



Appeal Decision

Hearing held on 6 February 2025

Site visit made on 7 February 2025

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/M0655/W/24/3352794

The Poplars, Cotswold Road, Poplars and Hulme, Warrington WA2 9SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr C Buckley, K & L Properties Ltd against the decision of Warrington Borough Council.
 - The application Ref is 2024/00228/FULM.
 - The development proposed is demolition of existing public house. Construction of 14 dwellings with new access and car parking.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Warrington Borough Council against Mr C Buckley, K & L Properties Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) was published in December 2024. In the interests of natural justice both main parties have had the opportunity to make representations. In reaching my decision I have had regard to the revised Framework and the PPG.
4. At the Hearing the appellant suggested the introduction of several pieces of new evidence relating to viability, proposed plans of the properties and a site layout plan relating to swept paths/highway safety. Given the nature of such new evidence and that late evidence should only be accepted in exceptional circumstances. In this case, the appeal process should not be used to evolve a scheme, and having regard to caselaw¹, I have not accepted revised or additional plans and have dealt with the appeal based on the plans which were before the Council at the time of determination.
5. Furthermore, any revised plans would have not been within the public realm and thus, causing an unlawful procedural unfairness to anyone involved in the appeal, and would deprive those who were entitled to be consulted on any plans the opportunity to make representation.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

6. The late evidence pertaining to viability included figures 'Document 1' which was to counter figures from the Council's viability assessment and 'Document 2' relating to addressing sales particulars of properties to discount in a 3-mile radius. In considering whether to accept the documents and any procedural unfairness the Council were given an opportunity to comment.
7. Objections were received from the Council on 'Document 1' as this was not justified, or supported by any evidential basis for new figures and the appellant's representatives confirmed these new costs were formed from only local building knowledge from recent developments, and not necessarily site specifics. The Council did not raise concern over 'Document 2', thus, on this basis I have accepted 'Document 2' and that it would not lead to a substantive change or unfairness on the proposal.
8. The Council's reason for refusal No.4 incorporates the effect on amenity to adjoining residential occupiers located on Chiltern Road and Cotswold Road. However, in the appeal the main parties have agreed that there is an acceptable relationship between the proposal and residential properties located on these roads. Therefore, this part of reason No.4 falls away, and does not form part of the deliberations in the appeal.

Main Issues

9. The main issues in this case are
 - Whether the proposal makes adequate provision for any additional need for affordable housing and other necessary infrastructure contributions arising from the development;
 - Whether the proposal provides a suitable mix of housing, including the provision of accessible and adaptable dwellings;
 - Whether the proposal provides adequate justification for the loss of the public house;
 - The effect of the proposed development on the character and appearance of the surrounding area;
 - The effect of the proposal on the living conditions of the occupants of Lancing Avenue, with particular reference to outlook;
 - Whether the proposal would provide acceptable living conditions for future occupants, with regard to outlook and private amenity space;
 - The effect of the proposal on highway safety, having regard to servicing arrangements;
 - The effect of the proposal on Biodiversity;
 - Whether the proposal would provide adequate provision for sustainable drainage, having regard to the surface water drainage hierarchy; and
 - Whether the proposal would provide adequate provision for the reduction in carbon emissions.

Reasons

Viability, affordable housing and infrastructure contributions

10. Policy DEV2 of the Warrington Borough Council Local Plan 2021/22 – 2038/39, adopted 2023 (the LP), requires that to meet housing needs in the Borough residential development of 10 dwellings or more in this location is required to provide 30% affordable housing. The affordable home ownership should account for one-third of the total affordable housing units, with two-thirds being affordable housing for rent.
11. The policy goes on to state at (8), that a lower proportion of affordable housing and/or different tenure split will only be permitted where it can be clearly demonstrated to the satisfaction of the Council that development would otherwise not be financially viable, or where there is clear evidence from a Registered Provider that an alternative tenure composition is required to ensure a development is deliverable. Policy DEV2 is supported by the Warrington Borough Council Planning Obligations Supplementary Planning Document, 2024 (the Planning Obligations SPD).
12. The appellant's supporting evidence acknowledges that the proposal triggers the requirement to consider the provision of affordable housing. Therefore, the planning application was supported by a viability assessment² (VA). However, the VA only relates to and considers a development of 12 dwellings. At the Hearing it was acknowledged that the VA is incorrect and should be given little weight but there were mitigating facts that the appellant had been unable to secure a revision to the VA from the evolution of the development scheme to reflect the submitted proposal of 14 dwellings at the planning application and/or appeal stage.
13. The appellant's representative therefore suggested that it would have not been difficult for the Council to assess the proposal by using a higher baseline on the VA and carrying out a mathematical calculation of the correct number of dwellings. Despite no extension of time being granted, or the circumstances that led to no revised correct VA being submitted, what is clear from the evidence is that the Council requested this on numerous occasions. It was also confirmed that the VA was not likely to reflect the proposal, including that sales costs are likely to be higher and build costs since it was produced in 2023.
14. The Council have undertaken their own viability assessment³ as part of the appeal which has been based on industry standard assumptions, and the use of Argus Developer Appraisal Tool. The methodology was appraised against an existing use value for the building and then calculated the Residual Land Value (RLV) by the proposed development by subtracting costs of achieving that development from the revenue generated on completion. The RLV has then been compared to the Benchmark Land Value (BLV). The assessment also includes that the information submitted by the appellant does not comply with the Framework, PPG and RICS guidance.
15. The assessment sets out that 30% affordable housing would have a RLV value above the BLV and the proposal would be viable to support the provision of 4 units of affordable houses on the site. Figures for other infrastructure contributions have

² Archive Projects, Project Appraisal dated 22-Sep-23 Rev 1.0

³ Appendix 6 Viability Appraisal, Adams Integra

been incorporated, therefore it allows that the development would be able to afford an element of other infrastructure contributions, that being education. Even if I were to agree with the appellant that some of the comparable market properties (Document 2) in the viability appraisal are not in the immediate location, and average house prices are lower in the area there is no revised or corrected VA that would contradict the Council's evidence, or that I should give any consideration to if the proposal was in the different ward of Orford.

16. The Framework at paragraph 59, is clear that in considering viability where up to date policies have set out contributions expected from development, planning applications that comply with them should be assumed viable. It goes on to say that it is up to the applicant to demonstrate to justify the need for a viability assessment, and that all assessments should reflect the recommended approach in the PPG including standardised inputs. The PPG for viability supports the Framework, and in particular any viability assessment should be supported by appropriate available evidence and should follow the government's recommended approach.
17. The Council have set out that in terms of other infrastructure contributions required this would be an education contribution due to the threshold of 10 dwellings or more which is in accordance with Policy INF4 and the Planning Obligations SPD. The contributions are required to mitigate the impact of development on the existing level of education provision in the area and where there is a need to secure land for a new school as part of larger-scale development in combination with other developments in one area.
18. The Council confirm that there is insufficient capacity in the local primary and secondary schools, based on child yields and the contributions would be spent towards new school provision and towards Padgate Academy Schools. This contribution would therefore meet the statutory tests in the regulations, the Framework and I have no evidence to say otherwise it would not be necessary.
19. The Council have drawn my attention to the requirements of Policy INF5, which sets out that in cases where the Council accepts a viability case exists/is agreed following independent review, a S106 obligation is required to enable a clause. However, I have not been presented with any obligation or mechanism, and the appellant's representative was clear in the Hearing they did not intend to submit one, as they did not agree that the development would be viable for any provision or contributions. Moreover, given I don't have an agreed position, I cannot demand a mechanism from the appellant.
20. Nevertheless, the weight to be given to a viability assessment is a matter for the decision maker. In considering the circumstances of the case and evidence before me, I give no weight to the appellant's VA and that the approach of using a desk-based assessment of boots on the ground is not an acceptable substitute and inconsistent with national planning policies on the approach to viability.
21. As such the proposal does not demonstrate that the scheme would not be viable, and it would fail to make adequate provision for affordable housing and other necessary infrastructure contributions arising from the development. For the reasons above, I conclude that the proposal would be contrary to Policies DEV2, INF4 and INF5 of the LP.

Housing mix, including accessible and adaptable dwellings

22. Policy DEV2 of the LP states that residential development should provide a mix of different housing sizes and types and should be informed by the Borough-wide housing mix monitoring target as set out in the Council's most up to date Local Housing Needs Assessment (LHNA). For the purposes of the LHNA, Borough wide data is disaggregated further into sub-area levels. The appeal site lies within the East Warrington area, defined as the area to the east of Inner Warrington, to the south of the M62.
23. The appellant proposes 100% market housing as 3-bedroom properties, which would not be in accordance with the requirements in the LHNA. The LHNA expects that the focus of new market housing provision will be on 2-bed and 3- bed properties, and in most sub-areas there is no evidence to support a move away from the recommendations for the Borough as a whole. The LHNA - Sub Area Profiles document, supports the LHNA as regards to the housing mix of new homes, with Appendix C showing the housing market model and concludes that there is no evidence for the housing mix in the sub-area to vary from the Borough-level findings or that of recommendations of the housing market model.
24. At the Hearing the appellant's representatives set out that an option for 2-bedroom properties would not be feasible in relation to the costs and viability of developing the site, and this would compromise the whole scheme. They consider that the scheme offers more modest and smaller scale 3-bedroom dwellings, with suggestion of 1 of the bedrooms could be utilised for homeworking or as a study, and that the policy or LHNA does not cater for small sites and niche requirements.
25. Nevertheless, there is no substantive evidence that alternative options have been considered, or sufficient justification why the proposal could not meet the required housing mix. Moreover, the proposal including the submitted plans, supporting information and application form show the dwellings as being 3-bedroom rather than one of the bedrooms being utilised for other purposes. Therefore, the market housing does not meet the requirements of the LHNA and would conflict with Policy DEV2.
26. Policy DEV2 also sets out criteria relating to optional standards, which is consistent with the definitions in Building Regulations and in line with the PPG guidance and Written Ministerial Statement in 2015. The policy advises, as a minimum, all homes should be provided to M4(2) 'Accessible and Adaptable Dwellings', and that the Council will seek that 10% of new housing meets M4(3) 'Wheelchair user dwellings' on sites of 10 dwellings or more. In cases where these requirements are genuinely not viable or technically feasible, evidence is required before any lower level of provision is permitted.
27. Therefore, there is a requirement for 10% of the proposed dwellings to meet M4(3) and the remainder to be M4(2) standards. At the Hearing the appellant accepted that the development would not fully meet at present the required standards in policy. To comply with M4(2) it would likely need changes to the ground floor layout, including a downstairs W.C and a shower. To comply with M4(3) standard it would likely require changes to the external building, which could necessitate a larger dwelling in terms of size and layout including parking within the appeal site. This would mean at present the proposal would fail to deliver safe and accessible

environments and promote inclusion and community cohesion which the Framework promotes.

28. Moreover, there is no substantive evidence considering conclusions already drawn from the appellant's VA and the weight to be given to the VA that any lower level of provision would not be viable or technically feasible.
29. For the reasons given above, I conclude that the proposal would not provide a suitable mix of housing, including the provision of accessible and adaptable dwellings, and would conflict with Policy DEV2 of the LP as set out above.

Loss of the public house

30. It was confirmed at the Hearing that the public house closed in 2022, previously owned by the brewery and it was then marketed for some 4 months and sale by way of tender. Mr Kirkham clarified that it was bought by the appellant / company in early 2023, with the intention to re-develop the site for residential purposes with the process completed around July 2023. It was further set out that the public house was likely to be not viable since Covid and had been left in a poor state of repair since that time, including that it did not have any services and since being bought had been subject to anti-social behaviour and theft.
31. The sales brochure from 'Read Property Associates', has limited particulars and details, which was provided as part of the Council's viability assessment at Appendix 6. It confirms a description of a closed public house with significant development opportunity on a site of 0.63 acres, subject to the necessary planning consent. Thus, the sales information does not indicate that it was advertised for sale as any social and/or community infrastructure including licenced premises, and it is evident that no consideration was given to local and national planning policies.
32. Nevertheless, part 6 of LP Policy DEV5 seeks to support the health and wellbeing of local communities and ensures development proposals avoid the loss or change of use including public houses where the loss would impact on the diversity of local services in the community. In addition, the general principles of Policy INF4 requires amongst other matters is that the Council will safeguard existing social and community infrastructure, subject to a continued need or likely future need or demand for the facility in question; or improved provision where a development scheme would result in the loss of important social and community infrastructure.
33. The appeal site is located within a local centre, Cotswold Road, Poplar as defined by the LP. This includes several other facilities on the opposite roadside to the appeal site of retail shops, supermarket and a take-away. It is therefore likely when the public house was open it positively contributed to this area and the immediate setting of the local centre without the need for residents to travel.
34. I acknowledge that there is nearby provision of community facilities including retail premises, a larger supermarket, and a public house 'The Stonemill' at Sandy Lane. However, there is nothing before me to demonstrate that it has been established through the seller and buyer process that there would not be a continued need or likely future need or demand for the public house, or even through any commercial redevelopment of the site that would satisfy development plan policies and not impact on the diversity of services within this local centre.

35. For the reasons given above, insufficient information has been provided to justify the loss of the public house and its overall loss as a social and community infrastructure site. Therefore, I conclude that it would be contrary to Policies DEV5 and INF4 of the LP, as set out above.

Character and appearance

36. The appeal site is some 0.28 ha in size, comprising of a public house and associated parking areas and is bounded by residential properties. It falls within an urban area which mainly has a high density of residential dwellings and some nearby shops. Properties are mainly characterised as 2 storey brick dwellings with a mix of pitched and hipped roofs, some are semi-detached, terraced and there is an array of single storey bungalows nearby. The buildings in the area are of a perimeter block typology, with properties facing towards the road with front gardens enclosed and many with driveways. Despite some variation in form, properties in the area positively contribute to the character and appearance of the area.
37. The appellant contends that the proposed dwellings should not be read as being 3-storeys in nature due to the design of the roofs and introduction of the dormer windows. However, even when considering the contrast of roof heights, including the shop buildings – the appeal site would be in a prominent location and would not be consistent with the predominant character of the area including several dwellings having no active street frontages to Cotswold Road. Therefore, having a poor relationship to the existing patterns of development.
38. The Warrington Design Guide SPD, 2024 (Design Guide SPD) requires that buildings are positioned and grouped to respond to the prevailing character of the area and environmental constraints and opportunities. The design features significantly incorporate higher gables which would not be positive to the street scape and overall, the layout fails to integrate the plots together as one grouped development to the detriment of the prevailing character, raising further concerns over natural surveillance and inclusivity.
39. At the Hearing the appellant explained the design evolution, however whilst the properties offer something different in the area and that the appellant wanted to create something that was aspirational and not replicate a housing estate. The proposed dwellings would fail to respond in a good way to the locational context, appearance of the area including that the blank areas of façade, height mass and scale do not assist to contribute to local distinctiveness. Thus, it would appear as an incongruous and cramped form of development which would not replicate good design principles.
40. For the reasons given above, I conclude the proposal would cause harm to the character and appearance of the area. It would be contrary to Policy DC6, the policy requires that good design should be at the core of all development proposals; Design and layout should have regard to respect, sustain and make a positive contribution to local character and distinctiveness, including density, street layouts, scale, height and massing.

Living conditions – Lancing Avenue

41. The Council contend that the living conditions of properties on Lancing Avenue would be impacted through the loss of outlook. This is due to the proposed relationship being of a shortfall separation distance of some 2m (14m in total)

between the rear elevations of properties on Lancing Avenue facing towards the side elevation of the proposed dwellings. They maintain there should be 16m due to the proposed dwellings being of a 3-storey nature.

42. However, the Design Guide SPD at 05.2.7 principles for homes, does not set minimum distances for direct outlook, or where principal habitable room windows face on to blank elevations. It sets out there should be 21m to neighbour's main facing habitable room windows, with distances increased where their differences in site levels or different heights of properties. The Design Guide SPD also sets out that in some instances and certain circumstances it may be justifiable to propose flexibility in the minimum overlooking distances.
43. The Council have also referenced the House Extensions Supplementary Planning Document, 2021. However, whilst this may be a useful tool in distances this guidance refers to householder developments for extensions and alterations to existing homes and not new dwellings or major developments.
44. Nevertheless, I saw at the time of the site visit that the levels between those properties on Lancing Avenue and the appeal site differed. There were limited rear extensions along the properties on Lancing Avenue and existing boundary treatments including fencing to each of the gardens were of some 2m in height, which already restrict views of the appeal site to a degree. In addition, first floor windows on properties on Lancing Avenue are already impeded by outlook views due to the height of the existing public house building. Whilst I appreciate that the outlook would change with the residential development, given the tight-knit nature of surrounding built development I do not consider that the proposal would cause additional harm to outlook to an unacceptable and/or significant degree than the existing situation.
45. Furthermore, I appreciate there would be a smaller separation gap than the existing, however there would still be a considerable distance between properties on Lancing Avenue and the side elevations of the new dwellings. Therefore, for the reasons given, I conclude that there would not be adverse harm to the living conditions of existing occupants on Lancing Avenue. It would therefore not conflict with Policy DC6 of the LP, which amongst other matters seeks to ensure no unacceptable adverse impacts on neighbouring amenity.

Living conditions – future occupants

46. The Design Guide SPD sets out requirements for private amenity space including that a minimum depth of 10m from rear elevation of any proposed dwelling to any boundary (usually but not exclusively a rear boundary). This is essential to mental wellbeing, and to protect privacy to facing windows and gardens. There would be several plots which result in a deficit of the required 10m with plots 01 to 08 resulting a depth of 8m and plot 14 having a depth of 7.6m with the existing sub-station proposed to be at the rear of plot 14. In addition, plots 09 to 14 would have minimal front garden areas due to their proximity to the access road and relationship with the parking courtyard. Despite, there being no privacy issues to the rear private amenity spaces they would not be acceptable and inadequate in size.
47. In terms of outlook, future occupiers would be impacted on by their properties facing on to the courtyard with vast areas of hardstanding and limited areas of soft landscaping. This would be further exacerbated by the layout arranged as the front

elevations with one row of properties (plots 09-14) facing towards the rear elevations of the other row (plots 01-08). Although the separation distances are acceptable plots 09 to 14 would likely cause a somewhat oppressing outlook for future occupiers facing on to the vast areas of hardstanding, views of the rear elevations of plots 01 to 08 and be directly faced with the adjacent rear boundaries of closed boarded timber fencing at a height of some 1.8m.

48. For these reasons, I do not consider that the proposal would provide acceptable living conditions for future occupants, with regard to outlook and private amenity space, and would conflict with Policy DC6 of the LP relating to amenity. It would also be at odds with the guidance in the Design Guide SPD.
49. The Council have referred to Policy ENV8 in their reason for refusal, however this policy relates to noise amenity and contamination. Therefore, I find no conflict with this policy in terms of these living conditions, and conditions could address such matters.

Highway safety

50. The proposed dwellings which would front Chiltern Road would have a parking space directly accessed with a dropped kerb. All other parking for the dwellings would be located within a parking courtyard served from Cotswold Road. The main parties agree that the level of parking for each dwelling is acceptable. In terms of visibility splays for the junction and electric charging points the Council accept it could be provided as suitably worded conditions and I have no evidence to disagree.
51. The Warrington Borough Council Standards for Parking in New Development SPD, 2015 sets out that it is essential that developments make adequate provision for all service and delivery vehicles to be accommodated without detriment to the safety of other road users or the free flow of all modes of transport. The Warrington Borough Council Design Guidance Note: Parking & Servicing, 2015 (DGN1) supports the SPD, amongst other matters sets out the considerations required for vehicle turning availability, emergency and refuse vehicle access. The DGN1, at paragraph 5.4 requires for residential developments a 12m ridged vehicle shall be the design vehicle, unless the layout dictates that larger vehicles are likely to use the roads.
52. The Council contend that the courtyard parking area would not be of sufficient size to accommodate larger vehicles, including servicing vehicles such as food delivery or goods companies that may be attending/delivering to the properties. The evidence suggests that 12m ridged vehicles would need to be accommodated, and this could only be achieved by reversing out of the courtyard as the site would only be capable of a vehicle being some 6.74m being able to turn and exit in a forward gear. In addition, the internal road for courtyard parking would be more than 40m, and a fire pump would be the largest vehicle expected and would not be able to turn in the available space.
53. The appellant responded to the Council's concerns in a 'SCP Technical Note' which provided additional information and revisions to parking layout at the turning head. A plan is also provided at 'Appendix 2' showing the swept path of a typical supermarket van being 6.746m in overall length. The appellant's representatives at the Hearing set out that there is a higher percentage in residential occupiers in the area having only 1 car or none. Therefore, they would not expect that the courtyard

area would be at full capacity or impeding any turning facilities for vehicles entering the courtyard.

54. However, the main parties disagree on the nature and size of vehicles that would be required to enter the courtyard, and those used by different suppliers of household goods. Nevertheless, the Technical Note which was provided only shows a swept path analysis of vehicles being some 6.74m, and whilst a condition could be imposed relating to the parking spaces to prevent vehicle obstruction at the turning point, it does not overcome the issues of turning within the site for larger vehicles up to 12m that would deliver goods or services to the new dwellings. In terms of bin provision, I consider that the necessary bin collection points shown on the plans would be sufficient and not necessitate a refuse vehicle having to enter and exit the courtyard.
55. I observed at the time of the site visit, Cotswold Road was a busy highway and there is a bus stop directly facing the site with the area being heavily congested with parking for the shops adjacent to the site. Pedestrians were frequently crossing the highway along Cotswold Road to reach the shops and bus stop. Therefore, for these reasons, I cannot be certain from the evidence presented that there would be no impact on highway safety or conflict with other road users, including pedestrians by the possibility of larger vehicles having to reverse directly onto Cotswold Road.
56. Therefore, I conclude the proposal does not demonstrate that it would not harm highway safety, having regard to servicing arrangements. It would conflict with Policy INF1, this policy requires that development proposals to demonstrate they will not result in an unacceptable impact on safety. It would also be at odds with the Council's guidance relating to parking and servicing arrangements.

Biodiversity

57. Policy DC4 of the LP sets out amongst other matters, that the Council will work with partners to protect, conserve, and restore biodiversity, secure a measurable net gain for biodiversity and enhance public access to nature across the plan area. These efforts are to be guided by national planning policy and the strategic approach including those within LP Policy DC3 relating to Green Infrastructure. Policy DC4(8) stipulates where there is loss of, or harm to biodiversity, an ecological network and/or green infrastructure functionality is considered to be unavoidable, development proposals must include mitigation or, as a last resort compensation measures. Through the mitigation hierarchy, a measurable net gain in biodiversity assessed against the latest version of the DEFRA Metric must be secured.
58. Biodiversity net gain (BNG) applies to major development where the planning application was made on or after the 12 February 2024 and is required to be delivered and secured under a statutory framework⁴. The objective for development is to deliver at least 10% increase in biodiversity value which should be relative to the pre-development value. There are minimum national information requirements which must be provided at the planning application stage for validation purposes, and if development is to be subject or exempt to the biodiversity condition. This also enables consideration of existing habitat baselines to understand the pre-development biodiversity value of the onsite habitat. Information should be provided

⁴ Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021)

in accordance with Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, as amended.

59. The PPG sets out that local planning authorities may seek further information, where it is appropriate to do so, about the approach to meeting the biodiversity gain objective for the development, and that BNG is a material consideration, including whether any imposition of conditions, or other ways can secure BNG.
60. The Regulations⁵, exempt certain developments from meeting the biodiversity requirement that would otherwise be imposed as a general condition of planning permission, which includes the de minimis exemption. However, this exemption only applies if two conditions are met 1) where it would not impact on a priority habitat, and 2) impacts must be less than 25 square metres (sqm) of onsite habitat with a biodiversity value greater than zero, and less than 5 metres of onsite linear habits (such as hedgerows).
61. The appellant's statement of case (SOC) indicates that a formal metric tool was not utilised as it is clear the site as existing provides zero biodiversity value, and the development would not result in any loss of habitat with any new provision representing gain including private garden space and landscaping to the site. It goes on to say that the application submitted in February 2024 preceded the introduction of requirements relating to BNG but was submitted in the context that the site was almost totally covered with buildings and hard surfacing with small areas of shrubs and grass around the site. Therefore, the appellant assumes the Council would be able to sufficiently control through conditions to require appropriate levels of information to ensure BNG was commensurate with policy.
62. At the Hearing this position was maintained, including that additional planting would be provided as part of the scheme. Despite this the appellant further contends proposals are exempt, due to when the planning application was submitted, validated and if that is not the case it should be considered as being de minimis for being less than 25 sqm of any form of vegetation.
63. In terms of the planning application being made and validated, it was clarified that the application was received on the 22 February 2024 and was made invalid on 12 March 2024. The application was subsequently amended including the application form during this period, with an amendment summary of '*Changes to BNG section*' signed and dated 12 March 2024, the application was then validated on 20 March 2024. Therefore, the application would not be subject to the transitional provisions⁶ or precedes any requirement for providing BNG.
64. Appendix 13 of the Council's SOC relates to email exchanges regarding the validation of the planning application. The appellant advises on 12 March 2024 that in response to BNG the application form has been amended to show that there is a de minimis amount of vegetation on the site – less than 25sqm. It confirms that vegetation apparent on photographs show the extent and nature of buildings, not details of vegetation but rather it may be more appropriately made to the existing survey 'Existing Site Plan K0201-XX-ZZ-DR-A-103 P2'. The email response on 20 March 2024, from the Council sets out that *"..the only thing missing that GMEU advised was the UK habitat plan, as this all a bit new I'm going to validate based on the amended form and see what they see,..."*. The enquiry, and consultation

⁵ The Biodiversity Gain Requirements (Exemptions) Regulations 2024

⁶ The Environmental Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024, made 17 January 2024

response from GMEU in March appears to indicate that further information would be required for clarity on the site zero value, particularly as they could not be certain that it breached the 25 sqm from what had been provided.

65. Nevertheless, the PPG⁷ is clear that if an applicant considers it is within the de minimis exemption they must provide reasons for this to enable whether the proposal is genuinely exempt at the validation stage. If it is clear the proposal is not exempt, the pre-development biodiversity will need to be provided. When providing reasons, an applicant should provide sufficient evidence to support their justification. In cases where the development would be smaller than 25 sqm, the description of development, existing and proposed site plans, and the development's area in sqm may be sufficient evidence.
66. I acknowledge that in terms of validation the information which was provided was likely to be inadequate, and it is unclear as to why the application was validated if it did not meet the minimum requirements. However, it does appear that it was reasonable in the circumstances of this case, and from the evidence for the Council to validate the application, and then seek further information in-line with the PPG. Particularly if it was considered at the application stage it did not meet the exemption, which does not appear to be the case.
67. As part of the appeal the Council has provided an extract from the existing site plan to demonstrate that the amount of vegetation located in the southwest corner of the site would exceed the 25 sqm exemption and would result in some 32 sqm. Other than what the Council have provided in their SOC there were no calculations put before me or any suggestion of a metric used to establish the baseline and if provision for BNG could be achieved, or how it would be delivered, managed or monitored to ensure provision for the long term. Moreover, it is clear there is existing vegetation on the site, whether that is low or exempt it cannot possibly be zero. Therefore, I consider there is insufficient evidence to confidently conclude that the site would fall within the exemption as being de minimis.
68. For these reasons, I consider the appellant's reliance on incorrect validation including preceded dates to BNG is unfounded, and that due to insufficient information to establish whether the proposal requires to offset or secure BNG. I conclude it would not comply with the local plan, the Framework and the PPG. Therefore, the proposal would fail to secure the enhancement of biodiversity and would not be sufficient to meet the requirements of Policy DC3 and DC4 of the LP, as above.

Sustainable Drainage

69. Policy ENV2 of the LP sets out the flood risk and water management approach in the Borough. General principles include that sustainable water management measures must be integrated into developments to reduce flood risk, and to avoid adverse water impacts on water quality and quantity. It sets out several criteria that is required for development proposals including the use of Sustainable Drainage systems (SuDS), and ensuring appropriate mitigation is included within designs. This policy is supported by Warrington Borough Council Sustainable Drainage (SuDS) Design and Technical Guidance, 2017 that identifies the information required to effectively review planning applications and implementation of SuDS.

⁷ Paragraph: 004 Reference ID: 74-004-20240214

70. The Framework at paragraph 182, requires a proportionate response into the nature and scale of proposals that affect drainage and require sustainable drainage systems. For major proposals it should take account of advice from the LLFA; have appropriate proposed minimum operational standards; and have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development. The PPG, flood risk and coastal change, sets out guidance and provisions for SuDS, including what information is required at the planning application stage, and considerations which apply to any adoption and maintenance of SuDS.
71. The appellant has submitted a degree of information relating to foul and surface water drainage, including relating to SuDS which included several plans and documents related to maintenance access, surface water exceedance routes, existing catchment, drainage report and strategies. They contend that it is unclear as to what additional information might be required, and that in principle this should enable a conclusion and not warrant further investigations at this stage. They consider the matters could be adequately dealt with by conditions. At the Hearing it was clarified that it is anticipated that a management company would likely maintain the development.
72. However, the Council consider that there is limited space shown on the proposed site layout to allow for surface level sustainable drainage systems, and how in particular the developer would comply with the policy criteria in ENV2. ENV2(13) requires a preference for new development to incorporate infiltration-based systems and therefore surface level sustainable drainage systems with multi-functional benefits as opposed to underground tank storage systems for management of surface water. It requires clear evidence where surface level sustainable drainage features are not proposed.
73. The stormwater attenuation tank would be sited under the courtyard parking area which also appears as a communal area. There is no substantive evidence whether this area would form part of a private way or be adopted in the future. If it were to be adopted by the highway authority, it would not be acceptable to have this under a public highway. There is little evidence as to why the tank is required to be located under this specific area which forms the parking spaces, nor the level of responsibility which may fall to individual occupiers or other company. Neither does the evidence demonstrate that the SuDS is achievable and how the management and maintenance would be secured for its lifetime to reduce surface water flooding and/or water pollution including key drainage features, surface water carrier drains, and areas shown within existing public highway.
74. Despite, the contention that it is likely a management company who would be responsible, the SuDs Maintenance and Management Plan⁸ at paragraphs 3.1 and 3.2 provides little assurance, as it suggests the development comprises several industrial units, and the owner will need to appoint an appropriate management company to manage and maintain. It goes on to say that until the new dwellings are sold to individual private owners or rented out the site owner/developer will manage and maintain the drainage on the development. Although this report suggests what is required in such a maintenance plan, it does not with any certainty provide any guarantees on an achievable model for maintenance or if it is feasible in considering some of the ambiguity in this document.

⁸ Document 23304-AJF-ZZ-ZZ-RP-D-002, dated January 2024

75. Therefore, I do not consider that conditions could secure this or meet the tests in the Framework, particularly as it has not been demonstrated that the design is feasible under parking areas or how it would be maintained. Moreover, the PPG⁹ requires that proposals for SuDS should include arrangements for their long-term maintenance, and any adoption by a management company, the local authority or private individuals should be examined in the design process to ensure any such criteria are clearly understood by the applicant.
76. Matters pertaining to drainage at the Cotswold Place development are not considered to be relevant as that is not the proposal which is before me. Moreover, that development is not comparable for drainage as it was considered under the previous development plan, and it is not a scheme for major development.
77. In the absence of any management plan, it has not been demonstrated that the proposal for drainage at the site can be maintained. Thus, I conclude that insufficient information has been provided to confidently demonstrate that sustainable drainage at the site would be in accordance with the surface water drainage hierarchy. The proposal would be contrary to Policy ENV2 of the LP.

Carbon emissions

78. Policy ENV7 of the LP requires that provision is made for new housing development to minimise carbon emissions. Major development in all locations outside the strategic allocations will be required to meet at least 10% of their energy needs from renewable and/or other low carbon energy source(s).
79. The submitted plans show that solar panels are to be provided, whilst the details are limited at this stage, and notwithstanding they are shown as being indicative on the roofs. The appellant's representatives at the Hearing confirmed that the intention is for the solar panels to be south facing and properties to be energy efficient which would meet the 10% and likely more than this percentage. This would also be met through heating, boiler, insulation and other efficiencies. Including that the properties would fall within the Governments Standard Assessment Procedure (SAP) required for energy ratings which is required to show compliance with building regulations.
80. In addition, I also saw during the site visit that solar panels were not so much of an alien feature in the immediate area to the site. Therefore, I consider that this matter could be dealt with by a suitably worded condition to ensure that it would comply with the aims of achieving renewable or low carbon energy sources including meeting or exceeding the 10%. As such, I conclude that the proposal would not conflict with Policy ENV7 subject to the imposition of such a condition.

Other Matters

81. Several of the appellant's arguments to support the proposal centre around the approved development for Cotswold Place and the erection of dwellings and the regeneration project known as the Peel Hall development. Whilst I have had regard to both these developments due to the proximity of the appeal site, and that the development would support further housing and uses in the area. There is nothing to suggest that the circumstances of those are directly comparable and provide justification for me to consider any departure from the adopted

⁹ Paragraph: 060 Reference ID: 7-060-20220825

development plan. Moreover, there is no dispute between the main parties relating to the Council being unable to meet a 5-yr housing supply or land availability.

82. The appellant has referred to the Council's handling of the planning application, noting that there are a significant number of reasons for refusal, and this represents a negative rather than positive approach to decision making. There is nothing to suggest that the Council did not determine the application in accordance with the statutory provisions for timeliness. However, these matters would not lead me to a different conclusion on the appeal.
83. The proposal was accompanied by an ecology survey which indicates there is no bats present, matters pertaining to the provision of bat boxes, birds and wildlife could be dealt with by suitably worded conditions. However, this weighs neither for nor against the development. Although letters of support have been received, these do not alter my findings and are a neutral consideration.

Planning Balance

84. The proposal would be contrary to the development plan, in that it does not justify that the development would not be viable for the provision of affordable housing, or that the necessary education contributions would not be required. Insufficient evidence has been provided relating to complying with the provision of BNG, sustainable drainage provision and in relation to highway safety. It further does not justify the loss of the public house, and it would cause harm to the character and appearance of the area and have an unacceptable impact on the living conditions of future occupiers.
85. Against the harm, the proposal would not harm the living conditions of existing occupiers on Lancing Avenue and would provide the necessary carbon emissions output to comply with policy. The Framework also promotes effective use of land in meeting the need for homes and other uses and sets out that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. The proposal would provide 14 dwellings on previously developed land within an accessible location to local shops, and services with some social and economic benefits. This would also be in accordance with the Government's aims of significantly boosting the supply of land for housing.
86. However, the Framework is not without caveat relating to substantial harm being caused and conflict with other policies. Therefore, taken together these considerations advanced by the appellant, and where I have found compliance with policy are not sufficient to outweigh the harm and conflict with development plan policies and national planning policies and guidance.

Conclusion

87. The proposal conflicts with the development plan taken as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given above the appeal is dismissed.

KA Taylor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Groves	Planning Consultant
Joe Orchard	C Square Architects
Dave Kirkham, K&L Properties	On behalf of the appellant
Gemma Wheatley	SCP Transport Planning

FOR THE LOCAL PLANNING AUTHORITY:

Martha Hughes	Principal Planning Officer
Matthew Carney	Major Applications Team Leader
David Coate	Associate Director, Adams Integra
Jonathan Dawson-Parry	Asset & Flood Risk Engineer
Kevin Jackson	Highways Officer

DOCUMENTS

Document 2 – Summary Tables of Properties for Sale