
Appeal Decision

Site visit made on 4 November 2025

by **A O'Neill BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 DECEMBER 2025

Appeal Ref: APP/T3725/W/25/3369156

Land to rear of Clover Hill, Warwick Road, Lapworth

- 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 J & M Green, HCD against the decision of Warwick District Council.
 - The application Ref is W/24/0934.
 - The development proposed is the erection of a detached dwelling and garage with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by J & M Green, HCD against Warwick District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether or not the proposal would make an effective and efficient use of the site.

Reasons

4. Paragraph 124 of the National Planning Policy Framework (the Framework) requires planning decisions to promote an effective use of land in meeting the need for homes and other uses while safeguarding and improving the environment and ensuring safe and healthy living conditions.
5. The appeal site forms Allocation H32 in the Warwick District Local Plan 2017 (the LP). Policy DS11 of the LP identifies the site is allocated for 12 dwellings. The appeal proposal is for one large dwelling with associated parking and garden areas which would occupy the whole site.
6. There is no explanation provided as to how the figure of 12 dwellings was calculated for this site. Paragraph 2.40 of the explanatory text for Policy DS11 states that an estimated figure for the number of dwellings for each site is shown, but it is also recognised that this may vary dependent on detailed planning at the application stage.
7. The appellant contends that the capacity of the site would be significantly less than 12 dwellings, due to the need to safeguard trees on and adjacent to the site, to protect watercourses and avoid flooding, to respect the character and appearance of the area and to protect the living conditions of neighbours. However, there is

little before me to demonstrate how the amount of development on the site may be constrained by these factors. Based on the evidence submitted and my observations on site, it is my judgement that the site would be capable of accommodating more than one dwelling. The submitted proposal would occupy the whole site and would likely not allow for any further residential units on the site. As such, the proposal would not make the most effective use of land in meeting the need for homes.

8. The Framework also seeks to achieve development at appropriate densities. Paragraph 129 supports development which makes efficient use of land, taking account of a number of considerations including the desirability of maintaining an area's prevailing character and setting.
9. There is existing residential development to the north, east and west which can be appreciated from within the site. To the west are large, detached properties set in generous plots. To the north and east there are terraced and semi-detached residential properties set in smaller plots. There is a clear variation in the density of the existing development.
10. The LP policies before me do not specify a density requirement for the site. Nevertheless, even taking into account the lower density of the existing residential properties to the west, the proposal would be at a density considerably lower than that which prevails in the area. When viewed in the context of the surrounding residential developments, in my judgement it would be possible to deliver a higher housing density on this site. Consequently, I find development of the site for only one dwelling would not represent an efficient use of land.
11. I am also mindful that, where there is a shortfall of land for meeting identified housing needs, paragraph 130 of the Framework states that it is especially important that planning decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential for each site. Part c) of paragraph 130 states that applications should be refused where, taking into account the policies in the Framework, they fail to make efficient use of land. The Council has confirmed it cannot currently demonstrate a five year supply of housing land. Based on the forgoing, I do not consider that the proposal would make optimal use of the potential for the appeal site.
12. I have had regard to the appellant's evidence that the build-to-plot ratio is comparable with nearby development. Be this as it may, this is not the same as density, and it does not demonstrate that the proposal would make an efficient use of land to meet housing needs.
13. My attention has been drawn to an appeal decision at another site in Warwick District (Reference APP/T3725/W/23/3319752, 24 May 2024) which allowed a development with fewer residential units than the site was allocated for in the LP. This was based on the particular circumstances and constraints of that site, which are not directly comparable to the appeal site before me now. As such, this consideration does not lead me to an alternative conclusion on this matter.
14. Taking all of the above into account, I find that the proposal would not make an effective or efficient use of the site. As such it would conflict with the aims of the Framework, as set out above.

Other Matters

15. I appreciate the site is subject to a covenant restricting development to one dwelling, and I have had regard to the evidence indicating that the appellant may not succeed in securing its removal. However, restrictive covenants are a matter of private law and Planning Practice Guidance states: “*Land ownership, including any restrictions that may be associated with land, is not a planning matter*” (Paragraph: 005 Reference ID: 13-005-20140306). Accordingly, I am concerned with the planning merits of the proposal, and so this consideration does not alter my conclusion on the main issue of this appeal.
16. I have also had regard to the High Court Judgement R (Save Wimbledon Park Ltd) v Mayor of London [2025] EWHC 1856 (Admin) which concerns the deliverability of development on a site which is subject to a restrictive covenant. Whilst the specifics of that case are not directly comparable to the case before me now, it confirms that legal obstacles, such as restrictive covenants, would not ordinarily be a material consideration to the determination of a planning application.
17. There is no dispute that the appeal site is in a suitable location for housing, given its allocation in the LP. Furthermore, I note that the Council’s Planning Policy Team did not object to the proposal. However, one additional dwelling would make a limited contribution to the overall supply of housing, as would the support that the construction and future occupancy would provide to construction employment and the local economy.
18. I acknowledge that the proposal has support from some neighbours. I also note that the Council raises no objection in terms of the proposal’s compliance with other relevant LP policies and I have no reason to reach an alternative conclusion. Nevertheless, these are neutral points and so they do not outweigh the harm identified above.
19. The Council has raised concerns that the proposal for one dwelling would not generate any financial contributions or affordable housing contributions that a proposal for a larger number of dwellings might attract. Such contributions may be considered benefits to a proposal, however, there is little before me to demonstrate the level of contributions which may be generated from a proposal for a greater number of dwellings. In the absence of such information, this consideration weighs neither in favour of, nor against the proposal.

Planning Balance

20. The appeal proposal is contrary to the aims of the Framework insofar as it seeks the effective and efficient use of land. The development of the site with one dwelling would fail to make optimal use of the potential for the site.
21. The Council has confirmed that it cannot currently demonstrate a five year supply of deliverable housing sites. In these circumstances, footnote 8 of the Framework establishes that paragraph 11d) is engaged. There is nothing before me to suggest that the policies identified in footnote 7 of the Framework provide a strong reason for refusing the development proposed under paragraph 11 d) i). Hence, the balance in paragraph 11 d) ii) applies.
22. Paragraph 11 d) ii) states planning permission should be granted unless ‘any adverse impact of doing so would significantly and demonstrably outweigh the

benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for...making effective use of land...'. In addition, measures set out to achieve the efficient use of land, set out at Paragraph 129 of the Framework constitute key policies for the purposes of paragraph 11 d) ii).

23. The Council has not confirmed its current supply of housing land. The appellant refers to an appeal decision issued in May 2024 which identified a figure of 4.01 years, as well as a figure of 2.34 years from the Warwick District Council 5 Year Housing Land Supply dated March 2025. I have based my reasoning on the more recent, lower figure, which is a considerable shortfall. Whilst the Framework does recognise the contribution that small sites can make to meeting the housing requirement for an area, one dwelling would make a minor contribution to the overall supply of housing and as described above, the benefits associated with one additional dwelling would be limited.
24. Consequently, the failure of the proposal to make an effective and efficient use of land, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

25. The proposal conflicts with the Framework taken as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

A O'Neill

INSPECTOR