



Appeal Decision

Site visit made on 6 November 2017

by Rachel Walmsley BSc MSc MA MRTPI

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

Decision date: 13th November 2017

Appeal Ref: APP/T3725/W/17/3179904

**135 Warwick Road (including rear builders yard), Kenilworth,
Warwickshire CV8 1HY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Bennett, Trengerren Ltd against the decision of Warwick District Council.
 - The application Ref W/16/1788, dated 25 September 2016, was refused by notice dated 26 May 2017.
 - The application sought planning permission for submission of all reserved matters under Condition 1 imposed on outline planning permission reference W/11/1618 granted on 4th July 2012 for the erection of 9no. apartments, 3no houses and 3no garages without complying with a condition attached to planning permission Ref W/15/0620, dated 16 September 2015.
 - The condition in dispute is No 1 which states that: *the development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawings 23560-0; 2356-17; 2356-03 Rev A; 2356-08 Rev B; 2356-09 Rev A; 2356-04, and specification contained therein, submitted on 13th May 2015; approved drawings 2356-02 Rev B; 2356-07 Rev C; 2356-19 Rev A & 2356-20, and specification contained therein, submitted on the 3rd August 2015; approved drawing 2356-01.1 Rev K and specification therein, submitted on the 11th August 2015 and approved drawings 2356-10 Rev C & 2356-LA01 Rev A and specification therein, submitted on the 7th September 2015.*
 - The reason given for the condition is: *for the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwickshire Local Plan 1996-2011.*
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural matters

3. The Council refused the planning application on the grounds of policy DP6 of the Warwick District Local Plan 1996-2011. Within the evidence before me it is

clear that this policy has been superseded by policy TR1 of the Warwick District Local Plan 2011-2029 (Local Plan)¹. As policy TR1 is the up-to-date policy and both parties have commented on it, I have considered this policy in my decision.

4. The planning application which is the subject of this appeal (ref W/16/1788) sought the Council's permission for a number of changes to planning permission W/15/0620; most notably changes to the design of the houses, apartments, access road, bin store location and parking layout. It is common ground between Parties that the matter of dispute relates to the access road proposed. In light of the evidence before me I find no reason to take a different view and it is on this basis that I have decided the appeal.

Background and Main Issue

5. Condition 1 of planning permission W/15/0620 stipulates that the development shall be carried out in accordance with a number of drawings, as listed. The approved drawings include the proposal to demolish No 135 Warwick Road and provide an access road into the site for motorised vehicles and pedestrians. In submitting the application which is the subject of this appeal (ref W/16/1788), the appellant wishes to retain part of No 135 which would in turn reduce the width of the access road. The Council refused the application on the basis of concerns for highway and pedestrian safety.
6. The main issue is therefore whether condition 1 is necessary having regard to the safety of pedestrians and other non-motor vehicle road users.

Reasons

7. The access proposed would reduce in width from 5.5 metres at the highway boundary to 4.5 metres for a distance of 29 metres before widening again where the access enters the site.
8. An access that is 4.5 metres wide would be sufficient for two vehicles to pass at the same time but insufficient for pedestrians to navigate the access as well. Pedestrians would need to wait at either end of the access to allow vehicles to pass before navigating the access road themselves. Given the distance of 29 metres, pedestrians would need to wait for some time for vehicles to pass. Furthermore, the lack of a pavement or any means to prioritise pedestrians above vehicles would result in pedestrians being on the constant look-out for moving vehicles, from the front and behind and feeling intimidated as a result. Consequently walking and cycling would be unpopular choices of travel. The proximity of a bus stop is noted as a benefit to the development, however, the shortcomings found for pedestrian access would undermine this benefit and the scheme's compliance with the National Planning Policy Framework (the Framework) and policy TR1 of the Local Plan which seek development that provides for a choice of transport modes.
9. Should one vehicle use the access there would be sufficient space for pedestrians and other non-motor vehicle users to use the access at the same time without risk to safety. However, there would be no mechanisms in place to control the number of vehicles using the access at any one time. Given the

¹ Warwick District Local Plan, 2011-2029, Adopted September 2017

number of dwellings proposed on the site, the likelihood of one vehicle using the access at a time is unlikely.

10. Manual for Streets² and the Local Transport Note before me refer to shared spaces which are noted as working best where vehicle speeds and the volume of vehicles is low; in the case of Manual for Streets a volume less than 100 per hour and a space that is short in length. The proposed access would satisfy the first two criteria. There is no definition of 'short length' within Manual for Streets but 29 metres is a notable distance for cars to drive along and in my judgement, does not qualify as being short. Notwithstanding this, Manual for Streets also refers to shared spaces as being places where pedestrians at the very least can walk without feeling intimidated by motor traffic. I have found that this would not be the case. The access road would not, therefore, be a shared space of the form promoted within Manual for Streets and the Local Transport Note.
11. The access with Warwick Road would meet visibility requirements for vehicles and pedestrians. However the harm found relates to the access that extends further into the site which the matters of visibility presented by the appellant do not relate to.
12. In all, therefore, I find that the access proposed would result in harm to the safety of pedestrians and other non-motor vehicle road users. Consequently the proposal would be contrary to the Framework, as indicated, and policy TR1 of the Local Plan which seeks development that provides a safe and suitable access for all road users. For this reason the disputed condition is reasonable and necessary.

Other matters

13. The appeal site adjoins part of the boundary of the Kenilworth Conservation Area. Both parties agree that the proposal would not have a detrimental impact on the significance or setting of the conservation area I see no reason to disagree. This matter, therefore, has no bearing on my decision.
14. The development proposed would realise the added benefit of No 135 as a dwelling. Whilst an additional property would help contribute to local housing supply, there is nothing within the evidence before me to suggest that the need for housing is a material consideration that would outweigh the harm to the safety of pedestrians and other non-motor users.
15. I recognise that the planning application was originally recommended for approval but that this was overturned by Members. Whilst I appreciate that the outcome of the application will have been a disappointment to the appellant, the recommendation to committee is just that, with Members able to decide the application based on the Officer's recommendation and all other material factors.

Conclusion

16. The development proposed would be harmful to the safety of pedestrians and other non-motor vehicle road users. There is no weight of material

² Manual for Streets (2007)

considerations before me sufficient to outweigh this conflict. Having had regard to all other matters raised I conclude that the proposal would be contrary to the development plan and the Framework and therefore the appeal is dismissed and condition No 1 retained in its current form.

R Walmsley

INSPECTOR