Development Officer has highlighted locations where these contributions could be spent, given the available evidence on travel distance to use such facilities and their distribution throughout the district which addresses concerns on this matter raised at the Hearing.
51. Air Quality: LP Policies TR1, TR2 and NE5 all require development proposals to have regard to their effect on air quality, with detailed advice provided in the Air Quality and Planning Supplementary Planning Document. Development of this scale would require appropriate Stage 3 mitigation.
52. Education: The education authority identified the level of demand that would be generated by the proposal and the equivalent financial contribution to meet this demand. The county council explained at the Hearing their approach to spending education contributions, elaborating on the response set out in the CIL compliance statement.
53. Library Contribution: A financial contribution is necessary for the improvement of the library service in response to the demand generated by the proposal.
54. Public Rights of Way: The proposal would increase the usage of public rights of way in the area. A contribution towards their maintenance is necessary which would be spent on routes that at least partially lie within 1.5 miles of the site.
55. Local Employment Strategy: A local employment strategy is required to ensure that local people benefit from the economic opportunities presented by development and minimising the need to travel.
56. Bus Stops: As set out above, the obligation makes provision for improvements to an existing bus stop, the delivery of bus stops within the site and contributions towards future maintenance within the site to ensure that there is appropriate provision in place.
57. Regulation 122 of the CIL Regulations allows for a contribution to be secured towards the costs of monitoring and reporting provided the sum to be paid fairly and reasonably relates in scale and kind to the development and does not exceed the authority's estimate of its cost of monitoring the development. I have no reason to conclude that the monitoring contribution secured through the planning obligation for both the Council and County Council would not comply with these tests.

58. The obligation provides for indexation, and for both the Council and County Council to repay the contributions if they are not spent within seven or ten years respectively for single payment contributions or seven years of the first payment of instalment payments. Given the trigger dates for payments and that financial contributions are required to meet the demands generated by the development, I consider this is a reasonable time in which to require the sums to be spent.
59. I conclude that all contributions secured through the planning obligation would be reasonable and necessary to make the development acceptable. They would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The planning obligation therefore complies with the statutory tests.

Other Matters

60. Any loss of playing fields at Campion School were access to be provided through it to the remainder of the allocation would be a consideration for that proposal. While the interests of good planning will require suitable access through this site to the remainder of the allocation, this can be adequately addressed at the reserved matters stage.
61. The site has been subject to a geophysical survey and trial trenching, the results of which were submitted with the appeal. These recovered limited finds, and did not include any evidence of a holy well. The Council's archaeological consultant is satisfied with these findings and does not require any further conditions in relation to archaeology. I am satisfied that appropriate investigations have been carried out and no further work is necessary.
62. I have been referred to documents which appear to be extracts from documents and representations made during the preparation of the LP. These would have been taken into account in the examination into the LP and it is not for this appeal to re-run those arguments. Furthermore, the supporting text to the LP identifies factors that were taken into account when determining which sites should be allocated.
63. The area shown to be protected by NP Policy W 6 falls within the area identified as open space in the parameters plan. As layout is a reserved matter, this, and the enhancements it seeks, would be considered in detail at a later stage. The need for the development to be brought forward in general accordance with the indicative layout plan can be secured by condition.
64. The proposal was accompanied by a Non-EIA Landscape & Visual Impact Appraisal which accepted that there would be a number of adverse effects, including major adverse effects at year 15. However, the allocation of the site included consideration of a landscape character assessment so the inevitable changes to the landscape character and the visual effects on surrounding users have been accepted in principle. I note the comments of the County Council's Landscape Officer, however these largely relate to detailed matters of landscaping and layout which are not before me at this outline stage.
65. Part of the site does lie within areas of risk of fluvial and surface water flooding, with low risk of other forms of flooding. As the allocations process was informed by a Strategic Flood Risk Assessment, this was taken into

consideration in the allocation of the site. These areas lie immediately adjacent to Whitnash Brook and are shown on the proposed parameters plan as providing open space. The surrounding land would comprise further open space, play space, attenuation ponds and allotments. Consequently, there would be no built development in the areas at greater than a low risk of flooding. A drainage strategy has been provided as previously discussed and would be secured via condition and planning obligation. There are requirements within the standards for these matters for future climate change to be taken into account. The safety of above ground drainage measures would be addressed through the details secured as part of the planning obligation.

- 66. It would be for the developer to ascertain how services and utilities could be delivered to the site, however I have no reason to think that this would not be feasible.
- 67. No substantive evidence of anti-social behaviour on Church Lane, how this is caused by the existing development or would be exacerbated by the proposed development has been placed before me.
- 68. The provision of accessible dwellings would fall to be considered at the reserved matters stage. The distance of the site to services and facilities may present challenges to people with mobility and other conditions. However, this also would have been taken into account during the site allocation process.

Conditions

- 69. The Council has suggested conditions should I be minded to allow the appeal. I have had regard to these in light of the tests set out in paragraph 57 of the Framework and the advice in the Planning Practice Guidance. Amended wordings for some conditions were received after the close of the Hearing and I have considered those amended wordings. I have made amendments to some of them for consistency and clarity purposes including with respect to triggers and removing tailpiece clauses. In the interests of certainty, I have imposed conditions 1, 2 and 3 for the submission of reserved matters and the commencement of works. Condition 4 confirms the approved plans and condition 5 is reasonable to establish the parameters for future reserved matters.
- 70. Condition 6, 7, 8 and 14 are reasonable and necessary for the protection and enhancement of biodiversity including trees during the construction process and its long term maintenance. Condition 7 should be submitted alongside any application containing details of reserved matters to ensure it would be effective. I have amended condition 14 to refer to the submitted plan that shows tree protection measures.
- 71. Condition 9 is reasonable and necessary to ensure comprehensive development of the wider allocation can be achieved. Condition 10 is reasonable and necessary to limit the effects of the development on the living conditions of surrounding occupiers and future occupiers and on the operation of the highway network is necessary. I have included details of working and delivery hours as part of this condition. Construction phasing is included as part of condition 9. I have removed a requirement for details of HGV routing as I have not been made aware of any restrictions on the immediate highway network that would make it enforceable.

72. Condition 11 is reasonable and necessary to mitigate the effects of the development on air quality but should be submitted as part of the reserved matters to ensure that it would be effective. As these measures can require a monitored travel plan and measures to promote public transport use, a further condition in this regard is not necessary. Conditions 12 and 13 are reasonable and necessary to ensure the site is appropriately drained and maintained. This would also address the concerns of the rights of way officer by ensuring surface water would not drain to the bridleway. I have amended the conditions to require a timetable for the delivery of the drainage scheme to form part of the approved details to ensure it would be effective and to ensure the maintenance scheme condition is enforceable.
73. Condition 15 is reasonable and necessary to mitigate the effects of the development on biodiversity. It would be sufficient for these details to be agreed prior to the installation of any lighting. Condition 16 would ensure the scheme would deliver a net gain for biodiversity and so is reasonable and necessary. Given the requirements of condition 6, I have removed extraneous detail from this condition.
74. Condition 17 is reasonable and necessary to ensure the continued safe operation of the adjacent railway during construction. Condition 18 is necessary in the interests of residential amenity. Condition 19 is reasonable and necessary to comply with the LP with respect to water efficiency. I have replaced the suggested condition with one that specifies the standard to be achieved as set out in the policy.
75. At the Hearing, it was suggested that an amended condition be imposed in light of a condition imposed on a recent appeal⁴ to secure compliance with the NZCDPD. Photovoltaics were identified in the energy statement as being a suitable method to achieve the aims of the NZCDPD and would affect the appearance of the dwellings. There are further measures to be required such as carbon offsetting which could require a subsequent legal agreement. It therefore would be necessary for an energy statement detailing the measures proposed to be submitted as part of the reserved matters to ensure that the scheme could deliver the policy requirements. The suggested condition also specified the content of the energy statement. I consider this would lack precision given the detailed requirements of the policies contained within the NZCDPD, and the potential ways in which its requirements could be met. Accordingly, I consider the condition would be more effective were it to require an energy statement that met the relevant policy requirements. I have amended condition 20 to reflect the above.
76. An additional condition was also submitted after the Hearing to address the requirement in NZCDPD Policy NZC1 that it be demonstrated that the constructed dwellings meet the standards. As written the policy requires this to be done for all buildings. Discussion at the Hearing confirmed that both the Council and the appellant considered this to be disproportionate for a large development such as this. The supporting text identifies that for large scale proposals, a sample of 20% would be appropriate. While this is greater than that suggested by the parties, I have no reason to vary from that figure and so have amended the suggested condition to reflect this. I have also amended condition 21 so it is clear that it applies to the properties as built and to allow

⁴ APP/T3725/W/23/3319752 allowed 24 May 2024

for the sample of properties to be in accordance with an approved scheme. There is no allowance in the policy for this to be aggregated across house typologies so I have removed this option as it would not be reasonable.

77. Condition 22 is reasonable and necessary to ensure appropriate living conditions for future occupiers. Given the references in the noise assessment of the effect of materials and design in the need for sound mitigation, I have amended the condition to refer to any reserved matters application that would require details of the appearance of the dwellings and to require a timescale given that some of the measures may relate to individual dwellings. Condition 23 is reasonable and necessary to integrate the development into the area by requiring the retention of existing landscaping and its subsequent replacement for a fixed time should this be necessary.
78. Dwelling mix would directly affect how the reserved matters would come forward so condition 24 is necessary to ensure the development would address the identified housing needs in the district. Given that percentages are not always precise, the use of general accordance is considered to be acceptable in this instance. Condition 25 is reasonable and necessary to ensure that allotments are delivered in a timely manner. Condition 26 is reasonable and necessary to ensure the site is suitable for the proposed end use.
79. It is necessary to ensure the access to the site and wider traffic calming measures are delivered prior to the first occupation of the site in the interests of highway safety as secured by conditions 27 and 28. At the Hearing, the potential for there to be amendments to the access to reflect the findings of a road safety audit was explained as the reason for the condition wording. I have amended condition 28 to make direct reference to this.
80. A trespass proof fence would be necessary adjacent to the railway line in the interests of public safety. As this is beyond what would normally be expected of boundary treatments, it is reasonable to secure this through condition 29.
81. Boundary treatments (other than those pertaining to the railway line), materials, delivery and replacement of landscaping, and the provision of car and cycle parking relate directly to the reserved matters and so do not require conditions. LP Overarching Policy SC0 seeks to enable strong communities to be formed and sustained. There is no substantive evidence before me to demonstrate that changes of use to houses in multiple occupation would be likely to undermine this on the appeal site. Removing this right would therefore not be reasonable.
82. Matters related to water supply and the provision of fire hydrants are controlled by other legislation and so are not necessary.

Conclusion

83. Although the Council cannot demonstrate a five year supply of deliverable housing land, the parties were in agreement that the policies of the development plan were consistent with the Framework insofar as they relate to this appeal. I have no reason to disagree, having had regard to the Framework published in December 2024.
84. I have found that the proposal would be in accordance with the development plan and there are no material considerations that indicate I should make my decision otherwise. Paragraph 11c of the Framework confirms that where

proposals that accord with an up-to-date development plan, they should be approved without delay.

85. I therefore conclude that the appeal should be allowed.

Jennifer Wallace

INSPECTOR

Richborough

APPEARANCES

FOR THE APPELLANT:

Satnam Choongh (Counsel)
Karin Hartley (Planning)
Dave Neale (Transport)
David Green (Planning)
Rebecca Mushing (Solicitor)
Glen Langham (AC Lloyd)

FOR THE LOCAL PLANNING AUTHORITY:

Dan Charles (Warwick District Council)
Janet Neale (Warwickshire County Council)

INTERESTED PARTIES:

Sheila Cooper (Local Access Forum)
George Davies (on behalf of Matt Western MP)
Capt. K.P. Thomas
Elizabeth White
Edward Leonard
Brian Jarvis
Christine Kenny

DOCUMENTS SUBMITTED AT THE HEARING:

Plan 1 – Suggested Walking Route from Main Parties
Plan 2 – Suggested Walking Route from Interested Party

DOCUMENTS SUBMITTED AFTER THE HEARING:

Document 1 – Copy of Statement made at Hearing on behalf of Matt Western MP
Document 2 – Infrastructure Delivery Plan
Document 3 – Condition Wording
Document 4 – Completed Planning Obligation
Document 5 - Comments on revised National Planning Policy Framework
Document 6 - Correspondence from Local Access Forum and Responses
Document 7 – Comment from Elizabeth White and Responses

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development to which this permission relates shall begin within three years of the date of this permission or within two years of the final approval of the reserved matters, whichever is the later.
- 4) The development hereby approved shall be carried out in accordance with the details shown on the following plans: Site Location Plan 4648-01 Rev E; Proposed Parameters Plan 4648-03 Rev N and Proposed Narrowing and Bridleway Crossing 20376-01 Rev E.
- 5) The development hereby approved shall be carried out in general accordance with the details shown on Illustrative Masterplan 4648-04 Rev. C.
- 6) No development shall commence on any phase of development until a Construction and Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall be compliant with the British Standard on Biodiversity BS 42020:2013 published in August 2013 and shall include details of pre-commencement checks and monitoring for protected and notable species, and habitats as deemed appropriate. In addition, appropriate working practices and safeguards for other wildlife that are to be employed whilst works are taking place on site should be included. The CEMP shall include a timetable for the implementation of measures stated. The agreed Construction and Environmental Management Plan shall thereafter be implemented in full.
- 7) Any application submitted pursuant to condition 1 that contains details of landscaping outwith residential curtilages shall be accompanied by a Landscape and Ecological Management Plan (LEMP). The LEMP shall include details of planting and maintenance of all new planting. Details of species used, and sourcing of plants should be included. The plan shall also include details of tree and hedgerow retention; habitat enhancement/creation measures and management, such as ponds, wildflower grasslands; and the provision of habitat for protected species. The LEMP shall also include details on soil management to make best use of the high-quality soils on site - detailed guidance to inform this matter is available in Defra 'Construction Code of Practice for the Sustainable Use of Soils on Construction Sites'. The development shall be carried out in accordance with the approved plan.
- 8) Prior to the submission of any application for the approval of reserved matters, a scheme for the protection of the Local Wildlife Site shall be submitted to and approved in writing by the Local Planning Authority. The Local Wildlife Protection scheme shall include:
 - Adequate measures to protect existing trees, scrub and ground flora of the adjacent Local Wildlife Sites during development.
 - Details of an appropriate barrier(s), such as a wire fence, to be erected before works start. This area should include a sufficient buffer zone

between the development/ associated works and the boundary of the Local Wildlife Site.

Thereafter, the approved protection scheme shall be implemented in full prior to any construction works on site and shall remain for the duration of the construction phase of the development.

- 9) Should the development hereby permitted come forward in phases, the first application for the approval of reserved matters shall be accompanied by a phasing plan for the whole site. The phasing plan shall include a programme of works detailing location, size, timing and delivery as applicable for the site access as shown on Proposed Narrowing and Bridleway Crossing 20376-01 Rev. E; primary and secondary roads as shown on Parameters Plan 4648-03 Rev. N; each phase of housing within the site; the sustainable urban drainage system; and on-site public open space including allotments and the play area. The development shall be carried out in accordance with the approved phasing plan.
- 10) No development shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall include provision for the following:
- the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - hours of operation for construction works and deliveries shall be restricted to 07:30-17:00 Monday to Friday and 08:00-13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays. During term time delivery vehicles shall not be allowed to arrive on site between 08:30 and 09:30 or between 15:00 and 16.30 Monday to Friday.

The approved Construction Method Statement shall be adhered to throughout the construction phase of the development.

- 11) Any application submitted pursuant to condition 1 shall include a scheme of Type 1 and 2 mitigation measures in accordance with Warwick District Council's Air Quality Supplementary Planning Document (January 2019). The development shall be carried out in accordance with the approved mitigation measures.
- 12) No development shall commence until a detailed surface water drainage scheme for the site, based on the sustainable drainage principles contained within Outline Drainage Strategy LIW-JBAU-XX-XX-RP-0001 Rev. A01-C01 (JBA, Feb. 2024), the approved Flood Risk Assessment LIW-JBAU-SI-XX-RP-HM-0001 Rev. A3-C03 (JBA, Nov. 2023) and an assessment of the hydrological and hydrogeological context of the development, has been

submitted to and approved in writing by the Local Planning Authority. The scheme to be submitted shall include the following information:

- Demonstrate that the surface water drainage system(s) are designed in accordance with 'The SuDS Manual', CIRIA Report C753 through the submission of plans and cross sections of all SuDS features.
- Limit the discharge rate generated by all rainfall events up to and including the 100 year plus 40% (allowance for climate change) critical rainstorm to the Q Bar Greenfield runoff rate of 28.5 l/s.
- Demonstrate the provisions of surface water run-off attenuation storage are provided in accordance with the requirements specified in 'Science Report SC030219 Rainfall Runoff Management for Developments'.
- Demonstrate detailed design (plans, network details and calculations) of the surface water drainage scheme including details of all attenuation and outfall arrangements. Calculations should demonstrate the performance of the designed system for the critical storm duration for at least the 1 in 1 year, 1 in 30 year and 1 in 100 year plus climate change return periods. The calculations should be supported by a plan of the drainage network with all manholes and pipes labelled accordingly.
- Provide plans and details showing the allowance for exceedance flow and overland flow routing. Water must not be directed toward properties nor flow onto third party land. Overland flow routing should look to reduce the impact of an exceedance event.
- A timetable for the delivery of the surface water drainage scheme.

In addition, the following mitigation measures shall be adhered to;

- All built development, including the attenuation pond and allotments are located outside of the design flood extent (i.e. on land above the 100 year river flood level, plus climate change); and
- There shall be no raising of ground levels on land at or below the design flood level (100 year river flood level, plus climate change).

Thereafter, each reserved matters phase submitted shall include a compliance statement together with appropriate detailed methodology to demonstrate that the drainage for that phase is in accordance with the overarching drainage strategy for the site.

The development shall be carried out in accordance with the approved scheme.

- 13) Prior to the first occupation of any part of the development, a detailed maintenance plan for the surface water drainage system, written in accordance with CIRIA C753, shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details on how surface water systems shall be maintained and managed for the lifetime of the development, the name of the party responsible and contact name and details. The drainage system shall be maintained in accordance with the approved scheme.
- 14) No development or phase of the development shall commence and nor shall any equipment, machinery or materials be brought onto the site until the tree protection measures shown on drawing number 2228-21-101 S5 P3 have

been installed. The approved measures shall be retained until construction works immediately adjacent have been completed.

- 15) Prior to its installation, details of any permanent lighting on the site shall be submitted to and approved in writing by the Local Planning Authority. This should follow the Institute of Lighting Professionals' Guidance Note 01/20: Guidance notes for the reduction of obtrusive light. Any lighting shall be installed and thereafter maintained in accordance with the approved details.
- 16) No development shall commence until a scheme to ensure that there is a net biodiversity gain as a result of the development has been submitted to and approved in writing by the Local Planning Authority. The net biodiversity impact of the development shall be measured in accordance with the relevant DEFRA biodiversity offsetting metric. The development shall be carried out in accordance with the approved scheme.
- 17) No development shall commence until a construction management plan for works adjacent to the railway line has been submitted to and approved in writing by the Local Planning Authority. The construction management plan shall include the following details:
 - a method statement and risk assessment for all works adjacent to the boundary with the railway.
 - appropriate vehicle safety protection measures along the boundary with the railway.
 - ground levels, earthworks and excavations to be carried out near to the railway boundary.
 - disposal of both surface water and foul water drainage being directed away from the railway.
 - any vibro-impact works on site including a risk assessment and method statement
 - any scaffolding works within 10m of the railway boundary
 - a demolition methodology statement (including mitigation measures) for any demolition works.

The development shall be carried out in accordance with the approved plan.

- 18) Any application submitted pursuant to condition 1 that includes details of the layout and scale of dwellings shall include details of the finished floor levels of all dwellings, existing and proposed site and the relationship with the site levels of adjacent phases if development is coming forward in phases. The development shall be carried out in accordance with the approved levels.
- 19) Prior to any above ground works taking place, a scheme setting out measures to ensure a water efficiency standard of 110 litres (or less) per person per day shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and the approved measures thereafter retained.
- 20) The details submitted pursuant to condition 1 where they include details of appearance, layout and scale of any dwelling shall include an Energy Statement which meets the requirements of Net Zero Carbon Development Plan Document Policy NZC1. The development shall be carried out in accordance with the measures contained within the Energy Statement.

- 21) Prior to any occupation within any phase of housing approved through reserved matters under condition 1, a scheme shall be submitted to and approved in writing by the local planning authority which sets out how it will be verified that the as-built dwellings comply with the standards set out in NZCDPD Policy NZC1. The submitted scheme shall provide for sampling of at least 20% of the dwellings in the scheme, include at least one example of each house type, provide indicative timings for when each dwelling would be completed for the purposes of testing. The development shall be carried out in accordance with the approved scheme.
- 22) The details submitted pursuant to condition 1 where they relate to the appearance and/or layout of dwellings adjacent to the railway line shall include a scheme for the proposed means of noise attenuation from the railway line. The scheme shall include a timescale for the delivery of measures, ensure that proposed measures are acoustically effective, have an acceptable visual impact and would not have an adverse effect on ecological features and trees. The development shall be carried out in accordance with the approved scheme and the mitigation measures retained thereafter in perpetuity.
- 23) The existing tree(s), hedges and shrub(s) indicated to be retained on drawing number 2228-21-101 S5 P3 shall not be cut down, grubbed out, topped, lopped or uprooted without the written consent of the Local Planning Authority. Any tree(s), hedge(s) or shrub(s) removed without such consent or dying, or being severely damaged or diseased or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, within five years from the substantial completion of development shall be replaced, as soon as practicable with tree(s), hedge(s) and shrub(s) of such size and species details of which must be submitted to and approved by the Local Planning Authority. All tree(s), hedge(s) and shrub(s) shall be planted in accordance with British Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations (excluding hard surfaces).
- 24) The details submitted pursuant to condition 1 shall broadly accord with the following mix:

	One Bed	Two Bed	Three Bed	Four Bed +
Market mix	5-10%	25-30%	40-45%	20-25%
Affordable mix	30-35%	25-30%	30-35%	2-5%

- 25) Prior to the occupation of 50% of the dwellings, the allotments and associated infrastructure shall be laid out and made available for use in full accordance with an Allotment Delivery and Management Plan that shall first have been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the location of the allotments, laying out of individual plots, infrastructure, boundary fencing, car parking areas and any proposed storage structures. Once laid out the allotments shall be appropriately managed, maintained and kept in a tidy condition for use as allotments for the lifetime of the development as set out within the Management Plan.

- 26) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
- 27) Prior to first occupation of the development hereby approved, the Traffic Management Scheme shall be delivered in general accordance with drawing 20376-02.
- 28) No part of the development hereby approved shall be occupied until the site access has been delivered in accordance with the approved plans. In the event that a road safety audit recommends alterations to this access, these shall be submitted to and approved in writing by the local planning authority prior to the access being brought into use.
- 29) Prior to the first occupation of any part of the development hereby approved, details of a trespass proof fence adjacent to the boundary with the railway shall be submitted to and approved in writing by the Local Planning Authority. The approved fence shall be installed prior to the first occupation of any part of the development hereby approved and thereafter retained.

END OF SCHEDULE