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# Appeal Decision

Site visit made on 11 and 15 April 2024

**by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

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

**Decision date: 24 June 2024**

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**Appeal Ref: APP/M0655/W/23/3326007**

**C P S Centre, 7-9 Common Lane, Culcheth, Warrington WA3 4EH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr A Cohen of Shivat Haminim Capital Limited against Warrington Borough Council.
  - The application Ref is 2022/42633.
  - The development proposed is for the replacement of existing car parking area with a two-storey mixed-use building consisting of two Class E units at ground floor level and three residential units at first floor level, new public realm and ancillary works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the submission of the appeal, on 4 December 2023 the Warrington Local Plan (LP) was adopted. Consequently, the policies contained within the Warrington Local Plan Core Strategy (2014) have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. Both parties have acknowledged this situation, with the Council providing comments in its Statement of Case (SoC) and the appellant has had an opportunity at the final comments stage to provide their views on the relevance of the new policies. This appeal has therefore been determined in relation to the policies contained within the LP.
3. The Revised National Planning Policy Framework (the Framework) was published on 19 December 2023, after the appeal was lodged. During the appeal an opportunity existed to submit comments on the implications of the Framework. Consequently, I will not prejudice any party by having regard to the Framework in reaching my decision.
4. The appeal is against the failure to give notice within the prescribed period of a decision on an application for planning permission. Following the lodging of the appeal, the Council considered the application and indicated in its SoC that they would have refused the application.

## Main Issues

5. As outlined in the SoC, the Council's reasons for refusing planning permission would have been regarding:
  - the effect of the proposed development on the vitality and viability of the Neighbourhood Centre;

- the effect of the proposed development on highway safety;
- whether satisfactory accommodation would be provided for future occupiers of the proposed development;
- the effect of the proposed development on the character and appearance of the appeal site and surrounding area; and,
- whether a risk of crime and/or anti-social behaviour would occur as a consequence of the proposed development.

## **Reasons**

### *Viability and vitality*

6. The appeal site is located in Culcheth Village and currently comprises a 22no space car park (the car park), which includes 2no disabled bays. The car park serves the CPS centre (the Centre), particularly the units that face it and has a maximum stay of 3 hours, similar to the main car park on the opposite side of the Centre, which comprises 110no spaces. Although, there does appear to be a facility at the main car park allowing an additional hour of parking to be purchased over the phone.
7. LP Policy DEV4 seeks for the development relates to ancillary services which will support the employment area by making it more sustainable, viable and/or attractive; the proposal will not undermine the viability of existing employment uses in close proximity to the site, amongst other things. LP Policy DEV5 sets out the hierarchy of centres, which identifies Culcheth Village as a Neighbourhood Centre, where proposals are expected to enhance the vitality, viability and overall attractiveness of the centre and sustaining local shops and services.
8. LP Policy INF4 seeks to safeguard existing social and community infrastructure, subject to a continued need or likely future need or demand for the facility in question; and require alternative comparable or improved provision where a development scheme would result in the loss of important social and community infrastructure, and require the provision of new social and community infrastructure where a development would increase demand for it beyond its current capacity or generate a newly arising need, amongst other things.
9. The proposed development comprises a two-storey mixed use scheme with 2no. commercial units at ground floor, and 3no. residential apartments above at first floor. Of the 3no. units, 2no. apartments would have one bedroom, with the remaining apartment having two bedrooms. The proposed development would be sited in proximity of the existing centre and would result in the loss of the 22no. car parking spaces that are currently provided on the site. Additionally, a further parking space would be lost on the main car park due to the re-provision of 2no. accessible bays.
10. I have examined the findings contained within the Transport Statement<sup>1</sup> (TS), where the surveys were undertaken on Saturday 12 February 2022 and Tuesday 15 February 2022. These surveys indicate the Centre currently operates with a spare capacity of 20no. spaces on a Tuesday and 21 spaces on

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<sup>1</sup> Transport Statement by Axis, dated October 2022

a Saturday. It was also noted that the maximum observed parking demand at the Centre was only experienced for a 15-minute period on both Tuesday and Saturday at 12:15-12:30 and 11:30-11:45 respectively. The Council's parking requirements for the proposed development is 12no. spaces, where 8no. spaces would be required for the commercial units, 2no. spaces for the one-bedroom apartments, 1no. space for the two-bedroom apartment and 1no. space for visitor parking. In the TS, the appellant has sought to demonstrate that the proposed development is forecast to generate a maximum parking demand of 5 vehicles in any 15-minute period on a weekday and a Saturday<sup>2</sup>.

11. Notwithstanding the findings in the TS, I also visited the site and surrounding area on a Tuesday and Saturday at various times through mid-morning to mid-afternoon. Whilst I appreciate that it only represents a snapshot in time my visits indicated that parking at the site was at or very near to capacity on all occasions, and the site experienced a relatively quick turn over of vehicles. Additionally, the car parks in the surrounding area, particularly the public car park off Jackson Avenue; the car park off Common Lane that serves retail/service units, including the Culcheth Co-op and parking off Lodge Drive. I also observed the Traffic Regulation Orders in effect, including those on Jackson Avenue and Common Lane and that parking at the medical centre is for patients and staff only. I also observed a number of vehicles parked on the highway further along Jackson Avenue, outside the existing residential properties.
12. There is no doubt that the site is in a sustainable location, with good access to a regular bus service, which weighs in favour of the scheme. I also acknowledge the findings of the TS and that some of its predictions have been formulated using the TRICS<sup>3</sup> database. However, I consider the residential units will likely have visitors and notwithstanding, the data from the census, there is no guarantee that car ownership at the development would be lower for the apartments than houses. Additionally, it is common ground that the Centre is not fully occupied, which if it was, would likely generate and additional parking requirement.
13. It is already recognised that the level of parking at the Centre is lower, when compared to the Council's parking standards by some 39no. spaces, but I accept that this requirement does not take into account the potential for linked trips. Nonetheless, it has been predicted that there will be instances where the demand for parking at the Centre will exceed the remaining spaces, albeit for only part of the day. Given my own experiences and observations during my site visits, I am not convinced that the amount of displaced parking could be easily accommodated on the surrounding network, especially if occupancy rates in the Centre increased. Furthermore, the arrangements and/or mechanism for future residents and associated visitor parking to the proposed apartments is not clear, particularly as the main car park is subject to time restrictions.
14. Consequently, there are significant issues surrounding car parking provision that could potentially undermine the viability and vitality of the Centre and the wider Neighbourhood Centre. Other factors would also weigh against the proposed development in this regard, such as highway safety, the agent of change principle, character and appearance and the risk of crime and anti-social behaviour. All of which, I shall discuss in more detail later in my decision.

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<sup>2</sup> Table 3.2 – Car Parking Accumulation of the Proposed Development of the TS

<sup>3</sup> Trip Rate Information Computer System

15. For the reasons given above, I conclude that the proposed development would undermine the vitality and viability of the Centre and surrounding Neighbourhood Centre. Thus, the scheme would fail to accord with the strategic aims of LP Policies DEV4, DEV5 and INF4, which collectively seeks to support the employment area by making it more sustainable, attractive, enhance the vitality, viability and overall attractiveness of the centre and sustaining local shops and services, amongst other things. The scheme is also contrary to the requirements of the Framework.

#### *Highway safety*

16. As outlined above the proposal involves the removal of 23no. parking spaces at the Centre, where there is a prediction that there will be instances of displaced parking at various times of the day, albeit this would be limited in the view of the appellant. Nonetheless, the public car park off Jacksons Avenue is already well utilised and other areas of parking in the area serve other shopping parades or are for customers or staff only. Given my findings on the previous main issue, I am not convinced that displaced vehicles could be adequately located, without risking indiscriminate parking to the detriment of highway and pedestrian safety. This would be highly likely in the case of short visits, which appeared to be a regular occurrence at the site from my own observations, and would be further exacerbated if occupancy rates at the Centre increased.
17. Deliveries to the proposed development would be taken from Jackson Avenue. It is recognised by the parties that Jackson Avenue has double yellow lines on both sides of the carriage way that extends from the junction with Common Lane for a notable distance and includes the section of road across the access to the site. Additionally, I noted that Common Lane has single yellow lines restricting parking in the vicinity of the site. Therefore, it is evident to me that the road network surrounding the site has various restrictions in place to prevent on-street parking.
18. The TS is of the view that the largest vehicle required for deliveries would be a small van, which would be able to utilise the main car park or the area to the southwest of the existing retail units which front the existing northern car park. Overall, I find that there is very little detail surrounding the types or style of delivery vehicle that would visit the site and existing units. Examples have been provided of vehicles parking on double yellow lines in proximity of the site. Even when excluding the possibility of larger vehicles delivering to the site, I cannot be certain that a delivery van would park in the areas identified in the TS. In the absence of evidence to the contrary, given the location of the proposed development, I find that it would be highly likely that delivery vehicles would want to park closer to the commercial units, where parking restrictions exist.
19. I note the offer from the appellant to provide a loading bay, but there is no agreement with the Council or mechanism to deliver this facility. Additionally, I note the comments that on street deliveries already exist in the area, and that this is an enforcement matter. However, this does not provide any justification to encourage any further parking infringements. Accident data indicates that an accident occurs less than once a year in the locality and that accidents that have occurred can be attributed to driver/rider or pedestrian error. Whilst this weighs in favour of the scheme, it does not outweigh the potential harm that I have identified. I have considered whether suitably worded conditions could be

imposed to ensure that otherwise unacceptable development could be made acceptable, but this is not possible in this instance.

20. For the reasons given above, I conclude that the proposed development would result in harmful effects on highway safety, with particular regard to parking, servicing and deliveries. Thus, the scheme would fail to accord with the highway safety aims of LP Policy INF1, which seeks to ensure traffic generated by development is appropriate to the type and nature of the routes available and that there is no adverse impact on the local community. The scheme is also contrary to the requirements of the Framework.

#### *Living conditions*

21. The proposed development would be in proximity of the Centre and it is common ground that the interface distances fall below the guidance contained within the Council's House Extensions Supplementary Planning Document, June 2021 (the SPD). Whilst acknowledging the proposed development does not constitute an extension, the principle of the SPD can be applied in this context. I accept that, obscure glazing could be introduced and conditioned accordingly, particularly where there are additional windows serving the same room on different elevation that would provide the necessary outlook. However, this would not be possible in the bedroom of unit one.
22. Additionally, whilst the appellant is of the view that a distinction is required between internal and external areas, I have no doubt that the balconies are proposed to provide private outdoor amenity space. Consequently, even if such a distinction was applied, there would still be significant overlooking of the balconies proposed at Units one and two, and to a lesser extent at unit three, particularly the balcony serving bedroom one. The double doors serving these balconies would also require obscure glazing, which is far from ideal or practical.
23. Paragraph 180 of the Framework, advises that decisions should contribute to and enhance the local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. Similarly, paragraph 191 of the Framework, requires that decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions, and avoid noise giving rise to significant adverse impacts on health and the quality of life.
24. The effects of the proposal on existing businesses that are sources of noise in the area should also be considered. The issue is acknowledged in the Planning Practice Guidance<sup>4</sup> and paragraph 193 of the Framework, which advises that planning policies and decisions should ensure that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Given the proximity of the commercial premises, which generate noise, there is a realistic prospect that such complaints would arise.
25. The appellant has provided a Noise Impact Assessment<sup>5</sup> (NIA) to support the proposed development in this regard. The conclusions of the NIA indicate that noise levels at the site are primarily from road traffic noise from both Common

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<sup>4</sup> Paragraph: 009 Reference ID: 30-009-20190722

<sup>5</sup> Noise Impact Assessment by Philip Dunbavin Acoustics Ltd, dated 3 November 2022

Lane and Jackson Avenue. It is also highlighted that live music occurs at the first-floor bar situated on the opposite side of Jackson Avenue to the site. Whilst I am satisfied that collection and deliveries to and from the site could be controlled by means of condition, such a condition would not extend to the operation of existing premises, where such problems may occur.

26. Furthermore, I note that the NIA requires openings in the façade to be closed to achieve the required sound insulation, where mitigation is proposed in the form of mechanical ventilation and/or trickle vents. Consequently, future residents would be reliant on artificial ventilation systems, where it seems to me a residential occupier, living on the first floor of a two-storey building, would reasonably expect to be able to open their windows during fine weather without being subjected to noise levels in excess of suggested limits. This mitigation would not apply to the balcony areas and raises questions surrounding these outside areas and the associated double doors.
27. I have considered the comments surrounding built in storage requirements as set out in the Technical housing standards – nationally described space standard 2015 (the NDSS). However, Unit Two has 1.7m<sup>2</sup> of storage space and is therefore compliant with the NDSS. Unit One has an extra 1m<sup>2</sup> of floorspace to compensate for the 0.9m<sup>2</sup> of proposed storage, which provides sufficient mitigation to secure overall compliance with the aims of the NDSS and thus LP Policy DEV2. Furthermore, I am satisfied that issues surrounding the potential odours from the commercial units and the hours of operation could be addressed by means of condition to ensure that otherwise unacceptable development could be made acceptable.
28. For the reasons given above, I conclude that the proposed development would not provide satisfactory living conditions for future occupiers. Thus, the scheme would fail to accord with the amenity aims of LP Policy ENV8, which seeks for developments, which are noise sensitive end uses near to busy roads or noisy existing businesses will need to demonstrate with any application that appropriate mitigation can be employed and implemented to prevent adverse impacts on health and quality of life for future site users. Such developments need to consider and implement the 'agent of change' principle, amongst other things. The scheme is also contrary to the requirements of the Framework.

#### *Character and appearance*

29. LP Policy DC6 requires delivery of high-quality design, where proposals should respect and enhance the area's distinct character, considering layout, scale, and landscape; contribute positively to the public realm and use a palette of high-quality materials which are appropriate to the local context. Paragraph 135 of the Framework goes on to state that developments should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping and should establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.
30. I note the Council do not consider the proposed development would be overbearing or dominant in the street scene, which I also consider to be the case. However, the Council is of the view that the design is uninspiring and disconnected from the surrounding context, particularly given its prominent corner location. Whilst pitch roofs are a characteristic in the surrounding area, I do not find the omission of such a feature in the scheme to be harmful, given



the presence of numerous buildings with flat roof designs in the locality, such as Culcheth Scout Centre, the Culcheth Centre and elements in the Centre itself.

31. I do not find the level of detail proposed on the elevations to be inadequate. Likewise, whilst concerns have been raised in respect of the fenestration and the composition of materials, I consider that the large expanse of glazing proposed at ground floor and the variety of materials present in buildings in the immediate locality to be mitigating factors, respectively. Additionally, whilst concerns have been raised about the depth of the proposed parapets and the ability to screen potential plant and equipment, I have not been provided with anything to substantiate this view. In any event, it is likely that such installations would require permission in their own right, which would give the Council control over such matters.
32. I accept that the proposed balconies could be sited better on the elevations, particularly with the spacing around the patio doors, but overall I do not consider these structures would be overly dominant or clutter the respective elevations. However, I do have concerns surrounding the pedestrian walkway (the walkway) that would be formed by the proposed development and the Centre. Due to the orientation of the Centre, the walkway would experience significant shadowing from Centre itself. Whilst this situation currently exists for the units in the Centre that face the site, the proximity of the proposed development would remove the open aspect that is currently viewed from these units, albeit over a car park. Consequently, I find the resultant enclosure of the space in front of the Centre in creating the walkway would not create a space that would function well, be visually attractive, welcoming or distinctive to live work or visit.
33. There would be a loss of semi mature trees on Jackson Avenue, which despite the lack of objection to their removal, do contribute positively to the amenity of the area. Although, replacement planting is proposed, I am not entirely convinced that this will be successful in the long term, as it is highly likely that pressure will arise from future occupiers of the commercial and residential units, to fell trees in the location proposed due to the constrained nature of the site and the proximity of the development. In this instance, suitably worded conditions could not be imposed to ensure that otherwise unacceptable development could be made acceptable.
34. For the reasons given above, I conclude that the proposed development would harm the character and appearance of the appeal site and surrounding area. Thus, the scheme would fail to accord with the design aims of LP Policy DC6, which seeks high quality design, amongst other things. The scheme is also contrary to the requirements of the Framework.

#### *Crime and anti-social behaviour*

35. LP Policy DC6 seeks for development proposals to minimise the incidence and fear of crime through the design of site layouts and buildings and overlooked streets and communal spaces and ensure that new open space is accessible, safe, and benefits from natural surveillance. Additionally, paragraph 135 of the Framework requires that developments should establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit and create places that are safe, inclusive and accessible and which

promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

36. A number of concerns have been raised on this issue by the Council and Cheshire Constabulary, but I accept that the majority of these could be dealt with through the imposition of suitably worded conditions. I have noted the comments surrounding the balconies providing shelter to people in the walkway. However, taking into account the size of the proposed balconies, I am not convinced that they would lead to unwanted loitering. Nonetheless, whilst acknowledging the width of the walkway and that it would benefit from a notable amount of natural surveillance from the existing and proposed units, I do have concerns surrounding the lack of a clear line of sight from one end of the walkway to the other. I have considered some of the suggestions surrounding street furniture and materials, but I am not satisfied that addressing such details would provide the necessary mitigation to make the design acceptable.
37. For the reasons given above, I conclude that it is highly likely that the proposed development would result in crime and/or anti-social behaviour. Thus, the scheme would fail to accord with the design aims of LP Policy DC6, which seeks to encourage the principles of crime prevention through environmental design, amongst other things. The scheme is also contrary to the requirements of the Framework.

### **Other Matters**

38. Before the adoption of the LP, it was common ground that the Council could not demonstrate a 5-year supply of deliverable housing sites (5-year HLS). However, as part of the adoption of the LP, the Council has confirmed that a 5-year HLS had to be demonstrated upon adoption. In the absence of substantive evidence to the contrary, I find the Council can demonstrate a sufficient supply of housing sites. The appellant is of the view that in recent years, the Council has underperformed in housing delivery and the annual housing requirement has now increased to 816 units per year through the adoption of the LP.
39. I am mindful that the 5-year HLS figure is not a maximum figure, and that the Framework seeks to significantly boost the supply of housing. Nonetheless, even if I accepted the appellant's position, the contribution to the Council's 5-year HLS would be very modest. The proposed development would result in social and economic benefits primarily through the creation of 3 no. residential units that would contribute to the Council's supply of homes, the creation of local jobs generated by the proposed commercial units, and the construction phase, amongst other things. However, these benefits would not significantly and demonstrably outweigh the harmful effects identified above, and the subsequent conflict with the development plan and the requirements of the Framework. Accordingly, 5-year HLS is not determinative to this appeal.
40. I have had regard to the large number of objections received from local residents and councillors and to the representations received in support of the scheme, as part of this appeal, which express a wide range of concerns including, but not limited to the following: Local economy; Health and safety; Access for emergency vehicles; Collections and deliveries; Effect on village green; Demand for proposed retail units and the community use of the car



park, amongst other things. However, I note that these matters were considered where relevant by the Council in its submission. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

### **Planning Balance and Conclusion**

41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
42. Given my findings above, the appeal scheme would fail to accord with the development plan, when considered as a whole, and there are no other material considerations, including the provisions of the Framework, that indicate it should be determined other than in accordance with the development plan.
43. For the reasons given above, I conclude that the appeal should be dismissed.

*W Johnson*

INSPECTOR