
Appeal Decision

Site visit made on 9 May 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 25 May 2017

Appeal Ref: APP/T3725/W/17/3169080

Land adjacent to 8 Birmingham Road, Stoneleigh, Coventry CV38 3DD

- 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 Court (Warwickshire) Ltd against the decision of Warwick District Council.
 - The application Ref W/16/1187, dated 27 June 2016, was refused by notice dated 22 August 2016.
 - The development proposed is demolition of dilapidated garage and erection of two semi-detached dwellinghouses with garaging, parking and access provision.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of dilapidated garage and erection of two semi-detached dwellinghouses with garaging, parking and access provision at land adjacent to 8 Birmingham Road, Stoneleigh, Coventry CV38 3DD in accordance with the terms of the application, Ref W/16/1187, dated 27 June 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Court (Warwickshire) Ltd against Warwick District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The evidence from both parties refers to paragraphs 14 and 49 of the National Planning Policy Framework (Framework) as being relevant to the appeal. The parties have been given the opportunity to make further submissions as to what, if any, bearing the Supreme Court judgement handed down on the 10 May 2017¹ has on the issues in the appeal. I have taken those submissions into account in reaching my decision.

Main Issue

4. The main issue is whether the appeal site is an appropriate location for the development proposed.

¹ Suffolk Coastal District Council v Hopkins Homes Ltd & Anor [2017] UKSC 37 (10 May 2017)

Reasons

5. The Council acknowledges that it is unable to demonstrate a 5 year Housing Land Supply as required by the Framework and that, in accordance with paragraph 49, the relevant development plan policies for the supply of housing should not be regarded as up to date. Having regard to the Supreme Court judgment referred to above, Policy RAP1 of the Warwick District Local Plan (2007), which directs new housing development to preferred locations, is such a policy. As it was formulated against a projection of housing need only to 2011 the policy does not reflect the current objectively assessed need for new homes in the district and can be given very limited weight.
6. Paragraph 14 of the Framework advises that, where the development plan is out of date, the principle of sustainable development requires that planning permission should be granted unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.
7. Footnote 9 lists Green Belt policies as an example of the policies that might provide such an indication and Stoneleigh is washed over by the Green Belt. However, the proposal falls within the scope of the fifth bullet to paragraph 89 of the Framework which states that limited infilling in villages is one of the exceptions to the general presumption against the erection of new buildings in the Green Belt. The proposal would not be inappropriate development and the High Court judgment in the Lee Valley Regional Park case² has established that, where development is not inappropriate, it should not be regarded as harmful either to openness or to the purposes of including land in the Green Belt. Hence, the proposal does not conflict with the Framework's Green Belt policies and the second limb of this part of paragraph 14 is not engaged.
8. The proposal complies with Policy H11 of the emerging Warwick Local Plan (2011-2129) (WLP). That policy supports development within the defined infill boundary of Green Belt villages where it would be for no more than 2 dwellings and would comprise the infilling of a small gap fronting the highway, and where the site does not form an important part of the integrity of the village. Although it forms a gap to the side of No 8, the site is an overgrown plot which is largely hidden from view by the tall hedge and trees to its roadside boundary. That gap does not form an important part of the integrity of the village and, given that the roadside hedge would be replanted behind the visibility splay, its loss would not have a significant effect on the character and distinctiveness of the local area. Paragraph 4.77 of the emerging Plan is clear that the purpose of this policy is to clarify what the Council considers to be 'limited infilling' and not to amend or replace the policies in the Framework.
9. Due to its location within the defined limits of the village the proposal would not result in the development of isolated homes in the countryside. No conflict with paragraph 55 of the Framework arises in this regard and there is

² Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404 (22 April 2016)

no requirement that the proposal falls within any of the special circumstances listed in that paragraph in order to justify a grant of planning permission. Paragraph 55 seeks to promote sustainable development by locating housing where it will enhance or maintain the vitality of rural communities but recognises that, where there are groups of smaller settlements, development in one village may support services in a village nearby.

10. With a population of around 500, Stoneleigh is a relatively large village that appears to have good quality recreational and community facilities. The village is served by two bus routes, one providing reasonably frequent weekday services to and from Kenilworth and the other providing less frequent services to Stretton and Royal Leamington Spa. The availability of these services may not make it unnecessary to have access to a car but it would provide the opportunity for future occupiers of the proposed dwellings to use public transport for access to employment, education or some of the shopping and other essential services that they would need.
11. Whilst seeking to promote sustainable transport, paragraph 29 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Harm would result from the likely reliance by the future occupiers of the proposed dwellings on the use of a private car for some of their day to day needs. However, given the availability of some public transport options and that only two relatively small family homes are proposed, that harm would be very limited in scale.
12. The development strategy underpinning the emerging WLP recognises the value of directing some new growth to villages that have a reasonable level of services and facilities, as identified in the Settlement Hierarchy Report of 2014. In addition to the identified 'Growth Villages' the Strategy also allows for development in 'Limited Infill Villages' (LIVs) which have a lower level of services but where limited development would help to deliver a wider choice of housing and to support services in nearby Growth Villages.
13. The Council's evidence to the WLP Examination in Public (Appendix 8 to the appellant's statement) acknowledged that recent planning policy has been very restrictive in respect of such villages and has not allowed for organic growth to meet local needs. The policy approach in the WLP provides for some limited growth on appropriate sites in such villages. Stoneleigh is designated within the WLP as a LIV and Policy H1 states that housing development will be permitted in such villages.
14. The proposal complies with Policy H1 and Policy H11 and, given the advanced stage of preparation that the WLP has now reached, these policies should be given significant weight.

Other Matters

15. Concerns have been expressed about whether the necessary visibility splay can be achieved without encroaching on third party land but I have no reason to question the Highway Authority's conclusions on this matter, particularly as these have been restated in their email to the Council of 5 May 2017. I note that some on street parking occurs on this part of Birmingham Road but am satisfied that no significant effect on highway safety or on the safe operation of the adjacent highway would result from the development.

16. Although within the Stoneleigh Conservation Area, the appeal site lies close to its northern boundary some distance from the historic core of the village. I consider that in its present condition, and with the level of screening provided by the frontage vegetation, the site makes a neutral contribution to the character and appearance of the Conservation Area. The proposed buildings would be set back from the road to follow the building line of the adjacent Swedish Houses. The design of the new houses would be in keeping in the street scene which includes dwellings of very varied form and style. The creation of a new access would result in a change to the appearance of the street but such accesses are a common feature within the street scene and the wider village and this change would not be harmful. Overall, the proposal would preserve the character and appearance of the Conservation Area.
17. I have considered the representations regarding the effect on nearby listed buildings. However, my assessment is that appeal site does not lie within the setting of any of those buildings. Although close to Calkin Cottage (Nos 7&8 Birmingham Road), the driveway to Nos 7&8 separates the site from that listed building. Because of that separation and the proposed setting back of the two new dwellings from the site frontage the proposal would not encroach on the setting of Calkin Cottage. As it is fully screened along its roadside frontage the appeal site makes no meaningful contribution to the setting of Nos 5&6 on the opposite side of the road and that setting would not be harmed by the proposal. The other listed buildings fronting Birmingham Road are too remote from the site for there to be any material effect on their setting.
18. The development of two new homes would make a small, but nevertheless valuable, contribution to offsetting the current undersupply of new housing and would help to meet local needs in line with the WLP development strategy. The additional dwellings would help sustain existing recreational and community facilities in Stoneleigh and the expenditure generated by the future occupants could also help support the viability of facilities and services in other nearby villages, in accordance with paragraph 55 of the Framework.

Conditions

19. The conditions I have attached to the permission are based on those suggested by the Council. I have also had regard to the appellant's comments on those draft conditions. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance.
20. In the interests of clarity, a condition is needed to tie the planning permission to the approved plans. In order to ensure a good quality of design appropriate within the Conservation Area conditions are needed to require the approval of samples of external materials and full details of other key external elements of the development. These need to be approved prior to commencement of the building to avoid potentially abortive works.
21. A condition requiring approval of a drainage scheme is needed to ensure adequate drainage provision. To ensure that any archaeological remains are protected, preserved and/or recorded a condition is needed that requires a programme of investigation to be carried out. In light of the findings of the preliminary ecological appraisal a condition is needed to require further assessment of the possible habitat value of the site and identification of any mitigation needed to minimise the risk to wildlife. These conditions need to be

discharged prior to commencement to avoid loss or damage to archaeological features or to wildlife and to avoid abortive works.

22. In order to secure an appropriate standard of development a condition is needed to require approval of a landscaping scheme, including ecological enhancements as recommended in the Preliminary Ecological Appraisal report, and that any trees or vegetation lost within 5 years of the completion of the development are replaced. In order to protect birds that might be breeding on the site a condition has been attached to prevent the removal of trees or other vegetation during the breeding season. A condition is also needed relating to a scheme of protection of trees during the construction works to ensure their long term survival.
23. A condition requiring the approval of a Construction Management Plan is needed to protect the living conditions of neighbouring residents and avoid any unnecessary disruption to the highway. Also in the interests of highway safety, conditions are needed to require that the new site access meets the necessary standards, is completed in accordance with the approved plans, and is not brought into use until a public footway and verge has been laid out. Finally, to protect the residents of the adjacent residential properties from overlooking, a condition is needed to require that the windows proposed in the gable elevations of the dwellings are non-opening and are glazed with obscured glass to an appropriate height.

Conclusions

24. The proposal would cause some limited harm in terms of the likely need for the future residents of the two dwellings to make journeys by private car for some of their daily needs. That harm would not clearly and demonstrably outweigh the benefits of the development. The proposal would, accordingly, constitute sustainable development and planning permission should be granted in accordance with paragraph 14 of the Framework.
25. I therefore conclude that the appeal should succeed.

Paul Singleton

INSPECTOR

Schedule of Conditions

- 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: 14-007/16/01-Location Plan; 14-007-16-02 Rev A – Site Layout; 14-007-16-03 – Plans and Elevations; 14-007-16-04 – Garage and Fence Details; 14-007-16-05 –Site Cross Section.
- 3) Other than site clearance and preparation works no development shall take place until samples of the materials to be used in the external construction of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Other than site clearance and preparation works no development shall take place until full details of doors, windows (including a section showing the window reveal, heads and cill details), eaves, verges and rainwater goods at a scale of 1:5 (including details of materials) have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of surface and foul water drainage works have been submitted to and approved in writing by the local planning authority. The works shall be carried in accordance with the approved details and shall be completed and be available for use prior to the occupation of either of the dwellings hereby permitted.
- 6) No development shall take place until:
 - i) a Written Scheme of Investigation (WSI) for a programme of archaeological evaluative work has been submitted to and approved in writing by the local planning authority.
 - ii) the programme of archaeological evaluative work and associated post-excavation analysis, report production and archive deposition detailed within the approved WSI has been undertaken and a report detailing the results of this fieldwork has been submitted to the local planning authority.
 - iii) An Archaeological Mitigation Strategy document (including a Written Scheme of Investigation for any archaeological fieldwork proposed) has been submitted to and approved in writing by the local planning authority. This should detail a strategy to mitigate the archaeological impact of the proposed development and should be informed by the results of the archaeological evaluation.

The development and any archaeological fieldwork post-excavation analysis, publication of results and archive deposition detailed in the Mitigation Strategy document shall be undertaken in accordance with the approved Mitigation Strategy.
- 7) No development, including any demolition, ground preparation and removal of vegetation, shall take place until an inspection of the site has been carried out by a qualified ecologist to assess its value as a habitat

for nesting birds, hedgehogs, amphibians and reptiles. If evidence of any of these species is found no works shall be carried out and no materials, machinery or equipment shall be brought onto the site until an Ecological Appraisal and Mitigation Strategy has been submitted to and approved in writing by the local planning authority. All construction works shall subsequently be undertaken in accordance with the approved Mitigation Strategy.

- 8) No development shall commence until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) boundary treatments;
 - ii) vehicle parking layouts;
 - iii) other vehicle and pedestrian access and circulation areas;
 - iv) hard surfacing materials;
 - v) retained trees and other landscape features and proposals for restoration, where relevant;
 - vi) proposed locations and specification of proposed trees, hedges and other soft landscaping works;
 - vii) the installation of 2 bat boxes at appropriate locations in accordance with the recommendations in the Preliminary Ecological Appraisal Report (Cotswold Wildlife Surveys - December 2015);
 - viii) external lighting, floodlighting and CCTV;

The hard landscaping works shall be completed in accordance with the approved details before either of the dwellings hereby permitted are occupied.

All planting, seeding or turfing comprised in the approved details of the approved landscaping scheme shall be carried out in the first planting and seeding season following the occupation of the dwellings or the completion of the development, whichever is the sooner. 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.

- 9) No removal of trees or other vegetation shall take place between 1 March and 31 August.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved. In this condition "retained tree" means an existing tree which is to be retained in accordance with the recommendations in the Arboricultural Planning and Integration Report (Arbortrack Systems Ltd – June 2016).

- 11) No development, including site clearance and ground works, shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved plan shall provide for:
 - i) the hours of working and the hours during which deliveries to and collection of materials or waste from the site can be made;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in the construction of the development; and
 - v) The routing of vehicles to and from the site.The approved Construction Management Plan shall be adhered to throughout the period of construction.
- 12) The gradient of the vehicular access to the site shall no steeper than 1 in 12 for a distance of 7.5 metres, as measured from the near edge of the public highway carriageway.
- 13) The vehicular access to the site shall be constructed in accordance with the details shown on Drawing no.14-007/16/02 Rev A. and shall be completed and available for use prior the occupation of either of the dwellings hereby permitted. The access shall not be constructed in such a manner as to reduce the effective capacity of any drain or ditch within the limits of the public highway.
- 14) The vehicular access to the site shall not be used unless and until a public highway footway/verge crossing has been laid out and constructed in accordance with details that have been submitted to and approved by the local planning authority.
- 15) Prior to the occupation of the dwellings hereby permitted, the first floor side facing windows in the north west elevation of the dwelling on Plot 1 and in the south east elevation of the dwelling on Plot 2 shall be non-opening and shall be permanently glazed with obscured glass to a height of 1.7 metres above the floor of the room in which the window is installed. The obscured glazing to the windows shall thereafter be retained and maintained in that condition.

End of Schedule of Conditions