
Appeal Decision

Site visit made on 10 May 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 31 May 2017

Appeal Ref: APP/T3725/W/17/3168566

Spinaway, Church Lane, Lapworth, Solihull B94 5NU

- 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 Mr P Robinson against the decision of Warwick District Council.
 - The application Ref W/16/1767, dated 29 September 2016, was refused by notice dated 9 December 2016.
 - The development proposed is the erection of a single dwelling house.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a single dwelling house at Spinaway, Church Lane, Lapworth, Solihull B94 5NU in accordance with the terms of the application, Ref W/16/1767, dated 29 September 2016, subject to the conditions in the attached schedule.

Procedural Matter

2. The appeal submissions refer to paragraphs 14 and 49 of the National Planning Policy Framework (Framework) as being relevant to the appeal. The parties have been given an opportunity to make further submissions with regard to what bearing if any 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

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

Reasons

4. The Council is unable to demonstrate a 5 year Housing Land Supply as required by the Framework and, 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) (WDLP), which seeks to direct new housing development to preferred locations, is such a policy. As it was formulated against a projection of housing need to 2011 only the policy does not reflect the current objectively assessed need for new homes in the District and can be given very limited weight.

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

5. Paragraph 14 of the Framework advises that, where the development plan is out-of-date, the principle of sustainable development requires that planning permission should be granted unless: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 the Framework indicate development should be restricted.
6. Footnote 9 to the Framework lists Green Belt policies as an example of the policies that might provide such an indication. Lapworth is washed over by the Green Belt. However, the proposal falls within the scope of the fifth bullet to paragraph 89 which lists limited infilling in villages as 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 case law in the Lee Valley Regional park judgment² 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 give rise to any conflict with the Framework's Green Belt policies and the second limb of this part of paragraph 14 is not engaged.
7. The proposal complies with Policy H11 of the emerging Warwick Local Plan (WLP) which supports housing development within the defined infill boundary of Green Belt villages where it would be for no more than 2 dwellings, would comprise the infilling of a small gap fronting the highway, and where the site does not form an integral part of the integrity of the village. Although the appeal site currently forms a gap between Spinaway and the adjacent dwelling this gap is not characteristic of the street scene in which most properties occupy the majority of the width of their generous plots. The loss of that gap would not, therefore, cause any detriment to the character and distinctiveness of the local area. Paragraph 4.77 of the WLP is clear that the purpose of Policy H11 is to clarify what the Council considers to be 'limited infilling' and not to amend or replace the policies in the Framework.
8. Given the site's location within the village envelope 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 no requirement that the proposal meets 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.
9. Lapworth has a church and a large community hall but no shops or other services. It is, however, within about 2.5 kilometres of Hockley Heath which has a full range of local services and a similar distance to Kingswood and Lapworth railway station. I accept that the lack of a continuous footpath and street lighting would not encourage future occupiers of the proposed dwelling to walk to those facilities and that they would be likely to use a car for most of

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

their day to day journeys. However, 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. Some harm would result from the reliance by the occupiers of the dwelling on journeys by private car to access work, education and daily needs. However, as the proposal is for a single 3 bedroom house, that harm would be limited in scale. The proposal would conflict with WDLP Policy RAP1 but, for the reasons already set out, that policy can be given very limited weight.

10. I note the concerns about the effect on nearby listed buildings but my assessment is that the site does not lie within the setting of any of those buildings and that there would be no adverse effect on the setting or significance either of those buildings or the conservation area. No other harm has been identified.
11. The proposal would make a modest, but nevertheless valuable, contribution to meeting the shortfall in housing provision within the District and would help sustain the existing community facilities within the village. The spending power generated by the future residents of the dwelling could also help to support the viability of shops and services in other nearby villages in accordance with the approach set out in paragraph 55 of the Framework.
12. Having regard to the policies in the Framework and the development plan, I find that the limited adverse impacts of granting permission would not significantly or demonstrably outweigh the benefits of doing so. The proposal constitutes sustainable development and permission should be granted in accordance with paragraph 14.

Conditions

13. I have had regard to the conditions suggested by the Council and the appellant's comments on those draft conditions. I have amended the wording of some conditions as appropriate to ensure that these reflect the guidance in the Planning Practice Guidance.
14. Permission is granted in accordance with the terms of the planning application but, in the interests of certainty, a condition is needed to tie the permission to the approved plans and drawings. To ensure an appropriate quality of development conditions are needed which require the submission of samples of the external materials to be used and of the details of the proposed doors, windows and rainwater goods to be installed. I have not adopted the full text of the condition suggested by the Council as those detailed requirements would be unduly onerous given that the site is not within the conservation area.
15. As full details were not provided with the application conditions are needed to require that a landscaping scheme be approved and carried out within a specified timescale to ensure a high quality development. For this same reason a condition requiring the replacement of plants that subsequently die or are otherwise lost within 5 years of the completion of the development is also needed.
16. In light of the recommendations in the Ecological Appraisal conditions are needed requiring a Precautionary Emergence Survey in relation to bats and a scheme for the precautionary removal of vegetation from the site. These conditions are required to minimise the potential for adverse effects on bats,

breeding birds and reptiles. A condition requiring a scheme for the protection of trees to be retained during the construction works is needed to ensure their long term survival.

17. The appeal site has some potential archaeological value and a condition is requiring the carrying out of appropriate evaluative work and mitigation prior to the commencement of development is needed to ensure that features of interest are preserved, protected and/or recorded as appropriate. Finally, in order to ensure the safe operation of the proposed access and adjacent highway a condition is needed which requires that the revised access to the site be constructed and completed before the dwelling is occupied.

Conclusion

18. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be allowed.

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 strictly in accordance with the details shown on the site location plan and approved drawings 16-095-01 and 16-095-02, and specification contained therein, submitted on 29.09.2016.
- 3) Other than site clearance and preparation no development shall take place until samples of the materials to be used in the construction of the external elevations to the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Other than site clearance and preparation no development shall take place until details of the proposed doors, windows and rainwater goods to be used in the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until a scheme of hard and soft landscaping works has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of: proposed boundary treatments; the revised access driveway; vehicle parking and other areas of hard surfacing; and full details/ specifications of any new trees, hedges or other soft landscaping proposed.
- 6) The hard landscaping works shall be completed in full accordance with the approved details within three months of the first occupation of the development hereby permitted. All planting shall be carried out in accordance with the approved details in the first planting and seeding season following the first occupation. All hedging, trees and shrubs shall be planted in accordance with British Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations.
- 7) Any tree or shrub which, within a period of five years from the completion of the development, dies, is removed or becomes seriously damaged, defective or diseased shall be replaced in the next planting season with another of similar size and species.
- 8) No development, including any demolition, ground clearance or removal of trees or vegetation shall take place until a Precautionary Emergence Survey for Bats has been carried out by a competent person in accordance with the recommendations set out in the Crossman Associates' Ecology Appraisal Survey Report (April 2016) and has been submitted to and approved in writing by the local planning authority. All subsequent works shall be carried out in accordance with approved findings and recommendations of that report.
- 9) No development, including any demolition, ground clearance or removal of trees or vegetation shall take place until a scheme for the precautionary removal of vegetation, in order to minimise the potential adverse effects on breeding birds and reptiles within the confines of the site, has been submitted to and approved in writing by the local planning

authority. All subsequent works shall be carried out in accordance with approved findings and recommendations of that report.

- 10) No development shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of undertaking the development hereby permitted until a scheme for the protection of all existing trees and hedges to be retained has been submitted to and approved in writing by the local planning authority. The scheme must include the locations and specification of stout protective fencing to be erected in accordance with British Standard BS5837:2012, Trees in Relation to design, demolition and construction. Nothing shall be stored or placed in the areas fenced off in accordance with the approved scheme and no excavations or alterations to the ground levels shall be carried out without the prior written approval of the local planning authority. The approved scheme shall be installed prior to the commencement of any other works on the site and shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed.
- 11) 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; and
 - 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 development and should be informed by the results of the archaeological evaluation.
- All subsequent works shall be carried out in full accordance with the approved Mitigation Strategy.
- 12) The dwelling hereby permitted shall not be occupied until a vehicular access has been provided not less than 5 metres in width for a distance of 7.5 metres, as measured from the near edge of the public highway carriageway.

End of Schedule of Conditions