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# Appeal Decision

Site visit made on 4 June 2024

**by U P Han BSc (Hons) DipTP MRTPI**

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

**Decision date: 8<sup>th</sup> July 2024**

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**Appeal Ref: APP/R3705/W/23/3331488**

**Land 50 metres west of 55 Warton Lane, Austrey CV9 3EJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mr Aaron Eidukas against the decision of North Warwickshire Borough Council.
  - The application Ref is PAP/2023/0006.
  - The development proposed is change of use to residential and erection of two detached houses.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the address for the site from the Decision Notice and the appeal form as this more accurately reflects the location of the site.
3. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the Outline Plans WLA/01/02 REV A, Landscape Plan Revised and Landscape Plan Post Development which show how the site might be developed but treated each element of the drawings as indicative, apart from the details of the access, when considering the likely impact of the proposal on the matters set out in the main issues below.
4. The National Planning Policy Framework (the Framework) was revised in December 2023 after the Council's decision and the submission of the appeal. Paragraph 76 of the Framework introduces criteria under which local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing. While the Council meets the criteria and is not required to provide a minimum of five years' worth of housing, it has nevertheless submitted evidence demonstrating 5.3 years housing supply. I have taken into account the Council's housing land supply position in the determination of this appeal.
5. Other revisions to the Framework do not alter the parts therein upon which this appeal turns, so I have had regard to its content, and I am satisfied that this has not prejudiced any party.

## Main Issues

6. The main issues are:
  - the effect of the proposal on the character and appearance of the area, including landscape character;

- whether the proposal would preserve or enhance the setting of a Grade II listed building, known as Flavel<sup>1</sup> and, its effect on the setting and significance of a non-designated heritage asset (NDHA), known as Saddlers Cottage; and
- whether the site is a suitable location for the proposed development with reference to the Council's settlement hierarchy and its compliance with other policies of the development plan.

## Reasons

### *Character and appearance*

7. The appeal site is a paddock located on the periphery of the village of Austrey where built development meets open countryside. Situated on the western side of Warton Lane at its junction with Bishops Cleeve, it occupies a prominent corner position near the south-west entrance of the village. The land is currently an undeveloped open grass field bordered by substantial hedgerows and trees. A metal gate on Warton Lane provides access to the site.
8. Opposite the site, on the other side of Warton Lane is Bishops Cottage which is a two-storey pebble-dashed house, and Flavel. Flavel Court sits behind Flavel and contains a small cul-de-sac of modern detached two-storey houses. Contemporary housing is also located on the south-east side of Warton Lane and on both sides of Bishops Cleeve. Next to the site is the NDHA.
9. The appeal site falls within Landscape Character Area 1: No Man's Heath Warton Lowlands within the North Warwickshire Landscape Character Assessment 2010 (LCA). Policy LP14 of the North Warwickshire Local Plan (NWLP) requires development to conserve and enhance landscape character within the landscape character areas as defined in the LCA.
10. The LCA describes the landscape character of the area as being distinctly rural with strong rectilinear hedge patterns, small flat pastoral fields, scattered farmsteads and nucleated hilltop villages. The landscape management strategy for this area includes conserving the historic field pattern and reinforcing the existing development pattern of the rural villages.
11. The appeal site falls outside the Austrey settlement boundary as defined by the NWLP. While the site is contained on three sides by development, the buildings south of Warton Lane are situated within countryside and display more rural characteristics. The proposal would therefore amount to an incursion into the countryside and divide the site into two plots which would erode the historic field pattern and remove the openness of the site.
12. The site's substantial hedgerow and tree boundary together with its openness as a green field reinforce the rural character of this part of the village. While the Landscape Plans indicate the majority of the existing hedgerows and trees could be retained and enhanced, the proposal would nevertheless encroach into open countryside and occupy a field that contributes significantly to the distinctive character of the locality.
13. Despite modern housing to the south-east of Warton Lane, the prevailing character of the area is defined by its verdant setting and the appearance and

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<sup>1</sup> List Entry Number: 1034710.

scale of the traditional homes on Warton Lane. The potential size and mass of the buildings as shown in the Outline Plans would not reflect the scale and character of the existing dwellings in the area. The proposed dwellings would potentially fill most of the width of the site with little break in built form, appearing dominant within its setting.

14. For the reasons above, I conclude the proposal would have a significantly detrimental effect on the character and appearance of the area, including the landscape character of the area. It would conflict with Policies LP1, LP14, LP29 and LP30 of the NWLP which require, among other matters, that development improve the individual settlement's character, conserve and enhance landscape character, protect and enhance the natural environment and respect and reflect the existing pattern, character, and appearance of its setting.

*Significance and settings of heritage assets*

15. Notwithstanding the absence of any objection from the Council's Heritage Officer, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 205 of the NPPF requires decision-makers to give great weight to the asset's conservation. Paragraph 209 of Framework also indicates that the effect on the significance of a non-designated heritage asset should be taken into account.
16. Flavel is a Grade II listed building built in the mid to late 18th Century. Its significance is derived from its age, architecture, and contribution it makes to the evolution of the village. The house displays Flemish bond brickwork with a string course and moulded brick cornice. The building has a striking symmetrical front with a five-window arrangement of nine pane sashes and cambered arches on the ground floor. A low brick wall defines the simple stone paved garden to the front giving the house an arresting presence on Warton Lane.
17. The appellant's Heritage Statement shows that there is no evidence from historic maps or records that the appeal site was associated with Flavel and that its grounds were concentrated to the rear of the property. Even so, the setting of Flavel is significantly enhanced by its outlook and the openness of the green field in front. Its character and appearance is enriched by its setting on the edge of the village where countryside meets settlement.
18. The rear of the property has been extended with a two-storey rear wing and a modern conservatory. The rear and side of Flavel has also been subject to modern housing development at 55 Warton Lane and Flavel Court. As a consequence, the setting of Flavel has been harmed by the presence of these built forms. However, its open setting to the front contributes to the significance and appreciation of the property's most special features on the front elevation.
19. The NDHA is located next to the appeal site and is bordered by hedges and trees. While the Council does not currently have a local list, it considers it a NDHA. Thought to be constructed at a similar time to Flavel, the name of the property, coupled with its courtyard style U-shape plan form and edge of

settlement location adjacent to fields, indicate that it was occupied by a saddler. Its significance stems from its age, architecture and contribution to the evolution of the village. Of late 18<sup>th</sup> to early 19<sup>th</sup> century, the two-storey brick building displays a number of different bonds such as Flemish garden wall and common bond with a white painted finish. Within this context, the NDHA is considered to have at least moderate significance.

20. The 1844 Tithe Map shows that the NDHA and the appeal site were under the same ownership, with the appeal site being described as pasture. This strong functional and historical connection reinforces the importance of the appeal site to the setting and significance of the NDHA.
21. Flavel and the NDHA form a small cluster of heritage assets on the fringe of the village where the built form quickly transitions into open countryside. The grouping of the two heritage assets and their shared setting adds to the distinctiveness of this part of the village.

*Effect of the proposal on the setting of the listed building and the NDHA*

22. The appeal site contributes significantly to the character of this part of the village by virtue of its verdant, undeveloped and open characteristics. Glimpses of the appeal site and Flavel can be seen from Warton Lane on approach into the village from the south-west. The proposed development would close off the openness of the setting and reduce visibility of Flavel as one enters the village. It would remove the open outlook of Flavel and encroach on its setting, being harmful to its character and appearance. In terms of the Framework, the harm identified would be less than substantial, which is agreed by the main parties.
23. The proposed development would also encroach on the setting of the NDHA and severely erode the historic connection between the appeal site and the NDHA. The Outline Plans show a large dwelling sited close to the boundary of the NDHA which could dominate the setting of the NDHA and have a looming effect upon it. As a consequence, the proposal could diminish rather than preserve the positive contribution the site currently makes to the setting and thereby significance of the heritage asset.

*Public benefits and conclusions on the second main issue*

24. Paragraph 208 of the Framework establishes that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Paragraph 209 of the Framework also suggests a weighing exercise in relation to proposals affecting NDHA that has regard to the scale of harm or loss and the significance of the heritage asset.
25. I acknowledge that the provision of housing is a clear public benefit, and that the Council's 5.3 years' worth of deliverable housing sites does not represent a ceiling on housing delivery. However, the fact that the proposal would only deliver two dwellings mean that its contribution to the overall housing supply in the Borough would be limited. As such, the benefits of two dwellings only attract a moderate amount of weight.
26. Similarly, the economic benefit of two dwellings to the local community would be minimal due to the scale of the development. There would be some associated social and economic benefits during the period of construction and

- once the dwellings are occupied. However, the scale of development proposed means the contribution to the local economy and community would be limited.
27. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) (the Act) places a duty on relevant authorities to keep a register of individuals and associations of individuals who wish to acquire serviced plots of land for their self-build or custom housebuilding. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Policy LP7 of the NWLP requires development proposals to make serviced self-build and custom build plots available unless it would be unfeasible due to the nature of the proposed development.
28. As of the 10 January 2024 there were 39 residents on the Council's self-build and custom homebuilding register. I acknowledge that the provision of two plots for self-build and custom homebuilding would amount to a benefit but the unilateral undertaking (UU) before me has not been signed.
29. The Biodiversity Gain Requirements (Exemptions) Regulations 2024 came into force on the 12 February 2024. While the proposal is not be required to provide a mandatory 10% bio-diversity gain as the application was made before 2 April 2024, the appellant's UU includes a £20,021 contribution towards off-setting biodiversity. The Council considers this would comply with Policy LP16 of the NWLP, but the UU is unsigned.
30. Section 18 of the Procedural Guide – Planning Appeals – England (May 2024) states the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances. There is nothing before me to indicate any exceptional circumstances to delay my decision for this to be completed. Therefore, in the absence of a legal agreement to secure the custom build dwellings and biodiversity off-setting contribution, they would only be afforded no more than very limited weight.
31. Paragraph 195 of the Framework states that heritage assets are an irreplaceable resource. The stated public benefits of the proposal carry some weight in combination, however on the basis that paragraph 205 of the Framework establishes that great weight should be given to the conservation of a designated heritage asset, they would not be sufficient to outweigh the harm identified. The setting of the listed building, that being Flavel, would not be preserved, contrary to the expectation of the PLBCA.
32. I have also found that the proposal would significantly harm the setting and significance of the NDHA, and the stated public benefits would not outweigh the harm identified.
33. For the above reasons, I conclude that the proposal would fail to preserve or enhance the setting of Flavel, a Grade II listed building, and would have a significantly harmful effect on the setting and significance of Saddlers Cottage, a NDHA. This would conflict with Policy LP15 of the NWLP which seeks to conserve and enhance the quality, character, diversity and local distinctiveness of the historic environment. There would also be conflict with abovementioned aims of the Framework.

### *Suitable location*

34. There is dispute between the main parties regarding whether the appeal site is in a Category 4 or 5 location with respect to Policy LP2 of the NWLP which sets out the settlement hierarchy and seeks to control the pattern of development throughout the Borough. While there is no definition of the term 'directly adjacent' in the NWLP, the clear physical and enduring feature of Warton Lane separates the area to the west of Warton Lane which is more rural in character, from the east of Warton Lane which is more built-up. The substantial hedges and trees around the boundary of the appeal site also distinguishes it from the more urbanised area within the settlement boundary. Based on the evidence before me, I consider the appeal site would not be situated directly adjacent to the settlement boundary and therefore falls within a Category 5 location.
35. Policy LP2 states that development in Category 5 locations "will not generally be acceptable, albeit as set out above that there may be some instances where development may be appropriately located and would enhance or maintain the vitality of rural communities under this category." Policy LP2 also requires all development, whether it be a Category 4 or 5 location, to have regard to other policies in the NWLP.
36. While there is no definition of the term 'appropriately located' in the NWLP, the proposal would conflict with Policies LP1, LP14, LP15, LP29 and LP30 of the NWLP for the reasons given above and the provision of two dwellings would only be likely to have a limited effect on the vitality of the community.
37. For these reasons, I conclude that the site would not be a suitable location for the proposed development with reference to the Council's settlement hierarchy and its compliance with other policies of the development plan. In particular, it would conflict with Policy LP2 of the NWLP which sets out the settlement hierarchy and seeks to control the pattern of development throughout the Borough.

### **Other Matters**

38. The appellant has drawn my attention to a planning permission<sup>2</sup> granted by the Council for a development of three houses adjacent to the adopted development boundary for Newton Regis. However, there are clear material differences between the proposal and this example. These include the fact that it does not affect the setting of a listed building or a NDHA. The listed building known as Newton House is much further away to the dwellings permitted than Flavel and the NDHA are to the proposal.

### **Planning Balance**

39. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise and judgement in relation to the heritage assets.
40. Compliance with the development plan in relation to ecology and highways will weigh neither in favour or against the proposal and is therefore considered neutral.

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<sup>2</sup> Application reference: PAP/2021/0064.

41. In terms of harm, the proposal would not comply with development plan policy in respect of its failure to preserve the settings of the Grade II listed building and the NDHA, and in terms of its effect on the character or appearance of the area. It would also not be consistent with the Council's settlement hierarchy. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, and I find that the adverse impacts of the proposal are matters of great weight against the grant of planning permission that outweigh the stated benefits.

### **Conclusion**

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

*U P Han*

INSPECTOR