



## Appeal Decision

Site Visit made on 26 October 2021

**by R Hitchcock BSc(Hons) DipCD MRTPI**

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

**Decision date: 12 November 2021**

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**Appeal Ref: APP/R3705/W/21/3267698**

**Land west of Station Road, Nether Whitacre, Coleshill B46 2EH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Mrs Susan Kingston against North Warwickshire Borough Council.
  - The application Ref PAP/2019/0671, is dated 4 December 2019.
  - The development proposed is an outline application (access only) for the erection of up to no.30 affordable dwellings land west of Station Road, Nether Whitacre, Birmingham, B46 2EH.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for planning permission on four grounds. I have had regard to this statement for the residential development of the site and the evidence of interested parties in framing the main issues.
3. Since the date that the appeal was registered the Council have adopted the North Warwickshire Local Plan 2021 (NWLP). For the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004 this is the development plan against which the proposal must be assessed. The main parties have had the opportunity to provide comments on any relevant implications for the appeal and have not therefore been prejudiced.
4. The Government published a revised National Planning Policy Framework (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.
5. The application was submitted in outline with all matters reserved save for the details of the site access and I have determined the appeal on that basis.

### Main Issues

6. The main issues are:
  - whether the proposal would be inappropriate development within the Green Belt for the purposes of the Framework and the relevant development plan policy

- whether or not the location would be suitable for housing having regard to flood risk
- whether or not the location would be suitable for housing having regard to accessibility to services and facilities
- whether or not the proposal would conserve or enhance biodiversity
- the effect of the development on highway safety
- the effect of the development on the character and appearance of the locality
- if the development is inappropriate, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Green Belt*

7. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt. However, a number of exceptions are made. Of those exceptions the appellant directs me to (now) Paragraphs 149 e) and 149 f) relating to limiting infilling in villages and limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites) respectively.
8. Policy LP3 of the NWLP reflects the Framework's restriction to development in the Green Belt. It provides details of how Green Belt policy will be implemented at the local level. In relation to infilling, the Policy states that 'limited infilling may also be acceptable where a site is clearly part of the built form of a settlement, i.e. where there is substantial built development around three or more sides of a site.'
9. The site consists of an open grazing field bordered by mature hedging and intermittent trees. It lies adjacent to, but outside of, the southern edge of the NWLP's defined settlement area for Whitacre Heath. The land to the west is mainly open and includes a residential garden and grazing land. Some distance to the south is an isolated dwelling with intervening garden and poultry areas. A freestanding village hall lies to the east.
10. Although immediately adjacent to the well-defined edge to development along the southern boundary of the village, the undeveloped site is bordered by predominantly open land with only intermittent built development on the remaining 3 sides. The sites to the south, east and west could not be described as having 'substantial' amounts of built development. As a site that would extend into open countryside, it would neither infill between areas of built development nor round off the existing pattern of development. Accordingly, the site would conflict with the definition of 'infilling' in Policy LP3.
11. The proposal would deliver up to 30 units of affordable housing. Whilst support for the delivery of affordable housing, including on sites adjacent to settlement

- boundaries, is provided within Policy LP2 of the NWLP, in Green Belt locations this is subject to limited affordable housing for local community needs.
12. There is no dispute between the main parties that there is an affordable housing requirement across the borough. According to the appellant, a recent Affordable Housing Needs Update suggests that a greater proportion of affordable housing in the overall housing delivery figure is required.
  13. However, in the supporting text to Policy LP9 relating to affordable housing delivery, 'local' is initially considered at the ward level before broadening out to adjacent ward areas. The appellant suggests that the proposal will positively address the housing needs of the Parish and the village. However, there is little evidence of the actual needs arising from either the village, Parish or ward areas.
  14. I acknowledge that the Council's housing waiting list from early 2020 indicated 24 individuals or families awaiting accommodation that had expressed the area of Nether Whitacre as a desired location. However, that is not necessarily a measure of need derived from the locality. According to the Council, only 2 of those prospective individuals or families live in the vicinity. Whilst other legitimate need might arise from those with a connection to the local area or who work nearby, there is little substantive evidence to demonstrate a current local demand for the 30 units proposed.
  15. I also note the findings of a survey supporting the development of a Neighbourhood Plan. However, the information provided is limited. It does not provide an objective assessment of local need or a solid evidence base to support it. Furthermore, there is little before me to indicate that those views have since been incorporated into Policies within the NWLP or elsewhere.
  16. In relation to scale, Policy LP2 indicates a threshold of up to 10 units on undesignated windfall sites in the context of Category 4 settlements. This permissive policy for the expansion of small rural settlements must be taken with regard to the size of the existing settlement and the services within it.
  17. According to the Council, the proposal would increase the size of the village by 20% of the existing housing numbers. Even accounting for some flexibility in the approach to the delivery of affordable housing, in any village or town, this would be a considerable expansion. In the absence of any objectively assessed local need, a proposal for up to 30 units would neither appear to be limited in the context of a rural windfall site or to the scale of the local village.
  18. I acknowledge that some Category 4 settlements have seen recent site allocations for more than 10 units such that the aim of developing incrementally has been challenged. I also note that development outside settlement boundaries has contributed to overall housing supply. However, in the absence of details of the circumstances of those examples, I am unable to draw comparisons or otherwise to the case before me. They are not therefore strong arguments in favour of the proposed development.
  19. As a development described as being 'up to' 30 units, the overall number could be reduced in practice. However, any condition to substantially restrict unit numbers could nullify the benefit of a planning permission on the basis of viability, for example. It would not therefore be a reasonable proposition in the context of Paragraphs 55 and 56 of the Framework.

20. The introduction of a significant number of new buildings and supporting infrastructure in the Green Belt would give rise to a significant spatial loss of openness. Although enhanced hedge boundaries to the external edges of the site would limit the extent of losses to visual openness from surrounding areas, there would be moderate losses observed from the adjacent parts of Station Road and Cottage Lane.
21. For the above reasons, I find that the development would not accord with the relevant exceptions listed within Paragraph 149 of the Framework relating to the construction of new buildings in the Green Belt. It would constitute inappropriate development within the Green Belt that would erode its openness. As such it would be contrary to Policy LP3 of the NWLP and the Framework as they seek to keep land within the Green Belt permanently open.

#### *Flood Risk*

22. Significant concerns have been raised by local residents with respect to the flood risk status of the site. There is no dispute between the main parties that the site lies within a Flood Zone 3 location or that it is susceptible to ground and surface water flood risk. The Council has consulted both the Environment Agency and Lead Local Flood Authority who have raised no objections subject to conditional requirements in order to meet the policies set out in the Framework.
23. As a non-allocated site within an identified flood risk area and a proposal outside the scope of 'minor' development for the purposes of flood risk assessment, the Framework requires a 2-stage process to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The process consists of the sequential test and exceptions test which seek to minimise the risk of flooding both to the development proposed and the surrounding area.
24. The appellant's Flood Risk Assessment (FRA) refers to the fact that the Strategic Flood Risk Assessment and Preliminary Flood Risk Assessments are key sources of flood risk specific information. However, there is little subsequent evidence to indicate any site-specific findings from those assessments or that a sequential assessment of alternative sites has occurred.
25. I acknowledge that extensive discussions have taken place between the relevant parties in relation to design requirements, freeboard and drainage. However, as aspects of the development associated with proving the exceptions test, these are of little value at the 'in-principle' stage since the sequential test is not proven. In the absence of the detailed findings of a sequential test – a matter for determination by the local planning authority, I find there is conflict with the requirements of Policy LP33 of the NWLP and Paragraph 162 of the Framework as they seek to minimise the risk of flooding by avoiding development in high-risk areas.

#### *Services and facilities*

26. To achieve sustainable ways of living and working, the Council's Spatial Strategy requires that development takes place with regard to the size of an existing settlement and its range of services and facilities. It seeks rural development to be concentrated to Market Towns and Local Service Centres. In smaller villages additional development will be limited to no more than 10 units

at any one time depending on viability, services and infrastructure deliverability.

27. As I have found, the proposal of up to 30 units would lead to a relatively large expansion on the edge of a small village. Although the village area includes a number of community facilities, there are few services to support day-to-day living needs within the settlement. Furthermore, there are limited such provisions within easy or convenient travel distance by sustainable means of transport in the wider area. The use of infrequent public transport in the locality would be largely impractical. Although additional residents could support an existing or improved local bus service, I find that convenient access to shops, services and employment opportunities would be substantially dependent on the use of private motor vehicles.
28. The Framework acknowledges that opportunities to maximise sustainable transport modes will vary between urban and rural locations. It is also recognised that additional housing in rural locations can contribute to the vitality of smaller settlements and the services within them. Nevertheless, this does not dispose of the requirement to manage patterns of growth in the interests of reducing the need to travel and limiting reliance on fossil fuels to access goods, services and employment opportunities.
29. For those reasons, I find the proposed location for a significant increase in housing would conflict with Policy LP2 of the NWLP as it seeks to deliver development in sustainable locations, reduce travel demand and to achieve convenient access to services and facilities.

#### *Highway safety*

30. The site lies adjacent to Station Road, a 2-lane carriageway bordered by pavements on either side. The road speed limit is 30mph. The proposal includes details of a 5m wide access road flanked by footways forming a junction with Station Road opposite the village hall site. The plans indicate that visibility splays of 2.4x60m can be achieved to the nearside edge of the carriageway in both directions.
31. According to the Council's highway advisor, the road is used as a commuting route between main roads. Despite some existing on-street parking in front of terraces lying a short distance to the north of the site, the Council indicates that speeding traffic has been recorded. This is reflected in a number of third-party responses from residents living near to the site and is not disputed by the appellant. It is the appellant's stance that it is within the gift of the relevant authority to enforce the speed limit.
32. As a commuter route, the daily monitoring of traffic speeds would not be a realistic proposition. It would not therefore necessarily curtail the likelihood of traffic travelling above the speed limit in the locality. In the absence of information to demonstrate that the proposed visibility splay would be sufficient to allow safe access and egress from the site having regard to the local road speeds, I find that, on the balance of the evidence, the appellant has failed to demonstrate that the access would provide a safe means of access and egress at the site.
33. For those reasons, the proposal would conflict with Policy LP29 of the NWLP as it requires development to provide safe and suitable access for all users.

### *Biodiversity*

34. The substantial area of the site consists of improved grassland which is used for the grazing of horses. Additionally, the site benefits from mature in-hedge native trees and hedgerows to much of its outer margins. The appellant's ecological advisor suggests retention and protection of the boundary features due to their moderate to high wildlife value.
35. Some of the roadside hedge would require removal to enable the proposed formation of the access road and pavements. Additional parts of the hedge would need to be removed to achieve suitable visibility splays along the site's frontage. From the evidence before me, it is unclear how much hedge would require removal, however, compensatory hedge planting to replace removed or reduced depths of hedge could be secured through planning condition to retain or improve its ecological value.
36. The Council's ecological advisors identify the site as having connectivity value with nearby sites of acknowledged biodiversity interest. The appellant's appraisal identifies that the majority of the site's value could be retained with enhancements incorporated into the detailed design of the development. These could include measures such as more diverse hedgerow species, the installation of nesting boxes and replacement tree planting, for example. Areas of enhanced grassland could also be provided.
37. However, an oak tree identified as having high potential for bat roosting is indicated for removal on the detailed plans of the access. Whilst compensatory planting could be provided within the site, Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on me to have regard to the likelihood of European Protected Species being present and affected by the proposed development. The appellant's ecological assessment<sup>1</sup> identifies that the site has potential for bat foraging and commuting and lies in an important location for bat foraging and roosting.
38. Circular 06/2005 states that '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, otherwise all relevant material considerations may not have been addressed in making the decision.' In the absence of the additional survey effort recommended in the ecological appraisal, I cannot be certain that the proposed works would not have an adverse impact on bats in an area where their presence is highly likely.
39. Therefore, whilst I acknowledge other biodiversity enhancements and connectivity would be possible, I am unable to ascertain the effect of the proposals on protected species. The proposal therefore conflicts with Policy LP16 of the NWLP as it seeks to protect features of importance for nature conservation.

### *Character and appearance*

40. The site lies in area LC9 'Hoggrill's to Furnace End – Arden Hamlets' landscape character area identified by the North Warwickshire Landscape Character Assessment 2010. The area is characterised by dispersed small settlements within a low undulating landscape of predominantly irregular fields and pockets

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<sup>1</sup> Phase 1 Preliminary Ecological Appraisal Ref Station0919\_PEA

of woodland. The rural road and field networks are often bordered by hedges incorporating trees.

41. Development in the locality is derived from numerous phases of small-scale infill and incremental extension of the built envelope of the village. This results in a variety of building sizes and designs. The majority of the local development fronts on to the historic road network such that it actively contributes to the mixed character of the local townscape and individual street scenes.
42. I acknowledge the detailed design of the scheme is not before me and I have little doubt that the buildings could be designed to reflect the local mix of house types. Nevertheless, the wholesale development of a single large site would neither be typical of the incremental growth of the village or linear pattern of roadside development.
43. The identified necessity to retain the ecological value of the boundary hedges and trees would preserve the well-defined site boundaries. Whilst this would preserve the characteristic landscape elements, it would ensure that the proposal appears as an inward-looking form of development. In contrast to the existing arrangement of development, this would provide little active contribution to the respective road frontages of the site. It would appear as an enclosed annexed area with poor integration with the more organically developed form of the village.
44. Furthermore, any requirement to significantly artificially raise the ground floor levels of the buildings, as identified in the FRA, would likely give rise to an incongruous arrangement of the development in the context of the surrounding buildings. Whilst not determinative in the context of an outline application, this would almost certainly frustrate attempts to assimilate the development alongside the settlement area.
45. Nevertheless, for the above reasons, I find the proposal would integrate poorly with the character of the village. It would conflict with Policies LP1 and LP30 of the NWLP as they seek proposals to integrate and harmonise with their immediate setting and wider surroundings and positively improve the settlement's character.

### **Other Considerations**

46. The delivery of a potential range of affordable housing types and tenures to meet needs identified within the wider borough area and the contribution to housing stock in response to the Government's objective of significantly boost the supply of homes would be a significant benefit of the development. The homes could be secured for those purposes through a planning obligation under s106 of the Town and Country Planning Act 1990, as provided for by the appellant.
47. In support of the proposal, the appellant suggests that the site is under-utilised, that it is available and deliverable, and would make best use of the land. It could be delivered in a short timeframe to meet a step-change requirement in the delivery of housing across the borough. The Framework recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. However, in the

context of the Council's current healthy housing land supply, this is a matter of only moderate weight.

48. The scheme could meet other policy requirements in relation to the provision of, or contribution to, public open space, and other necessary supporting infrastructure. However, as requirements of the development plan, these are not benefits in favour of the proposal.
49. I note the concerns of the appellant in regard to the level of communication and engagement by the Council and their advisors throughout the course of their consideration of the planning application. However, this is not a relevant matter to the consideration of this appeal.

### **Planning balance and conclusion**

50. The erection of up to 30 affordable dwellings on the site would be inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it.
51. The proposal would cause harm to the spatial and visual openness of the Green Belt. It would be located in an area identified as being at high risk of flooding. The location is distant from services to meet day-to-day living needs and would be largely dependent on the use of private motor vehicles.
52. Additionally, the appellant has failed to demonstrate that a safe means of access could be provided having regard to the local highway conditions, or that the access could be provided without harm to protected species interests. Furthermore, the large-scale site development would contrast with the predominant characteristic layout of incremental roadside development in the locality.
53. The considerations presented by the appellant in relation to affordable housing delivery do not clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify granting planning permission for development in the Green Belt do not exist.
54. I am aware that the site lies within an impact zone of the nearby Whitacre Heath Site of Special Scientific Interest (SSSI). SSSIs are protected under the Wildlife and Countryside Act 1981 from damaging operations, including development proposals. As I have found against the development, it is not necessary for me to consult with the statutory nature conservation body or consider this matter further in the particular circumstances of the case.
55. For the reasons set out above, I conclude that the proposal would be contrary to the adopted development plan taken as a whole and there are no other material considerations to indicate a decision otherwise than in accordance with it. The appeal should therefore not succeed.

*R Hitchcock*

INSPECTOR