

## Appeal Decision

Site visit made on 24 October 2016

**by S D Harley BSc(Hons) MPhil MRTPI ARICS**

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

**Decision date: 14<sup>th</sup> November 2016**

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**Appeal Ref: APP/R3705/W/16/3155070**

**Land North of Manor Barns, Newton Lane, Austrey, Warwickshire CV9 3EP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr R Kirkland, Maplevale Developments Ltd. against the decision of North Warwickshire Borough Council.
  - The application Ref PAP/2015/0350, dated 5 June 2015, was refused by notice dated 14 June 2016.
  - The development proposed is erection of up to 25 no. dwellings and associated works (outline:access).
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### Decision

1. The appeal is allowed and outline planning permission is granted for up to 23 dwellings and associated works (outline:access) on Land North of Manor Barns, Newton Lane, Austrey, Warwickshire CV9 3EP in accordance with the terms of the application Ref PAP/2015/0350, dated 5 June 2015, subject to the conditions set out in the attached Schedule.

### Procedural Matters

2. The proposed development is described on the application form as set out above. The appellant has indicated on the appeal form that the description of development had not changed. However, the decision notice, the description of development on the appeal form and the illustrative plans all refer to the erection of up to 23 dwellings. The Council considered the proposal on this basis and I have considered the appeal in the same way.
3. The application is submitted in outline with layout, scale, appearance and landscaping for consideration at the reserved matters stage. Access is included for consideration. At a late stage the Highway Authority made representations and commented that plan Ref 16346-03D does not meet the required standards. The appellant had the opportunity to comment on the representations of the Highway Authority and raised no objections to the conditions proposed. Highway safety is a material consideration and in reaching my conclusions I have had regard to the views of the appellant, the Council and the Highway Authority.

### Main Issue

4. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area taking particular account of density and built form in its location and setting in the village.
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## Reasons

### *Character and appearance*

5. Policy NW12 of the North Warwickshire Local Plan Core Strategy 2014 (the CS) requires that, amongst other things, all development proposals must demonstrate a high quality of sustainable design that positively improves the character of the individual settlement, and the appearance and environmental quality of the area. In this respect Policy NW12 conforms to those principles in Section 7 of the National Planning Policy Framework (the Framework) that seek good design that respects the character of the local area.
6. The appeal site lies at the northern edge of Austrey village outside the development boundary. It comprises a roughly rectangular shaped broadly flat field immediately to the north of Manor Barns and other properties accessed off Warton Lane. It adjoins Manorcroft to the north east where planning permission has been granted for the erection of four dwellings Ref PAP/2014/0446. Beyond Manorcroft are other residential properties facing Newton Lane. The site is bordered by a village periphery road, Newton Lane, on the remaining two sides. The roadside boundary is enclosed by hedgerows other than at the field access. Across Newton Lane are flat open agricultural fields.
7. Austrey has a variety of styles, ages and forms of development within it including some high density development in the core of the village. The appeal site extends to some 0.58 hectares. A development of 23 houses would equate to a density of around 40 dwellings per hectare. This would be on the high side particularly in the context of the houses to the north of the appeal site and the openness of the countryside beyond Newton Lane.
8. I appreciate that developing open land would, by its very nature, change the character of the area. However, the site does not feature in views of Austrey that the Local Action Group seeks to protect as indicated in the plan appended to the Austrey Neighbourhood Plan Final Submission Document August 2016 (the Neighbourhood Plan). Rather it reads in the context of the adjoining development.
9. I find the submitted plans are not particularly convincing in terms of the fairly significant run of terraced units, positioned close together in a near continuous run of built form at Plots 5 to 15, and the closeness of the houses at Plots 1 and 23 to Newton Lane. However, these are illustrative plans only and I consider that a satisfactory development of up to 23 dwellings could be accommodated within the site provided careful attention was paid to the scale and positioning of buildings, particularly on the roadside fringes, the positioning of any needed open space and provided the development is limited to two storeys in height as proposed by the appellant.
10. There would be a single point of access from Newton Lane. Part of the hedgerow along the appeal site boundary would be removed to create the access and requisite visibility splays. A short section of hedgerow would also be removed to create access to the proposed pedestrian footway on the western side of Newton Road beyond the existing hedgerow. However, the majority of the Newton Lane hedgerows would be retained and appropriate landscaping could offset the effects of the losses and retain the soft landscaped character of this part of the village.

11. The proposed development is some distance from the nearest listed buildings. Accordingly subject to careful positioning of buildings the proposal would not adversely affect them or their settings.
12. On balance I conclude that the development would round off the settlement and, with an appropriate layout and design of buildings, would preserve the character and appearance of the area and the setting at the edge of the village. It would therefore broadly accord with Policy NW12 of the CS. It would also align with those principles of Section 7 of the Framework which seek high quality design and to positively improve a settlement's character and appearance.

*Other development plan considerations*

13. Policy NW2 of the CS sets out a settlement hierarchy for the distribution of development within the Borough. Austrey is a village with a range of facilities including churches, a primary school and a pre-school, public house, playing fields, a shop/post office and a limited bus service. It is defined as a category 4 settlement where development should be limited to that identified in the CS, or through a neighbourhood or other locality plan. I find that the site, though some distance from the village centre is in a moderately accessible location.
14. The site lies outside the development boundary for Austrey. It is not an allocated site for housing in the emerging Site Allocations Plan (Draft Pre-Submission June 2014) (ESAP); nor is it put forward in the consultation draft of the Neighbourhood Plan as one of the 3 sites allocated for housing. Accordingly the proposal is contrary to Policy NW2. Whilst I recognise that the appeal site is not included as a potential housing site in the ESAP or emerging Neighbourhood Plan these are not yet at a sufficiently advanced stage as to warrant full weight. Nor does the fact that planning permission has been granted on possible future allocations in the ESAP affect the above conclusions.
15. Policy NW5 of the CS states that a minimum of 40 dwellings should be provided in Austrey. From the evidence it appears that planning permission has been granted for about 80 dwellings, within and on the periphery of the village. Objections have been raised on the grounds that the scale of growth exceeds the capacity of Austrey to accommodate it in terms of services and in terms of maintaining the character of the settlement. The 40 dwellings are identified as a minimum and no maximum thresholds have been set. It appears that there has been no objective assessment of the capacity of the settlement and I have seen no empirical evidence to show that an additional 23 dwellings would 'tip the balance' such that further development would be unsustainable.
16. The proposal is for more than 10 dwellings which would conflict with the expectation in Policy NW5 of the CS that housing would be delivered on sites of no more than 10 units. The Policy does not expressly require sites to be within the development boundary. On the basis of the above I consider the proposal would partly comply and partly conflict with Policy NW5.
17. From the submitted evidence it appears that the Council can demonstrate a 5 year supply of deliverable housing land. However, this is likely to be affected, amongst other things, by the agreement to accommodate some of Coventry City Council's shortfall of capacity. Moreover, the Framework is clear that local planning authorities are required to boost significantly the supply of housing regardless of their housing land supply position and says that housing

applications should be considered in the context of the presumption in favour of sustainable development. The appeal scheme would make a moderate contribution to the supply of housing which would accord with these principles of the Framework.

18. I appreciate that considerable work has been undertaken on the emerging Neighbourhood Plan, and together with the forthcoming ESAP, will set out policies for housing. However, notwithstanding the support for the emerging Neighbourhood Plan and its iterations, both the Neighbourhood Plan and the forthcoming ESAP are at an early stage of preparation and therefore, even though the Framework encourages a plan-led approach, I can attach limited weight to them.

*Other considerations*

19. Notwithstanding the views of third parties about the level of affordable housing required in Austrey itself Policy NW6 of the CS indicates a requirement of 40% of affordable housing to address the shortage of affordable housing in the Borough. A completed and signed Unilateral Undertaking has been provided securing on-site affordable housing to accord with Policy NW6. This would also comply with the requirements of the Community Infrastructure Levy Regulations and attracts moderate weight in favour of the proposal.
20. From the evidence it appears that localised episodes of flooding occur and Warwickshire County Council as the Lead Local Flood Authority objects to the proposal. However the Council considers that a technical solution to the satisfactory drainage of the site, based on a system of containment and slow discharge as was previously established under application Ref PAP/2014/0446, could be found. The attenuation would be likely to take the form of tanks to be installed beneath the access road within the site.
21. The Ecological Appraisal identifies that the site is of low ecological value. There may be some loss of biodiversity as a result of the loss of parts of hedgerows. This could be satisfactorily offset by a scheme for the compensation of biodiversity loss.
22. Local residents have raised objections on the grounds of safety of the proposed access and the increase in traffic generated by the scheme. The County Council as Highway Authority do not object in principle but do not agree with the details proposed on Plan Ref 16346-03d. Nevertheless the Highway Authority considers appropriate visibility splays could be provided, the development would represent a modest increase in the number of vehicle movements, and a pedestrian footpath along Newton Lane would be provided. Notwithstanding the timing of the submission of the Highway Authority comments, on this basis and subject to the imposition of the conditions proposed, I see no reason to withhold permission on the grounds of highway safety.
23. The Highway Authority has requested a contribution of £75 per dwelling to provide sustainable welcome packs; to promote sustainable living and to deliver road safety education in the area. The Council considers such a contribution is not necessary to make the development acceptable. On the basis of the available evidence I see no reason to disagree with the Council.

24. I have also considered whether the grant of planning permission would set a precedent for other similar developments. I have seen no directly comparable sites to which this might apply. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature would not justify withholding permission in this case. Whether or not permission has been refused for earlier proposals on the site has not led me to any different conclusions on the appeal before me.
25. The proposed HS2 route lies close to the village. The effects of this on the living conditions of occupiers of the proposed dwellings could be addressed by incorporating appropriate acoustic features during construction.
26. Poachers Pocket is a single storey converted barn with a glazed elevation close to the appeal site boundary. Concern has been raised about the effect of the proposal on the outlook, privacy and light of occupiers of that property. However, the effect on the living conditions of occupiers of that and any other property, including those dwellings granted permission Ref PAP/2014/0433, could be addressed at the later detailed stage.

### **Planning Balance and Final Conclusion**

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (the TCPA) require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration and contains a presumption in favour of sustainable development. This is defined as having environmental, social and economic roles.
28. I have found the proposal does not conform to those policies of the development plan that allocate sites for housing and seek to protect the land outside development boundaries from residential development. However, the ESAP and the Neighbourhood Plan attract limited weight as they have not advanced to adoption.
29. I have found that the proposal would not unacceptably affect the location and setting of the village and that it broadly conforms to Policy NW12 in terms of the effect on the environment. It is a reasonably accessible location for the purposes of Policy NW2. On this basis I conclude that the proposal satisfies the environmental role of sustainable development.
30. I have found that the proposal partly accords with and partly conflicts with Policy NW5 but overall would help boost the supply of housing. In providing for affordable housing it would meet the aims of Policy NW6 of the CS. Although the Council can presently demonstrate a 5 year supply of deliverable housing land, overall I conclude the contribution to the housing stock attracts moderate weight in favour of the proposal. This would meet the social role of sustainable development.
31. The proposal would assist the economy by providing employment during construction. Future residents would increase local spending and help support facilities in the village. This would satisfy the economic role of sustainable development to which I attribute moderate weight in favour.
32. I therefore conclude that the appeal scheme would amount to sustainable development. Sometimes policies pull in different directions but, on balance, I

conclude that the proposal conforms to the development plan taken as a whole and there are no technical reasons that cannot be overcome. For the reasons set out above and taking into account all other relevant matters raised I conclude the appeal should succeed.

### **Conditions**

33. I have considered the conditions suggested by the appellant, the Council and the Highway Authority. Where appropriate I have amended them in the light of advice in the Framework and the Planning Practice Guidance.
34. A number of the conditions require submission of details of reserved and other matters and the timing of development, all of which are necessary to ensure the development is carried out appropriately. Similarly implementation in accordance with the approved plans and details and retention of the approved measures is appropriate and necessary. To preserve the character and appearance of the area, it is necessary to restrict the number and height of the proposed units and control finished floor levels. The specification and maintenance of a scheme for delivery of compensation for biodiversity loss and replacement hedgerow(s) along the existing access to the site and around the proposed access are needed in the interests of the character and appearance of the area and to enhance biodiversity.
35. In respect of highway safety, it is necessary to ensure the access road is sufficiently wide, suitable visibility splays are provided and that the access has an appropriate surface prior to occupation of the dwellings. In the interests of pedestrian safety a new crossing and a footpath link of appropriate width, lighting and surfacing should be provided. The existing gate access should be closed, only one vehicle access should be created and a Construction Management Plan should be put in place in the interests of highway safety.
36. To ensure that the site is adequately drained, and to restrict any potential for flooding of adjacent land, it is necessary to control the disposal of foul and surface water, to ensure any works in the highway do not reduce the effective capacity of highway drains and ditches and to ensure permeable paving is used. The provision of adequate water supplies and fire hydrants is necessary in the interests of fire fighting purposes.
37. Appropriate sound insulation measures should be provided to mitigate any effects of noise arising from the proposed HS2 railway line.
38. Archaeological investigations of the site and, if appropriate a mitigation strategy, are required to record/protect heritage assets.

*SDHarley*

INSPECTOR

### **Schedule of Conditions**

- 1) Notwithstanding the layouts shown on Plans Ref 16346-03D and 1343/50 Rev F (neither of which, other than with regards to the proposed footpath link, are hereby approved) details of the access, 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 3 years from the date of this permission.
  - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
  - 4) The development hereby approved shall be carried out in accordance with location Plan Ref 1343\_01C and shall not be more than 23 residential units; no building shall be more than two storeys in height.
  - 5) No development shall take place until precise details of the finished floor levels of the development in relation to a nearby datum point have been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details.
  - 6) No development shall commence until details of the specification and maintenance over a period of 5 years of the approved replacement hedgerow and other landscaping have been submitted to and approved in writing by the local planning authority. The replacement hedgerow(s) and other landscaping works shall be carried out in accordance with the approved details within the first planting season following the removal of the existing hedgerow in accordance with the agreed maintenance and implementation programme. The completed scheme shall be maintained in accordance with the approved scheme of maintenance.
  - 7) No dwelling shall be occupied until visibility splays have been provided to the vehicular access to the site with an 'x' distance of 2.4 metres and 'y' distances of 43 metres measured along the near edge of the public highway carriageway, incorporating a tangent to the north-west terminating at a point 2.4 metres back from the 'give way' line of the public highway D11 Newton Lane at its junction with C3 Newton Lane. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.
  - 8) No dwelling shall be occupied until the new access from Newton Lane has been constructed with a width of no less than 5.5 metres and has been surfaced in a bound material for a minimum distance of 20 metres, as measured from the near edge of the public highway carriageway.
  - 9) The access to the site for vehicles shall not be used until it has been provided with not less than 6 metre kerbed radiused turnouts on each side.
  - 10) There shall be no more than one means of vehicular access to the site.
  - 11) The development shall not be occupied until a footway/footpath link, broadly in accordance with the footpath proposals shown on plan Ref 16346-03D, and incorporating appropriate street lighting, advance warning signs of the pedestrian crossing for road users and maintenance proposals for the private pedestrian footway, has been provided to connect the application site to the footway of the public highway C1 Warton Lane within the land indicated within the 'blue line' ownership on

drawing number 1343/01 Revision C, in accordance with a scheme submitted to and approved in writing by the local planning authority. The footway/footpath link and associated street lighting shall thereafter be maintained in operational order for those purposes in accordance with details approved as part of that scheme.

- 12) The development shall not be occupied until a footway crossing with dropped kerbs and tactile paving, incorporating visibility splays on each side of the carriageway with 'x' distances of 2.0 metres and 'y' distances of 43 metres measured along the near edge of the public highway, has been provided to enable pedestrians to safely cross the public highway C3 Newton Lane as part of the footway link required in Condition 11. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.
- 13) The access to the site and associated highway infrastructure shall not be constructed in such a manner as to reduce the effective capacity of any drain or ditch within the limits of the public highway.
- 14) Prior to the first occupation of the development, the existing gate access serving the site off Newton Lane shall have been closed and the kerb and footway/verge have been reinstated in accordance with details previously submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - Parking, turning and loading/unloading of construction/demolition vehicles;
  - construction working hours; and
  - wheel washing facilities.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 16) No development shall take place until detailed design drawings and calculations for the disposal of foul and surface water have been submitted to and approved in writing by the local planning authority. No sewage discharge shall be in operation until the approved works have been completed.
- 17) No development shall take place until a Maintenance Plan detailing how the approved surface water system will be maintained has been submitted to and approved in writing by the local planning authority. The completed scheme shall be maintained in accordance with the approved scheme of maintenance.
- 18) No development shall take place until detailed drawings showing plans and sections of the proposed permeable paving have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 19) The development hereby permitted shall not be commenced until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site, has been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details before any dwelling is occupied.
- 20) No development shall take place until a Written Scheme of Investigation for a programme of archaeological evaluative work has been submitted to and approved in writing by the local planning authority in consultation with the Warwickshire County Council Archaeological Information and Advice team.
- 21) Prior to any development works (with the exception of any groundworks associated with the archaeological evaluation detailed above) taking place an Archaeological Mitigation Strategy document (including a Written Scheme of Investigation for any archaeological fieldwork proposed) shall be submitted to and approved in writing by the local planning authority. This shall detail a strategy to mitigate the archaeological impact of the proposed development and should be informed by the results of the archaeological evaluation detailed in condition 20 above. The programme of archaeological fieldwork and associated post-excavation analysis, report production and archive deposition detailed within the approved Archaeological Mitigation Strategy shall be undertaken in accordance with the approved details.
- 22) Prior to the commencement of development a scheme for the delivery of compensation for biodiversity loss shall be submitted to and approved by the local planning authority in writing. The approved scheme shall be implemented in accordance with the approved details.
- 23) Prior to the commencement of development a scheme of acoustic double glazing and acoustically treated ventilation to habitable rooms in the proposed dwellings shall be submitted to and approved in writing by the local planning authority. The approved scheme shall then be implemented in full and maintained as such thereafter.