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## Appeal Decision

Site visit made on 19 January 2021

**by Darren Hendley BA(Hons) MA MRTPI**

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

**Decision date: 1 February 2021**

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**Appeal Ref: APP/M0655/W/20/3255990**

**The Blackburne Arms, Orford Green, Orford, Warrington WA2 8PL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Rob Stratton, Lane End Developments Construction Ltd against the decision of Warrington Borough Council.
  - The application Ref: 2019/35678, dated 20 August 2019, was refused by notice dated 10 March 2020.
  - The development proposed is described as 'Full Planning (Major) Demolition of existing public house and construction of 52 unit affordable retirement facility and associated landscaping. Change of use from A4 to C3.'
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appellant submitted an agreement under Section 106 of the Town and Country Planning Act 1990 (Section 106 Agreement) during the appeal. The appellant confirmed that it is this version of the Section 106 Agreement that is for my consideration. The Council was also given the opportunity to comment on this document.
3. The appellant also submitted a Legal Opinion document at the Final Comments stage. In the interests of fairness, the Council were afforded the opportunity to comment on this document. Accordingly, I have taken it into account in my decision.

### Main Issues

4. The main issues are the effect of the proposal on (i) the character and appearance of the area; (ii) the provision of community facilities and local services, in particular through the loss of a public house; (iii) highway safety and the free flow of traffic by way of the traffic generation and the parking provision; and (iv) flood risk.

### Reasons

#### *Character and Appearance*

5. The appeal site comprises the Blackburne Arms Public House and the associated grounds. The large public house building is constructed of red brick with sandstone dressings and a slate roof. It is in a Tudor Revival style with a

prominent front facing gable that contains half timbering infilled with white render and herringbone brick. There is an associated car park. A more informal hardstanding area lies between the building and the north boundary of the site.

6. An important characteristic of the site is the expanse of enclosed open land within its boundaries. In particular, this includes land between the building and a large park found to the south and up to the boundary with neighbouring allotments. A bowling green is also found in close proximity. The open land within the site and close-by contributes favourably towards the local character. It assists in providing relief in what is a largely built up residential area. Due to its location with regard to the park, the allotments and the bowling green, the open land within the site more readily relates in character terms to these open aspects of the local character, rather than that of the built up aspects of the area.
7. Policy QE7 of the Warrington Borough Council, Local Plan Core Strategy (2014) (LPCS) concerns character and appearance matters, as it seeks to ensure a high quality place. It states that the Council will look positively upon proposals that are designed to, amongst other criteria, use the density and mix of development to optimise the potential of the site without damaging the character of the area.
8. The proposed building would have a substantially larger footprint size than the existing building. It would extend over a markedly greater distance towards the boundary of the site with the park. It would also be positioned closer to the allotments. The open nature of the site would be diminished to the extent that it would considerably detract from this facet of the local character, when its proximity to the park, allotments and the bowling green are considered. The proposed landscaping would not offset this loss of open character, with the extent of the proposed building on the site.
9. The adverse effect on the character would be evident because of the 3 storey height of the proposed building. As a consequence, it would be visible from its surroundings and so the unfavourable reduction in the open character would be apparent. The comparison in height with the existing building and the nearest dwellings would not address that it would be the amount of development extending over significantly more of the site that would harm the local character. The same applies as regards the use of detailing, recessing and materials to break up and mitigate the enlarged footprint.
10. The screening effects of the trees that are found on the adjacent part of the park would be less effective at times when the trees are not in leaf. Hence, this would not satisfactorily overcome the harmful effects that would arise. The trees are also dissected by a footpath access into the park that would also provide clear visibility. The proposal would not cause loss of public open space, but this is of a limited bearing as regards the character and appearance issue.
11. The contemporary design and architectural merit of the proposed building is not a matter of dispute between the main parties and there is not landscape character evidence of a substantive nature for my consideration. However, the proposal would not enhance the character of the area, due to the reasons that I have set out. Nor does the ancillary functions of the open areas to the existing building lessen their contribution to the open character.

12. With regard to where there are buildings of comparable or larger footprint size, these are too distant to appreciably inform the character of the site, in particular as there are open spaces and other buildings in between. I reach the same view with regard to the Penketh appeal decision<sup>1</sup> that I have been referred to.
13. The appellant considers that the Council has widened its case on character and appearance grounds in its submissions. The Council do make additional policy and guidance references. Nevertheless, I have based my deliberations on the matters that are set out in the related reason for refusal.
14. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. Hence, it would not comply in this regard with Policy QE7 of the LPCS because whilst the proposal seeks to use the density and mix of development to optimise the potential of the site, in so doing it damages the character of the area.

#### *Community Facilities*

15. Prior to the restrictions associated with the current Covid-19 pandemic, it is understood from the submissions that the public house had remained open. I observed on my site visit signage that had been erected that related to controls when such establishments were open. Other signage advertises the typical services that are available in a public house. Externally, the building appeared in good upkeep and inviting to custom.
16. The public house is said to provide a meeting place for local people, sporting teams, visitors and the users of the recreational facilities. This has not been disputed by the appellant. In this regard, it benefits from its proximity to the bowling green, the park and the allotments, as well as the local residential area. It has also been listed relatively recently as an Asset of Community Value (ACV). It is understood that the application was submitted by a former landlord and was supported by a social media campaign and a petition.
17. Policy SN6 of the LPCS states that the Council will seek to assist the continued viability and growth of the local economy and support the sustainability of local communities by ensuring development proposals avoid the loss or change of use of viable public houses where the loss would impact on the diversity of local services in communities, amongst other named services and facilities. Policy SN7 of the LPCS concerns enhancing health and well-being, including maximising opportunities for contact with nature, cultural activities, exercise and active travel.
18. With regard to viability, the appellant has provided details of the marketing that has taken place. Directed marketing of the public house has taken place since 2012 which is said to have yielded no positive responses for operating the use as a going concern. The style, position, running costs and trading figures of the public house are said to have been deterrents to positive interest.
19. Despite of this apparent lack of interest during the marketing, the public house has stayed open until the pandemic restrictions. Whilst I understand that it has closed at times, it has then re-opened. In relation to how Policy SN6 applies viability, there appears to be some disparity between the public house remaining open and the lack of interest expressed during the marketing that

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<sup>1</sup> Appeal ref: APP/M0655/W/20/3248314

has taken place. In my mind, this places doubt on whether the lack of a buyer means that a successful business could not operate. The viability evidence is not therefore compelling.

20. I am not unsympathetic as regards the impact of the pandemic restrictions on the owners. Nevertheless, such restrictions apply to all such premises and this would not justify the loss of the public house as a community facility.
21. Furthermore, there is a level of support expressed by the local community in terms of its function as a meeting place and a social hub. The strength or volume of objection to the proposal is not, in itself, a determining factor, but what those objections demonstrate in this case is the value of the public house to the community. The ACV listing provides further related evidence. The proposal would have the disbenefit of resulting in the loss of such a facility.
22. The appellant has pointed to a number of other public house facilities in the area. However, these would not have the benefit of the location of this public house with the recreational facilities that are in close proximity to it, as well as the immediate residential area. They would not replicate the conditions that cause this public house to be a community facility. Its loss would impact on the diversity of local services.
23. The weight to be given to the ACV listing is a matter for the decision maker to determine and it does not, on its own, form a land use control in planning terms. In this instance, it does though form part of the persuasive evidence of the value of the public house to the local community and that its loss would have an adverse impact on such amenities of the local residents. When taken together, this evidence carries significant weight in my decision.
24. Whether or not the public house would continue to be used by the community is to be considered in planning terms, rather than the contractual arrangements that exist outside of the planning system. In any event, as I have set out above, it remains a public house rather than a vacant facility.
25. Based on the evidence before me, I conclude that the proposal would have an unacceptable effect on the provision of community facilities and local services, in particular through the loss of a public house. As such, it would not comply with Policy SN6 because it would not avoid the loss of a viable public house where the loss would impact on the diversity of local services in communities. It would also not comply with Policy SN7 as its loss would not enhance health and well-being for the community that it serves.

### *Highway Safety*

26. Vehicular access to the site is taken from an outside bend onto A50 Orford Green. A further bend is found a short distance to the north, close to the junction with Birtles Road. A traffic controlled junction is found to the east, where Orford Green meets Hallfields Road. Orford Green is a busy thoroughfare in this part of Warrington.
27. The appellant revised the original traffic generation rates associated with the proposal so they are based on private flats rather than the occupation by residents of a retirement age. This would result in 12 trips during the AM peak and 14 trips during the PM peak. The Council consider these trip rates should be higher at around 15 in both AM and PM peaks. Nevertheless, the difference between the main parties on the trip rates is not significant. The use of the

higher trip generation that relates to private flats would also satisfactorily address the Council's concern that lower trip rates for occupation by residents of a retirement age do not reflect what would be higher levels of trips by this age group.

28. The predicted trip rates from the proposal also account for the times of day when traffic flows along Orford Green would be likely to be higher as a primary route, at peak times. I am not convinced that the addition of what are not high levels of traffic generation associated with the proposal would have an unacceptable effect on the operation of Orford Green. Moreover, the public house would itself result in some traffic generation, even if it would not be to the same level as the proposal or at the same times of day. This also needs to be factored into the effect on traffic generation.
29. The submissions also indicate that a 'keep clear' box would be provided at the access. This would assist in remedying delays for drivers using the access during busy periods. Overall, undue highway safety issues at the site access would be unlikely to arise. With the traffic generation levels, the effect on the use of the Birtles Road and Hallfields Road junctions would also be likely to be limited. In coming to this view, I have had regard to the road safety incidents that I have been referred to.
30. It is understood that the site is used for parking by users of the bowling green, the allotments and the adjacent residential dwellings. At the time of my site visit, it also seemed to be used by visitors to the park. These arrangements, however, exist on an informal basis and it would not be reasonable to penalise the appellant in this regard concerning the parking levels for the proposal. The current arrangements could be stopped at any time without recourse through the planning system, based on the evidence before me. Nor would the proposal impede parking that is available adjacent to the bowling green and access would be maintained to it.
31. In relation to the parking requirements, these are set out in the Council's Standards for Parking in New Development Supplementary Planning Document (2015). The relevant standards are flexible in the sense that an alternative is presented where developers are unable to accommodate the preferred parking standards. The proposed parking provision would rely on this flexible approach.
32. The Council are concerned that the associated levels of car ownership related to the occupancy of the proposal would result in use of spaces for visitors and disabled persons, as well as overspill car parking onto streets that cannot accommodate it. However, whether such an effect would occur also needs to be considered in relation to the location of the site in other respects. It is found well within an urban area with a number of local services close by. Local bus stops provide a public transport option that gives access to a broader range of services. Whilst inevitably utilising these services would involve crossing local roads, the road conditions are not to the extent where this would likely discourage use and place a greater reliance on the car.
33. The appellant has also proposed a management strategy that would set out controls on the use of the parking, enforcement and ongoing monitoring of visitor parking. When this is considered with the levels of on-site parking that would be available and the accessible location, the effect on parking would not be unacceptable.

34. The Council has also raised servicing concerns, although the swept path analysis does appear to indicate that a typical refuse collection vehicle would be able to negotiate the site layout. Larger vehicles would be more infrequent, based on the type of development proposed. This would not, in itself, render the proposal unacceptable.
35. I conclude that the proposal would not have an unacceptable effect on highways safety and the free flow of traffic by way of the traffic generation and the parking provision. Therefore, it would comply with Policies CS1, QE7 and MP1 of the LPCS in this regard where they are concerned with public safety, access and adhering to locally determined car parking standards, amidst other matters. The proposal would also comply with Policy QS6 of the LPCS as regards public safety, which has also been referred to.
36. The proposal would also accord with the National Planning Policy Framework (Framework) in this regard, including where it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

#### *Flood Risk*

37. The appeal site lies within Flood Zones 2 (medium probability of flooding) and 3 (high probability of flooding), as well as within a Critical Drainage Area. The site is protected against fluvial flooding by existing flood defences. The risk of flooding would principally arise if the flood defences were overtopped or breached.
38. It is intended that the risk from flooding would be mitigated by using a number of property level protection measures, including a raised finished floor level and flood resilience and resistance measures that would be incorporated into the construction of the building. There would also be a flood plan for the future occupants, participation in the Environment Agency flood warning system and a safe access route to Orford Green.
39. Surface water would be discharged to a surface water sewer near to the site. The peak surface water discharge would be at a brownfield rate with a betterment and related storage would be provided on site. These measures are also proposed so that surface water flooding would not result.
40. When this information is taken together, there is sufficient detail that demonstrates that the proposal would not have detrimental impacts on flooding in the area. This is subject to the implementation of the measures that I have set out above. Whilst I note the Council's concerns over the intended occupation of the proposal, by virtue of its Use Class, it is not residential accommodation for people in need of care where such an issue may be more of a concern.
41. As a result, I conclude that the proposal would not have an unacceptable effect on flood risk.

#### **Other Matters**

42. The appellant has stated that the Council cannot demonstrate a 5 year housing land supply in accordance with the Framework as it only has 3.7 years supply. This has not been contested by the Council. The shortfall is not insignificant



and the proposal would make an important contribution to alleviating the deficit, as well as according with the Government's objective of significantly boosting the supply of homes. It would also provide for a housing mix and provide accommodation for different groups because it would be aimed at retired people.

43. There would also be economic benefits during construction, and through employment, the spend of the future occupiers and the receipts that the Council would receive. The proposal would provide for recycling and it is intended that energy efficiency and carbon reduction measures would be incorporated, as well as that high quality accommodation would be provided for its residents. It would also be located where it would be accessible to local services.
44. It is intended that the proposal would constitute an affordable housing scheme. The appellant has submitted evidence that shows a significant under delivery of affordable housing in the Council area. Again, this has not been contested. The Section 106 Agreement includes a planning obligation which concerns affordable housing. However, the Section 106 Agreement is not complete. Amongst other matters, it is not dated or signed. For such an agreement to carry weight in my decision, it must be complete.
45. The effect of the absence of such a completed agreement is that affordable housing provision would not be secured if planning permission were to be granted. Whilst the provision of the proposal as an affordable housing scheme would have carried significant weight in my decision with a completed agreement, the opposite situation now arises. It would not secure affordable housing in line with Policy SN2 of the LPCS. This counts considerably against the proposal.
46. The same applies as regards the financial contribution through the Section 106 Agreement that would fund improvements to the existing health care provision. It would be needed to provide sufficient capacity to meet the demand on healthcare services from the additional population that would result from the proposal. It is calculated in accordance with the Council's Planning Obligations Supplementary Planning Document (2017), and such an approach accords with LPCS policies SN7 and MP10. It is necessary, directly related to the development and reasonable in scale and kind to the development. The incomplete Section 106 Agreement would not, though, secure the contribution.
47. The proposal would make use of previously developed land and seeks to comply with the Framework as regards density and the efficient use of land. The application of the policies of the Framework are not, though, uncaveated in these respects as they also provide for the consideration of character and appearance, as well as community facility provision, which are issues where I have expressed concerns. The Framework also provides for the consideration of affordable housing and healthy communities, which is of relevance as regards the defects in the Section 106 Agreement.
48. Nor does the identification of the site in the Council's 2019 Strategic Housing Land Availability Assessment as suitable for residential development negate the consideration of particular planning considerations that arise from the proposal. It also refers to the public house as 'former', which does not appear to be a reflection of its status at the current time.

49. That the proposal would not be unacceptable as regards highways safety and flood risk attracts neutral weight, as does the effect on the living conditions of the occupiers of neighbouring properties, ecology and on trees. I do not find any particular benefit from the proposed new planting and landscaping. This is due to the harm that would arise to the open character.
50. That the Council's case differs from the Officer Report to the Planning Committee simply reflects that the Council refused the application. Where I have taken a different view to the Officer Report, I have set out my explanations in this decision.

### **Planning Balance and Conclusion**

51. With the conflict that I have identified with the development plan policies, the proposal conflicts with the development plan as a whole. This is because the policies are central in deciding whether or not the proposal would comply with the development plan. They are also consistent with the Framework and the conflict with them attracts significant weight in my decision.
52. Due to a lack of a 5 year supply of deliverable housing sites, paragraph 11 d) of the Framework is engaged. As a consequence, the balance under paragraph 11 d) ii. applies. This means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This means that the development plan policies are out of date. However, this does not prescribe the level of weight to be given to the conflict with the policies which I have set out above.
53. In relation to the adverse impacts, these concern the effects on the character and appearance of the area and the provision of community facilities and local services, in particular through the loss of the public house. With the deficiencies in the S106 Agreement, they also concern affordable housing provision and the effect on healthcare services. I find the harm, when taken together, to be very significant. Set against this would be the addition of 52 dwellings to the supply of housing, including the contribution to addressing the shortfall against the 5 year supply of deliverable housing sites. When this is considered with the other benefits, they attract significant weight in my decision.
54. I have taken into account the relevant matters in relation to the economic, social and environmental objectives of the Framework, as set out above, notwithstanding these are not criteria against which every decision can or should be judged.
55. Taking these matters together, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the application of paragraph 11 does not indicate that permission should be granted, when assessed against the policies in the Framework taken as a whole. The proposal does not benefit from the presumption in favour of sustainable development.



56. In coming to my conclusion, I have considered all relevant matters that have been raised. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

*Darren Hendley*

INSPECTOR