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## Appeal Decision

Site visit made on 1 May 2025

**by Stuart Willis BA Hons MSc PGCE MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 21 May 2025**

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**Appeal Ref: APP/R3705/W/24/3355712**

**10-12 Tamworth Road, Polesworth B78 1JH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Carlton McDonald against the decision of North Warwickshire Borough Council.
  - The application Ref is PAP/2023/0515.
  - The development proposed is the construction of apartments for over 55s accommodation. Ten 1-bedroom apartments.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the description of development from the decision notice as the scheme was amended during the application, and it reflects the proposal determined by the Council.
3. While reference was made to amending the scheme as determined by the Council earlier, amended floor plans were not provided until after the appeal consultation took place, as part of the costs application correspondence. Parties, including consultees and members of the public did not have opportunity to comment on them. Moreover, the appeal process should not be used to evolve a scheme. Therefore, accepting the plans, or reverting to the original plans that were amended prior to the Council's decision would result in procedural unfairness. I have considered the plans that the Council made their decision on.

### Applications for costs

4. An application for costs was made by Mr Carlton McDonald against North Warwickshire Borough Council and a further application by North Warwickshire Borough Council against Mr Carlton McDonald. These applications are the subject of a separate Decision.

### Main Issues

5. The main issues of the appeal are:
  - Whether there are reasonably available sites appropriate for the proposed development in areas at lower risk of flooding and the effect of the proposal on flood risk,

- Whether the proposal would provide appropriate living conditions for future occupiers with regard to daylight and sunlight,
- The effect of the proposal on highway safety; and
- The effect of the proposal on biodiversity.

## Reasons

### *Flooding*

6. Whether or not the appeal site has flooded previously, in part or as a whole, it is located in fluvial Flood Zone 3b according to the Environment Agency's (EA) Flood Map for Planning Purposes and is considered functional floodplain. This is confirmed in the Flood Risk Assessment provided with the application. The proposal would introduce residential development at the site, including sleeping at ground floor level and is classified as more vulnerable development. Pluvial risks are Very Low to High according to the EA mapping.
7. The National Planning Policy Framework (Framework) and Planning Practice Guidance (PPG) require that a Sequential Test to be carried out to steer new development to areas with the lowest risk of flooding from any source in such instances. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
8. No details of any Sequential Test have been provided. Therefore, the evidence before me has failed to demonstrate that it is not possible to locate the proposed development in lower risk areas. The Sequential Test is intended to establish whether the principle of development is acceptable in terms of flood risk. As such, it would not be appropriate to impose conditions requiring the test to be carried out.
9. Even if mitigation could be put in place to ensure the development was safe for its lifetime, without increasing flood risk elsewhere and reduce flood risk overall, such as subterranean flood storage or existing defences, the Sequential Test must be passed first. In any event, no detailed flood modelling has been carried out or a detailed surface water management scheme provided for the proposal as determined by the Council. That the building footprints could be flood free from a surface water flooding event and risks from ground water are low, does not alter the policy requirements. Moreover, PPG indicates that more vulnerable development in Zone 3b should not be permitted.
10. Consequently, the proposal fails to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas at lower risk of flooding or that the scheme would not increase flooding elsewhere. It would fail to accord with policy LP29 and LP33 of the North Warwickshire Local Plan (Local Plan) where they in part seek to manage effects of climate change and reduce risks from flooding.
11. It would also be contrary to the Framework where it states development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

### *Living conditions*

12. There would be no external openings for any bedrooms of the proposed units. Occupants would have no access to daylight or sunlight from these rooms. This would lead to a bleak and oppressive experience for future occupiers. Given significant changes would be needed to the layout and potentially the external appearance of the buildings, it would not be appropriate to impose conditions requiring such changes.
13. Therefore, the proposal would not provide appropriate living conditions for future occupiers regarding daylight and sunlight. It would be contrary to Policy LP29 of the Local Plan where it states schemes should avoid unacceptable impacts with regard to light and take into account needs of users.

### *Highway safety*

14. As the existing bus stop is set back from the edge of the highway, it would not obstruct visibility for drivers and other roads users. Nevertheless, at the time of my site visit there were cars parked on the road near the site. While only a snapshot in time, there is no clear evidence that this was untypical and there were no parking restrictions in front of or immediately adjacent to the appeal site. Parked vehicles would severely limit visibility for road users of vehicles emerging from the site and vice versa. This would lead to a risk of collisions as there would not be sufficient time for drivers and users to adjust their speeds or stop.
15. The absence of swept path analysis means that it has not been shown that larger vehicles could enter and exit the site in forward gear. Were vehicles reversing on or off the road, this would lead to further limitations on visibility at the access and further increase the dangers above. Given the uncertainty over this and the implications were vehicles not able to turn in the site, imposing a condition for these details would not be appropriate.
16. The location of the bin store would mean that refuse vehicles would need to wait on the road during collection. There was a relatively frequent flow of traffic passing the site at the time of my visit. The potential presence of parked vehicles, the junction opposite and the number of units proposed mean that the refuse vehicle parking on the road would disrupt the flow of traffic and lead to further instances of highway safety concerns.
17. While there is a change in levels between the road and the site, there is no compelling evidence to indicate that achieving a suitable gradient is unlikely or improbable.
18. Nevertheless, the proposal would harm highway safety. It would conflict with Policy LP29 of the Local Plan where it states schemes should provide safe and suitable access to the site for all users.

### *Biodiversity*

19. The Preliminary Ecological Appraisal (PEA) referred to a buffer between the river and development to retain commuting corridors. On this basis further surveys for otter and water vole were not required. However, the proposal subsequently included subterranean flood storage. The implications of this on biodiversity has not been addressed in the PEA. The PEA also identified the need for further survey work in relation to bats. The nature and extent of any effects, what

mitigation or compensation may be required, where this would be and how it secured is not known.

20. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. It has not been shown that the proposal represents the exceptional circumstances where conditions could be used to require further surveys.
21. In addition, due to the lack of clarity on the effects of the proposal on biodiversity, there is insufficient information to demonstrate whether the proposal would result in net gain.
22. Consequently, the proposal would harm biodiversity. It would fail to accord with Policies LP16 and LP29 of the Local Plan where they seek to protect and enhance the natural environment.

### **Other Matters**

23. The appeal site is within the development boundary and would be a more efficient use of land for a windfall site in a location with reasonable access to services, facilities and public transport links. There would be economic and social benefits from the construction and occupation of the proposed units. However, given the scale of the scheme these benefits would each be minor, as they would be for energy efficiency.
24. Small sites can often be built out more quickly. The proposal would contribute to the supply and mix of housing in the area providing for the needs of groups with specific housing requirements with over 55s accommodation and potentially affordable housing. Even if such provision could be secured by condition, the scale of the scheme mean such benefits would be moderate. A lack of harm from other issues is a neutral factor.
25. It is not for this appeal to seek to amend national or local plan policy. Matters relating to the representation of the appellant and conduct of the various parties during the application and appeal do not alter my findings on the main issues.

### **Conclusion**

26. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
27. For the reasons given above the appeal should be dismissed.

*Stuart Willis*

INSPECTOR



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## Costs Decisions

Site visit made on 1 May 2025

by **Stuart Willis BA Hons MSc PGCE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

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### **Costs application A in relation to Appeal Ref: APP/R3705/W/24/3355712**

#### **10-12 Tamworth Road, Polesworth B78 1JH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by North Warwickshire Borough Council for a full award of costs against Mr Carlton McDonald.
  - The appeal was against the refusal of planning permission for the construction of apartments for over 55s accommodation. Ten 1-bedroom apartments.
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### **Costs application B in relation to Appeal Ref: APP/R3705/W/24/3355712**

#### **10-12 Tamworth Road, Polesworth B78 1JH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Carlton McDonald for a full award of costs against North Warwickshire Borough Council.
  - The appeal was against the refusal of planning permission for the construction of apartments for over 55s accommodation. Ten 1-bedroom apartments.
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### **Preliminary Matters**

1. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may 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.

### **Application A**

#### **Decision**

2. The application for an award of costs is allowed in the terms set out below.

#### **Reasons**

3. While pre-application advice is not binding, many of the concerns with the appeal scheme were raised prior to its submission. This included the issue of flooding. National and local policy are clear with regard to this topic and the order in which matters should be addressed. The requirement for a sequential test is also highlighted in the Flood Risk Assessment provided with the application and that there were in principle policy conflict with residential development in this location. The appellant has not provided sequential evidence, detailed modelling for the effects of the underground flood storage facility including its effects elsewhere, and it is not for this appeal to seek to amend national policy.
4. Whether or not the appellant had chance to address a Planning Committee, very little case has been made against the other refusal reasons with conditions being

suggested to overcome them. The reasons why these could not be addressed by condition is given in my decision.

5. Amended plans seeking to address the living conditions issue were not provided at the outset of the appeal when consultation took place. As a result, I have not considered them as part of the appeal. In any event, the floor plans provided do not show the position of openings.
6. Issues between the appellant and their agent or those who produced supporting documents and the method of how the Council register applications does not alter that insufficient information was provided as part of the appeal.
7. The development is clearly not in accordance with the development plan as well as national planning policy and guidance. There is inadequate supporting evidence provided of other material considerations to find against the relevant policy. Pursuing the appeal as has been presented was unreasonable. The Council have had to prepare evidence as part of the appeal, and this would have incurred costs.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

### **Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Carlton McDonald shall pay to North Warwickshire Borough Council, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. North Warwickshire Borough Council are now invited to submit to Mr Carlton McDonald, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

### **Application B**

#### **Decision**

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

#### **Reasons**

12. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
13. Many of the points raised by the appellant, relate to issues prior to the appeal being made. As above, pre-application advice is not binding and with regard to the conduct of the Council during the application, including how the application was determined, PPG states that costs cannot be claimed for the period during the determination of the planning application. Similarly, the mechanism for pre-application advice from the Environment Agency is a matter outside of the scope of this appeal and costs application.
14. Issues between the appellant and any of their representatives or regarding fees, does not alter that the Council have given clear reasons for each refusal reason in

their decision and linked these to local and national policies. This was both at the time of their decision to refuse planning permission and again during the appeal proceedings. I have dismissed the appeal on all main issues and therefore, the Council have not been unreasonable regarding the planning merits of the appeal.

15. PPG also states that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. It is not for this costs decision to review the process of applying for costs.
16. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*Stuart Willis*

INSPECTOR

Richborough