

Appeal Decision

Site visit made on 24 July 2024

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2024

Appeal Ref: APP/M0655/W/24/3340278

North View, Stretton Road, Warrington WA4 4NP

- 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 Stephen Farthing against the decision of Warrington Borough Council.
 - The application Ref is 2022/42763.
 - The development proposed is described on the application form as 'proposed development of 9 detached houses and formation of access from Stretton Road'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Stephen Farthing against Warrington Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The application was submitted in outline form with all matters reserved. I have regarded all detailed elements of the submitted drawings as indicative only.
4. The appellant requested that the appeal be dealt with by way of a hearing. However, having regard to the criteria contained in Annex K of the Procedural Guide to Planning Appeals, I consider that a hearing is not necessary and that the written representations procedure is appropriate.
5. Additional ecology evidence seeking to address the reasons for refusal was submitted by the appellant after the deadline for final comments had expired. The Procedural Guide to Planning Appeals states that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. The appellant subsequently withdrew this late evidence and I have not considered it further in this appeal.
6. The Warrington Local Plan 2021/22 – 2038/39 (LP) was adopted in December 2023. Its policies supersede the Core Strategy policies referred to in the decision notice. Both parties had the opportunity to comment on the implications of this for the appeal and details of the relevant LP policies have been provided.
7. The first reason for refusal concerns inappropriate development in the Green Belt. However, with the adoption of the LP, the site is no longer in the Green Belt. Consequently, the Council is not defending this reason for refusal and this matter does not remain as a main issue in my consideration of the appeal.

Main Issue

8. The main issue is the effect of the proposed development on biodiversity and protected species, having particular regard to Great Crested Newts (GCN).

Reasons

9. The appeal site is a rectangular parcel of land on the southern side of Stretton Road. It is located between North View to the west and a grass strip and trees to the east, with Dorothy Farm beyond. There is a further residential property on the opposite side of the road to the north, and fields to the south.
10. The site is an overgrown area of grassland with mature hedgerows and trees on and around the site boundaries. There are two ponds just beyond the eastern site boundary and some connectivity to other habitats in the wider area. The appellant's ecological assessment report states that there are eighteen ponds within 500m of the site, including five ponds located to the south or south-west which are not separated from the site by any major barriers to amphibian movement and are within influencing distance of the development.
11. Natural England has completed surveys of GCN presence and habitat suitability in the borough and the outputs have been categorised into risk zones. The site falls within an amber zone which indicates suitable GCN habitat. GCN are protected by the Regulations¹ and a precautionary approach should be taken. The Circular² is clear that it is essential the presence or absence of protected species, and the extent that they may be affected by the proposal, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
12. The site provides suitable habitat for a variety of species and GCN could be present, as confirmed by the ecological assessment. Although the assessment concludes that the two nearby ponds have either poor or below average suitability for GCN, it recommends that an Environmental DNA test or surveys be undertaken of the ponds requiring survey to establish whether GCN are present.
13. Access to survey the nearby ponds was not granted. Assessments therefore had to be undertaken from the eastern site boundary, which cannot be regarded as being conclusive. The appellant's assessment is clear that the potential impacts on GCN cannot be determined without further surveys, yet these have not been undertaken. The assessment sets out that, as an alternative to surveys, the District Level Licensing scheme could be used, whereby the developer makes a financial contribution to off site habitat compensation instead of applying for a separate licence or carrying out individual surveys prior to a planning application. The evidence does not indicate that the appellant has entered into the licensing scheme or that a financial contribution has been made.
14. Therefore, on the basis of the evidence that is before me, I consider that the value of the appeal site for GCN has not been properly established. In particular, it is unclear whether GCN are present, what effect the development may have on them, and what mitigation measures may be needed to address any impacts.
15. The proposal would result in the loss of suitable habitats, including those listed as priority habitat in the Cheshire Biodiversity Action Plan. The evidence is

¹ Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

² Paragraph 99 of ODPM Circular 06/2005

inconclusive on the presence or otherwise of protected species and the impacts have not been demonstrated. Although biodiversity enhancements are outlined in the ecological assessment, this is not sufficiently detailed to demonstrate that there would be no net biodiversity loss on the site. Moreover, there is no legal agreement before me to secure off site mitigation should that be required.

16. The Circular states that the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. Given the uncertainty over the possible ecological impacts, and therefore any mitigation measures that may be required, it would not be appropriate to address these matters by way of conditions.
17. I note the appellant's contention regarding the allocation of adjacent land for development. However, that allocation relates to the principle of development only, and appropriate ecology surveys to establish the impacts on protected species and any necessary mitigation measures would still be sought for future applications for that land, as they would be for any comparable development. Therefore, this matter does not provide justification for the appeal proposal.
18. For the above reasons I conclude that it has not been robustly demonstrated that the proposal would not have an unacceptable adverse effect on protected species and biodiversity, with particular regard to GCN. It is contrary to LP Policies DC3 and DC4 which, amongst other things, seek to protect, conserve and restore biodiversity. For the same reasons the proposal conflicts with Section 15 of the National Planning Policy Framework which requires the conservation and enhancement of the natural environment, and the Regulations.

Other Matters

19. I note the other matters raised by third parties, including the effects on the neighbours' living conditions, highway safety, flooding and the character of the area. As I am dismissing the appeal I have not considered these matters further.

Planning Balance

20. For the reasons set out above, I find that it has not been demonstrated that the appeal proposal would not adversely affect biodiversity and protected species. This matter weighs significantly against the proposal.
21. The contribution that the proposal would make towards the Borough's housing needs weighs positively in its favour and aligns with the Government's objective to significantly boost the supply of homes. It would also create employment during the construction period and future residents would support the local economy. Given the scale of the development, I attach moderate weight to these benefits and find that they would not outweigh the harm identified.

Conclusion

22. The proposal would not accord with the development plan and there are no other considerations that outweigh this finding. Therefore, I conclude that the proposal is unacceptable and the appeal should be dismissed.

M Ollerenshaw

INSPECTOR