
Appeal Decision

Site visit made on 16 January 2017

by Rachel Walmsley BSc MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 April 2017

Appeal Ref: APP/W3710/W/16/3160129

Land to the rear of 25-39 Whitburn Road, Bedworth CV12 0LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Greenacre Property Ltd against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 033762, dated 17 November 2016, was refused by notice dated 5 April 2016.
 - The development proposed is erection of 8 two storey houses and 6 two storey apartments with car parking and improved existing access from Whitburn Road.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 two storey houses and 6 two storey apartments with car parking and improved existing access from Whitburn Road at land to rear of 25-39 Whitburn Road, Bedworth, CV12 0LT in accordance with the terms of the application, Ref 033762, dated 17 November 2016, subject to the conditions set out in the attached schedule.

Procedural matters

2. The planning application form refers to the appeal site as Whitburn Road, Bedworth, Warwickshire CV12 0LT. However, the development proposed relates to land to the rear of 25-39 Whitburn Road, as detailed on the appeal form. I have therefore adopted the address on the appeal form which more accurately describes the site.
3. I have before me a signed and completed Unilateral Undertaking (UU) submitted by the appellant. It would secure an option on land at No 37 Whitburn Road to achieve a visibility splay. I return to this matter later in this decision.

Main Issues

4. These are:
 - (i) the effect of the proposal on the character and appearance of the area; and,
 - (ii) the effect of the proposal on highway safety, with particular regard to pedestrian visibility.
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Reasons

Policy position

5. The Council cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Policy ENV14 of the local plan¹ is a positively worded policy which seeks a high standard of design and materials in-keeping with the scale and character of the locality. This policy is therefore not a housing supply policy.
6. In light of paragraph 215 of the Framework, the weight attributed to policy ENV14 is dependent on the consistency of the policy with the Framework. The Framework encourages good design and development that contributes positively to an area which is consistent with policy ENV14. I therefore attach significant weight to this policy.

Character and appearance

7. The appeal site is a rough area of grassland that is within a residential area and is not immediately obvious from the public highway. As a result, the site contributes little to the character and appearance of the area. The site is set behind frontage properties to the north and south of the site. The frontage properties enjoy good sized plots with front and rear gardens. This linear form of development is representative of the layout of many houses within the immediate vicinity of the site. Also adjoining the site are two areas of land that are more open and undeveloped in character. Whilst these areas of land are not readily accessible to the public, views of the site from these areas are publicly available.
8. The development would utilise a site that currently contributes little to the character and appearance of the area. The new dwellings would be within the confines of the existing site and whilst their layout would not replicate or continue the existing pattern of frontage properties, the linear pattern that contributes most to the character and appearance of the area would not be disrupted.
9. The limited visibility of the development from the public highway means that it would not impact on the character and appearance of the area to have a discernible effect. For the same reason, the development would not impact on the visual qualities of the area; limited views of the houses from the open land either side of the site would not affect the overall impression of the area to be considered harmful to its character and appearance.
10. It is recognised that the development would be on plots that do not afford the same space to the front and rear of the properties as existing houses within the area, which implies that the development would be denser than its surroundings. However, for the reasons given above, I have found no harm to character and appearance as a result of the development adopting a form that differs from its surroundings.

¹ Nuneaton and Bedworth, Local Plan (June 2006)

11. Policy ENV14 of the local plan, paragraph 61 of the Framework and the Council's SPD² seek development that is in-keeping with and integrates well into the scale and character of the locality, to include plot shapes and patterns. Whilst the pattern of development would be unlike the existing, I have found that it would not be harmful to the character and appearance of the area. As such the development would not be contrary to policy ENV14 of the local plan, the Framework or the Council's SPD.

Highway safety

12. Access to the appeal site is achieved across land within the Council's ownership. Land either side of the proposed access is required to create pedestrian visibility splays. Land from No 39 Whitburn Road has been acquired by the Council. I have before me an option on land to No 37 Whitburn Road. The option requires Nuneaton and Bedworth Borough Council to serve notice on the occupants of No 37 Whitburn Road, up until April 2017, following which the occupants are required to sell the land to the Council for the financial sum set out in the option.
13. There is nothing within the evidence before me to suggest that the implementation of the option could not be realised. With the land obtained from No 37 and No 39 Whitburn Road, adequate pedestrian visibility splays could be achieved on site which in turn would ensure that pedestrians accessing the site and using the pavement at the site's entrance could do so safely and without coming into conflict with moving vehicles. This in turn would ensure that the development would not be contrary to the Framework that requires development to provide safe and suitable access with little conflict between traffic and pedestrians.
14. To ensure highway safety throughout the lifetime of the development, including during construction, it would be reasonable to secure any planning permission with a Grampian condition that required the implementation of the vehicular access and pedestrian visibility splays before development commences.
15. In all, therefore, I find that the development would not have a harmful effect on highway safety and therefore would be compliant with the Framework.

Other matters

16. I have before me a Unilateral Undertaking that commits the appellant to a financial 'open space contribution.' In the absence of any evidence to explain why this contribution is required, it has not been demonstrated that this obligation is necessary to make the development acceptable in planning terms. As a result, the test of necessity set out in Regulation 122(2) of the Community Infrastructure Regulations (2010) has not been met and therefore I have given no further consideration to this undertaking in my consideration of this appeal.
17. The Council do not dispute that they cannot demonstrate a 5 year supply of housing land. In accordance with paragraph 49 of the Framework relevant policies for the supply of housing should not be considered up-to-date in these circumstances. Whilst no such policies have been drawn to my attention, paragraph 14 of the Framework states that where a development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts significantly and demonstrably

² Nuneaton and Bedworth Borough Council's Residential Design Guide 2004 (SPD)

outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have not identified any such adverse impacts in this case. This is a material factor which weighs in favour of the appeal.

Conditions

18. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. As a result I have amended some of them for clarity and eliminated others where conditions have not been considered necessary.
19. In addition to the standard time limitation for commencement, I have imposed a condition specifying the relevant drawings as this provides certainty.
20. Conditions requiring the approval of details of materials and hard and soft landscaping are necessary in the interests of the character and appearance of the area. Also of relevance to character and appearance are details of finished ground floor levels, which, because of their very nature, require approval before development commences. Similarly, I have required details regarding surface water drainage before development commences. I find no justification for the drainage details suggested by the Council in relation to the development proposed, however, a drainage condition as worded would ensure that there are no significant adverse effects of the proposal on the local environment.
21. Given the presence of existing trees on site, a condition requiring an Arboricultural Survey to be submitted and approved prior to any works taking place on site is necessary to ensure that harm does not result to any trees worthy of protection.
22. Given that adequate pedestrian visibility splays are important for highway safety, I have included a condition requiring the implementation of the vehicular access and pedestrian visibility splays before development commences.
23. Evidence does not demonstrate that there are reptiles present on the appeal site but a condition to ensure that the development is carried out in accordance with the Preliminary Ecological Assessment is required to limit the impact of the development on local ecology.

Conclusion

24. Whilst the Council is unable to demonstrate a 5 year supply of deliverable housing, significant weight can be attached to policy ENV14 of the local plan. I have found that the development would comply with this policy, as well as with the Council's SPD and the Framework. The lack of a 5 year supply of deliverable housing sites is also a material factor weighing in favour of the appeal. The proposal would comply with the development plan and would constitute sustainable development. Accordingly, the appeal is allowed.

R Walmsley

INSPECTOR

CONDITIONS SCHEDULE

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 1381-LP; Block Plan 1381-BP; Proposed Site Plan 1381-01_A; Proposed Plots 1-14 Elevations 1381-05_A; Proposed Plots 1-5 Floor Plans 1381-02_; Proposed Plots 6-11 Floor Plans 1381-03_A; and Proposed Plots 12-14 Floor Plans 1381-04_.
3. No works related to the development hereby permitted, other than site clearance, preparatory works and ground works, shall take place until details of the materials to be used in the construction of the external surfaces of the development have been agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details and maintained as such thereafter.
4. Prior to the implementation of any hard and soft landscaping on site, details of such landscaping shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i. means of enclosure and retaining structures;
 - ii. boundary treatments to include a 1.8m high close boarded fence to the boundaries of No 37 and No 39 Whitburn Road;
 - iii. hard surfacing materials;
 - iv. earthworks showing existing and proposed finished levels or contours;
 - v. minor artefacts and structures;
 - vi. planting plans to a scale of 1:100; and,
 - vii. planting schedules noting species, plant sizes and proposed numbers/densities.

The hard landscaping works shall be carried out in accordance with the approved details within twelve months of the development commencing.

5. All planting, seeding or turfing comprised in the approved details of landscaping referred to under condition 4 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
6. No development shall commence until detailed plans and sections of the finished ground floor levels of the proposed buildings, above ordnance datum and in relation to existing ground levels, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
7. No development shall commence until details of surface water drainage works, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and including a management and maintenance plan have been submitted to and approved in

writing by the local planning authority in consultation with the Lead Local Flood Authority. The surface water drainage works shall be carried out in accordance with the approved details before any part of the development is first occupied and managed and maintained thereafter in accordance with the management and maintenance plan as approved.

8. No works related to the development hereby permitted, including site clearance, preparatory works and ground works, shall be carried out until an Arboricultural Survey has been submitted to and approved in writing by the local planning authority. The survey shall include:
 - i. a plan showing the position of every tree on the site that could influence or be affected by the development and which trees are to be removed;
 - ii. a schedule in relation to every tree identified, listing information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction – Recommendations (or in an equivalent British Standard if replaced); and any proposed pruning, felling or other work;
 - iii. in relation to every existing tree identified to be retained on the plan referred to in i) above, details of any proposed excavation that might affect the root protection area; and all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced).

The development shall be carried out in accordance with the approved details.

9. No development shall take place until the vehicular access and pedestrian visibility splays shown on the approved drawings have been implemented on site. The permitted access shall not be used, other than emergency vehicles, until it has been completed in accordance with the approved details. The scheme shall be maintained in accordance with the approved details thereafter.
10. The development shall be carried out in accordance with the recommendations of the Preliminary Ecological Assessment, Report No: RT-MME-121631 dated January 2016.