



Appeal Decision

Site visit made on 8 January 2024

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/R3705/W/23/3321566

Land to the west of Wulfric Avenue, Austrey, CV9 3FE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ('the Act') against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Crow of Fernhill Estates against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2021/0707, dated 23 December 2021, was refused by notice dated 4 November 2022.
 - The development proposed is the development of land for up to 10 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on this basis and I have taken the layout of development shown in the submitted 'Illustrative Masterplan' plan (ref SK02 Rev A) into account as indicative in relation to my consideration of the principle of the development on the appeal site.
3. On 19 December 2023, a revised National Planning Policy Framework ('the Framework') was issued. The parties were invited to comment on the Framework in relation to the proposed development so that their views would be taken into account in the determination of the appeal. The comments that have been received were taken into account in this decision.
4. A properly completed unilateral undertaking made under section 106 of the Act has been submitted. It secures the provision of on-site affordable housing and financial contributions towards amenity and recreation provision. Its terms are addressed in more detail within this decision.

Main Issues

5. The main issues in this appeal are:
 - whether the location of the proposed development would comply with the spatial strategy of the development plan;
 - the effect of the proposed development on the character and appearance of the area; and,
 - whether the proposed development would make efficient use of land.

Reasons

Location of development

6. The development plan for the area includes the North Warwickshire Local Plan 2021 ('Local Plan'), adopted in 2021 and the Austrey Neighbourhood Plan 2014 – 2029 ('Neighbourhood Plan') that was made in 2017.
7. Policy LP2 of the Local Plan has established a settlement hierarchy which identifies the settlements which are the most suitable in sustainability terms to meet the development needs of the District. Under this policy development is to be commensurate with services that are available within a settlement. At the top of the hierarchy are 'Market Towns' followed by 'settlements adjoining the outer boundary of the Borough', followed by 'Local Service Centres'. As an 'Other Settlement with a settlement boundary', Austrey is located within the fourth and bottom tier of named settlements where, within the settlement boundary, development is supported in principle.
8. In situations such as with this appeal, where the proposed housing site is located outside but directly adjacent to the development boundary of a category 4 settlement policy LP2 advises that development of up to 10 dwellings may also be acceptable. In order to be acceptable, the proposal needs to be proportionate to the scale of the settlement, and comply with other policies in the Local Plan and national planning policy considered as a whole. Amongst other matters, the availability of services is also a consideration in this policy. I shall deal with the matter of proportionality and service availability in this section of the decision, before going on to consider the other contested aspects of the proposal and concluding at the end on the scheme's compliance with the Local Plan, development plan and national policy.
9. No figures for the number of houses in Austrey have been provided. On the basis of the plan of the Austrey Development Boundary, and what I saw of the village, it appears to be a relatively small settlement amounting to only a few hundred dwellings.
10. Austrey was placed in the fourth tier of settlements due to its limited range of services and facilities which include a primary school, church, village hall, public house, shop with post office and play area. There are no health care facilities, employment areas, or other public services such as a library or sports centre that I have been made aware of. There is a bus service to the town of Tamworth and a bus service also provides transport to the secondary school. However, other than between 8am and 9am, the Tamworth service, with typically only one bus every two hours and no service in the evenings, is too infrequent to encourage its regular use by people to access the town. As a result, other than in relation to schools, access to the shops, services and employment necessary for day to day living in practice is reliant on car use.
11. In determining whether a development proposal would be proportionate, in addition to the size of the village and its range of services, the amount of housing that has received planning permission in recent years is a relevant consideration. Policy AP9 of the Neighbourhood Plan identified housing sites that would provide 57 new dwellings for the village and confirms that planning permission for these dwellings has been granted. Policy AP10 of the Neighbourhood Plan also supports windfall housing subject to it meeting certain criteria. The officer report notes that recently Austrey, including the Wulfric

Avenue development, has had a number of housing developments totalling over 100 units. This has not been contested by the appellant. As the only housing developments I have been provided details of are the allocated housing sites in the Neighbourhood Plan, I have treated these as forming part of this total.

12. For a settlement of only a few hundred dwellings and a limited range of services and facilities, over 100 new homes is a considerable increase in size. Whilst the Local Plan supports development within and adjacent to Austrey, and in isolation a development of up to 10 houses is not particularly large, a point is reached beyond which the amount of new housing is out of proportion to the size of the village and the services and facilities it has to offer. In my judgement, with over 100 houses having been permitted in recent years, the appeal proposal would exceed this point.
13. The development plan and the Framework support development that would enhance or maintain the vitality of rural communities. Given the amount of new housing that has been granted in recent years these benefits in Austrey have currently been realised.
14. For the reasons given above, I therefore find that the proposed development would result in a disproportionate increase in the size of Austrey. In the context of over 40 windfall dwellings having been granted planning permission in Austrey in recent years, it would also be contrary to policy AP10 of the Neighbourhood Plan which relates to windfall development.

Character and appearance

15. Austrey is located within an agricultural landscape of hedged fields. The North Warwickshire Landscape Character Assessment places the village and the site within the 'No Man's Heath to Wharton – Lowlands' character area. Its key characteristics include small, nucleated hilltop villages with prominent church spires set within an open agricultural landscape.
16. Austrey differs in that the village has developed linearly along the roads that pass through the settlement and is not located on a hilltop. The location of its key community features such as St Nicholas Church, primary school and post office spread along the length of the village, rather than focussed on a central core, reflect this pattern of development.
17. The densest area of development within the village is located towards its north western end where residential development in depth has occurred. The rest of the village is predominantly linear with short cul-de-sacs that do not extend far from Main Road. The only exceptions to this in the southern half of the village are Wulfric Avenue and a cul-de-sac behind houses opposite the Bird in Hand public house. In these two examples, each development crudely extends away from Main Road in the direction of an adjacent lane by a distance of no more than 200m. As a result, Austrey is only partly nucleated, with the southern half of the village having far less development, and land to the west of Main Road having a far more open character than on the northern side of the village.
18. The appeal site is a fenced field of pasture at the western end of Wulfric Avenue which slopes gently downwards in the same direction. Together with other fields on its northern side it forms part of the rural setting of the south western part of the village. Wulfric Avenue and the development boundary for

the village do not materially extend westwards beyond the grounds of St Nicholas Church. As a result, the appeal site, in conjunction with the other open countryside to its north, forms an attractive rural setting for this part of the village.

19. The proposed residential development would result in the loss of countryside and urbanise the site to the detriment of the rural setting of Austrey. It would also represent a notable change in the pattern of development that characterises the southern half of the village because it would create significantly greater development in depth than currently exists off Main Road. The resulting arrangement of further residential development added onto a long cul-de-sac would be maze like and more akin to a sprawling suburb of a large settlement than a small addition that would be in proportion to a rural village. Therefore, whilst development of the appeal site would not extend further westwards than the edge of the north western quadrant of the village, these two different parts of the settlement are almost entirely out of view of each other with a large area of open countryside separating the two. As a result, this consideration does not alter my assessment of this main issue.
20. On the basis of my site visit, which took place in January, the harm that would be caused would be visible from several places. Firstly, during the colder months of the year it would be visible from Cinder Lane when the lack of leaves would render development on the site visible. Secondly, it would be seen from the end of Wulfric Avenue which provides pedestrian links northwards to a play area and St Nicholas Church, and lastly, in more distant glimpsed views from the well-used public rights of way that criss-cross Bishops Field.
21. Planting could be used to further screen the site from view along Cinder Lane during winter. However, this would take a number of years to become well established and effective. As the harm that would be caused to the countryside and the setting of the village relates to the presence of buildings, and the effect that the development would have on its form, this harm could not be overcome by good design at reserved matters stage.
22. For the reasons given above, I therefore conclude that the proposed development would not harmonise with the form of the village and would harm the character and appearance of the area, contrary to policies LP14 and LP30 of the Local Plan. These policies require the protection of the character and appearance of a locality through high quality design.

Efficient use of land

23. Policy LP7 of the Local Plan expects that new housing development achieves a net density of no less than 30 dwellings per hectare (dph). It is not a matter in dispute that the development of 10 dwellings on the site would have a density of 12 dph. This would be considerably less than the minimum density sought. Clearly, if the appeal was allowed and a smaller scheme of less than 10 dwellings came forward, an even lower density of development would be delivered.
24. The need for a balancing pond and pumping station reduces the amount of land available for housing on the appeal site. However, the illustrative masterplan includes generous landscaped margins which could be used to deliver a higher density of development on the site.

25. Although the appellant states that Wulfric Avenue has a density of 13 dph it is a common feature across a settlement that the density and grain of development varies – especially if a higher number of houses is sought. Through good design it would be possible to deliver a significantly higher density on the site in a manner that would be acceptable in design terms.
26. For the reasons given above, I therefore conclude that the density of the proposed development would conflict with policy LP7 of the Local Plan.

Other Matters

Housing Delivery Test

27. The results of the most recent Housing Delivery Test¹ show that the delivery of housing in the Borough met 80% of the housing requirement between 2019 and 2021. On the basis of the Housing Trajectory included within the Local Plan this figure is lower than expected and the evidence is that delivery on allocated sites will continue to be lower than expected over the next few years. Clearly therefore the delivery of housing is lagging behind that sought by government and envisaged by the Local Plan.
28. As the proposed development would make a worthwhile contribution to increasing housing delivery, I attach notable weight to this consideration in favour of the appeal.

Affordable Housing

29. The appeal site is agricultural land and the proposal includes the provision of 40% affordable housing. In so doing, it would comply with the requirements of policy LP9 of the Local Plan which relates to affordable housing provision.

Access

30. The Council has no objection to the proposed access subject to it being laid out and constructed in accordance the submitted plans and the provision of adequate visibility splays. I have no reason to disagree with those conclusions and I saw no reason why these requirements could not be complied with.

River Mease Special Area of Conservation (SAC)

31. The area covered by North Warwickshire Borough Council contains part of the River Mease SAC which is in 'unfavourable' conservation status for the purposes of the Habitats Regulations. As a result, any development proposal that would result in a likely significant effect on the SAC must be subject to an Appropriate Assessment. The main parties to the appeal and Natural England were invited to comment on this matter.
32. Based upon the responses received, I am satisfied that the connection of development on the site to the main sewer would not result in a discharge to the River Mease SAC. I have therefore not considered this matter further in this appeal.

Conclusion

33. The proposed development would provide 40% affordable housing and would enhance biodiversity in accordance with policies LP9 and LP14 of the Local Plan.

¹ Housing Delivery Test: 2022 measurement published on 19 December 2023

It would also not harm highway safety, nor would it cause harm to other matters identified in the officer report such as residential amenity, heritage assets or in terms of flood risk. As a result it would comply in these regards with the policies of the development plan that relate to these matters. For the purposes of this planning balance, I have also assumed that the submitted unilateral undertaking passes the relevant tests and so would not harm leisure facilities in compliance with policy LP22 of the Local Plan. However, the absence of harm, and the policy compliance that results, are matters of neutral rather than positive weight that weigh in favour of a proposal.

34. On the other side of the balance, I have found that the proposal would not be a proportionate addition to the village which has already expanded significantly in recent years and which has limited services and facilities. Residential development of the site would also be harmful to the character and appearance of the area and at too low a density to make efficient use of the land. As a result the scheme would be contrary to policies LP14, LP30 and LP7 of the Local Plan and I attach very significant weight to the harm that would be caused. It would also not comply with policy AP10 of the Neighbourhood Plan which relates to windfall development, albeit as this policy conflicts with the more liberal approach of policy LP2, I place greater weight on whether the scheme complies with this latter policy.
35. The Framework supports significantly boosting housing land supply and maintaining and enhancing the vitality of rural communities. However, it also supports protecting the countryside, making efficient use of land and reducing the need to travel to access services and facilities.
36. Taking all these matters into account, I conclude that the proposal would be contrary to the development plan and the Framework considered as a whole. As a result, it would be contrary to policy LP2 of the Local Plan and would not constitute sustainable development as sought by the Framework and required by policy LP1 of the Local Plan. Even if I had found that the proposed development was a proportionate addition to the village, given the other harms that I have identified, this would not have altered my conclusion on the scheme's compliance with the development plan and Framework as a whole.
37. Other considerations have been put forward in favour of the proposal. Socially, the proposed development would increase the supply of housing, including the supply of affordable housing, at a time when housing delivery is lower than that expected by the Local Plan. I attach notable weight to these housing supply benefits. There would also be economic benefits during the construction of the development and afterwards from the spend of the additional households locally. Environmentally, biodiversity on the site would be enhanced. I attach some weight to the economic benefits and the identified environmental benefit.
38. In this case, the other considerations put forward in favour of the proposal are insufficient to outweigh the harm that would be caused and non-compliance with the development plan. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.
39. As I noted as a procedural matter, the appellant has submitted a properly completed unilateral undertaking made under section 106 of the Act. The tests in paragraph 57 of the Framework and Regulation 122 of the Community

Infrastructure Levy Regulations 2010 (as amended) apply to planning obligations. In this case however, as the appeal is to be dismissed on its substantive merits, it is not necessary to formally assess the agreement against these requirements.

Ian Radcliffe

Inspector