



Appeal Decision

Site visit made on 18 July 2018

by W Johnson BA (Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2018

Appeal Ref: APP/D4635/W/18/3193539

Land adjoining 126 Church Road, Bradmore, Wolverhampton WV3 7EN

- 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 Nouredine Elbakkali, Bantock Homes Ltd against the decision of Wolverhampton City Council.
 - The application Ref 17/00915/FUL, dated 9 August 2017, was refused by notice dated 18 December 2017.
 - The development proposed is the erection of 1 Four bedroom detached house, 2 Three bedroom semi-detached houses, 14 Three bedroom semi-detached houses with single garage, 4 Two bedroom semi-detached houses, 2 Two bedroom semi-detached bungalows and 6 Three bedroom town houses with integral garages. (29 new dwellings in total).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 four bedroom detached house, 2 three bedroom semi-detached houses, 14 three bedroom semi-detached houses with single garage, 4 two bedroom semi-detached houses, 2 two bedroom semi-detached bungalows and 6 three bedroom town houses with integral garages. (29 new dwellings in total) at land adjoining 126 Church Road, Bradmore, Wolverhampton WV3 7EN in accordance with the terms of the application, Ref: 17/00915/FUL, dated 9 August 2017, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Revised National Planning Policy Framework (the Framework) was published in July 2018, after the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the Revised Framework, and the subsequent comments received from both parties, in reaching my decision.
3. The appellant has submitted an amended plan for Plot 10 with their final comments. However, I am unable to accept this as it has not benefitted from a full consultation exercise, undertaken by the Council, where interested parties would have been notified.
4. Whilst the provision of affordable housing did not form part of the reason for refusal, the Council did suggest that a review mechanism would be required in the event of any approval being granted, and to re-assess the viability of the proposal. I have therefore treated this as a main issue, in the determination of this appeal.

Main Issues

5. The main issues in this appeal are:

- the effect on the living conditions of neighbouring occupiers on Lutley Close, and with particular regard to outlook, privacy and sunlight;
- the effect of the proposal on highway safety; and,
- whether or not it would accord with relevant local and national planning policy in respect to affordable housing.

Reasons

Living conditions

6. The principle of development is accepted by the Council, and I consider that the site is located within an accessible location, within walking distance to nearby District Centres, and with access to public transport. For these reasons, I do not consider that there will be a reliance of private motor vehicles. The scheme is for a total of 29 dwellings, which would comprise of a one bedroom detached house; two three bedroom semi-detached houses; 14 three bedroom semi-detached houses with single garages; 4 three bedroom semi-detached dormer bungalows; 2 two bedroom semi-detached bungalows and 6 three bedroom terraced houses with integral garages. The Council has not raised any issues with the design of the scheme in relation to character and appearance, and I too agree that the proposal represents a well-designed place, which is visually attractive in this respect.
7. The plots closest to the rear of the dwellings on Lutley Close are Nos 6-10, which would back onto Nos 15-20 Lutley Close. The potential for overlooking from the development is thus greatest in relation to these properties. Whilst concerns have been raised in respect of Plots 4-5, these would be sited adjacent to the church rather than any existing residential property. Plots 8 and 9 would have the closest direct facing relationship of all the dwellings proposed with 18 Lutley Close and 19 Lutley Close, where the separation distance would be approximately 10 metres. However, as these proposed dwellings are bungalows, single storey in form with their roofs sloping away from the dwellings on Lutley Close, the potential for any adverse effects on outlook is therefore minimised. Consequently, there would be no sense of enclosure created. Furthermore, as permitted development rights could be removed to prevent any extensions or openings to the roof, this would ensure the living conditions of the existing occupiers would be protected.
8. The other dwellings on Lutley Close, which face the scheme would have much greater separation distances than No 18 and No 19, and would not directly face the scheme, and being sited at oblique angles. Whilst concerns have been raised with regards to the effect of Plot 10 on 15 Lutley Close and 16 Lutley Close, the overall separation distance provided, and the facing elevation being the gable end with 3 non-habitable room windows will ensure that no significant adverse harmful effects will occur. The windows in this elevation will serve a cloak room at ground floor; a bathroom at first floor, and an en-suite at second floor, and as such all of these windows are likely to be obscure glazed, which could be conditioned accordingly. However, an additional mitigating factor, key to the preservation of the living conditions of No 15 and No 16 are that they will not directly face Plot 10.

9. Although the development would be readily visible from the properties adjacent to the site on Lutley Close, the siting, location and design of properties within the scheme would ensure that development would not create any significant adverse effects on the living conditions of existing occupiers. During my site visit, I noted that the land levels of the appeal site was comparable those at present at Lutley Close. However, whilst the scheme will be sited to the south of the properties on Lutley Close, the design and location of the dwellings proposed would ensure that properties on Lutley Close would still receive a considerable amount of open sky, which in turn would still deliver a significant amount of daylight/sunlight to these properties and their gardens.
10. The proposed layout is acceptable, and the distances proposed between the existing dwellings on Lutley Close and the scheme is sufficient to maintain a high standard of amenity for existing and future users. Therefore, the scheme does not amount to overdevelopment, as the dwellings can be accommodated comfortably within the site. The proposal would not have a materially harmful effect on the living conditions of the occupiers of properties on Lutley Close with regard to sunlight/daylight, outlook or privacy.
11. For all of these reasons the proposal would not create any harmful effects to the living conditions of neighbouring properties, in particular those on Lutley Close, and therefore accords with Saved Policies D4, D7, D8 and AM15 of the Wolverhampton Unitary Development Plan 2006, which seeks to prevent overdevelopment leading to cramped layouts and/obtrusiveness in relation to adjoining properties, buildings should not appear overbearing, and relate positively to and be appropriate to its context. Furthermore, it accords with Policy ENV3 of the Black Country Core Strategy 2011, which requires the highest possible design standards, good place making and sustainable development given local circumstances.
12. Additionally, the scheme is consistent with the guidance contained within the Residential Development Supplementary Planning Guidance 1996 (SPG), which seeks to achieve good levels of privacy, adequate sunlight and quality design. Furthermore, the proposal would comply with paragraph 127 of the Framework, which, seeks to ensure a high standard of amenity for existing and future users.

Highway safety

13. Vehicular and pedestrian access will be obtained directly from Church Road, which is an adopted road maintained by the Local Highway Authority. The appellant's Transport Statement explains potential traffic flows and volumes, and accident records for the locality amongst other things. Within this document it advises that that there is likely to only be a maximum of one movement per household in the peak hour, and that the overall traffic movements in any 24 hour period is not likely to exceed 174, based on 6 movements per dwelling. This was compiled through using Trip Rate Information Computer System (TRICS) data to assess traffic predictions. Dividing the figures into arrivals and departures, it is predicted that more vehicles will leave the site in the morning peak (08.00-09.00), and more vehicles will arrive in the evening peak (17.00 - 18.00), than at other times of the day.
14. In total it is anticipated that the scheme would potentially generate 23.2 vehicle movements during both the morning and evening peak hours,

amounting to approximately 0.8 vehicle movements per household in both peak hours. The Council's Professional Lead for Transport Development (PLTD) has accepted the findings in the TRICS assessment, and accepts that the scheme would not generate a significant amount of vehicular movements in and out of the site, including/during, the morning and evening peak hours. Furthermore, the PLTD considers the scheme to meet the Council's parking standards for residential developments, where it is envisaged that no additional on-street parking on Church Road would occur.

15. The comments from the Council and neighbouring occupiers in relation to the possible effect on the free flow of traffic using the Church Road/wider highway network, and on-street parking on Church Road have been noted, which I too saw some examples during my visit, but this was not excessive. It has been brought to my attention that there have been no accidents recorded on Church Road itself within the last 5 years. Whilst there have been four accidents resulting in seven slight injury casualties at the junctions with Oxbarn Avenue and Colbarn Road, these did not occur in the immediate vicinity of the site. There is no data to support the claims to the contrary of the findings in the submitted Traffic Statement or the comments from the PLTD. I consider that the comments from the PLTD form a material consideration in the determination of the appeal and carry significant weight. In light of all the evidence, I consider that the scheme would provide sufficient off-street parking within the site, and would not create an excessive amount of vehicular movements to the detriment of highway safety.
16. For all of these reasons, I therefore conclude that the proposed scheme would not unacceptably harm highway safety, and therefore accords with Saved Policy AM15 of the Wolverhampton Unitary Development Plan 2006, which seeks for development to contribute towards improving road safety and personal security. Furthermore, it accords with Policy ENV3 of the Black Country Core Strategy 2011, which requires urban streets and spaces to be designed to provide high quality public realm and an attractive, safe and permeable movement network. As a result, the proposal would comply with paragraph 102 of the National Planning Policy Framework, which requires potential impacts of development on transport networks to be addressed.

Affordable housing

17. There is an acknowledged need for affordable housing not only across the country but in this City as well. However, when considering if a planning proposal should make a contribution to such accommodation (whether on-site or off-site) regard should be given, in part, to the scheme's overall viability. The Council does not contest that the scheme would be unviable if affordable housing were to be secured in any form at this stage. The point of dispute between the parties in this regard is, therefore, in respect to the lack of any built-in review mechanism, such that the viability of the development to provide affordable housing could be reviewed at a later date, and then for it to be secured if appropriate.
18. Whilst, this was not a reason for refusal, the Council has made references to this requirement in the officer report for planning committee on 14 November 2017 and in their Statement of Case for this appeal. The Council has maintained that they accept that the proposal is not financially viable, and that a reduction in Section 106 requirements commensurate with the shortfall in

viability would be applied on a pro-rata basis, for all properties that are ready for occupation within 3 years of the date that a lack of viability was demonstrated. The appellant has confirmed in their final comments, the acceptance of these terms.

19. Both parties have been contacted regarding this issue, and the Council have confirmed that Policy H7 referred to in the SPG was superseded in 2006. However, they have confirmed that Policy HOU3 of the Black Country Core Strategy, 2011 is now relevant for the delivery of affordable housing. Within the policy it seeks to secure 25% affordable housing on all sites of 15 dwellings or more, where it is financially viable. On sites where 25% affordable housing is proven not to be viable, the maximum proportion of affordable housing will be sought, which will not undermine the development's viability. Financial viability assessments conforming to an agreed methodology will be required, and claw back and other flexible arrangements will be sought through planning agreements, wherever possible, to allow for changing market conditions in future years.
20. As the scheme is not accompanied by a Section 106/unilateral undertaking, there is no suitable mechanism to secure the re-appraisal of the viability of the scheme at a later date. The Government's Planning Practice Guidance (PPG) sets out that viability assessment in decision taking should strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission (Paragraph: 010 Ref ID: 010-010-20180724). Additionally, it states, where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time (paragraph: 009 Ref ID: 10-009-20180724).
21. However, the proposal is for 29 dwellings, and I have no reason to suppose in this case, given the limited scale and nature of the development proposed, that it would be likely to be brought forward other than in a single phase or over a long term. The timescale for carrying out the development works would not be very long, and if, therefore, the development was to be carried out in the near future, it is very unlikely that circumstances would change sufficiently to increase profitability to a level where contributions would be feasible. Therefore, I am not persuaded that the provisions of Policy HOU3 for 'claw back' would meet the relevant tests in this instance, as set out in paragraph 56 of the Framework. In particular, it is not necessary to make the development acceptable in planning terms. I therefore give it no positive weight in the overall planning balance. The nature of this relatively small-scale development means that a review of viability through an s.106 obligation would not be appropriate in this instance.
22. For all of these reasons, I therefore conclude that the proposed scheme would accord with Policy HOU3 of the Black Country Core Strategy 2011, for the delivery of affordable housing. As a result, the proposal would accord with paragraph 56 of the Framework, which sets out the tests when a planning obligation should be sought.

Other Matters

23. In addition to those matters considered above, neighbouring occupiers on Lutley Close have raised concerns, regarding, amongst other things, the clearance of trees/hedges, noise/odours/smoke and wildlife. I have considered these concerns, but have judged them to be unfounded. I note that in the Officer Report, no objections have been received from Environmental Health, the Tree Officer or the Ecologist/Landscape Architect on the above issues raised. I agree with the Council in these respects, as the activities associated with the construction can be mitigated and suitably controlled by means of condition to prevent any significant harm occurring.
24. I have had regard to various other matters raised by the neighbouring occupiers including, amongst other things, property values and loss of views, but these do not alter my conclusions on the main issues. I have considered this appeal on its own merits and concluded that it would be acceptable for the reasons set out above.
25. The Council has set out in its submission that a Planning Obligation would be required for 10% renewable energy in addition to the 25% affordable housing, and for each dwelling to have an electric vehicle charging point. However, no suggested condition has been provided in respect of 10% renewable energy or evidence to justify its inclusion. Therefore, in light of the lack of evidence on this matter, and the viability issues that have been demonstrated by the appellant I have not sought, in this instance to require 10% renewable energy to be included in the scheme.

Conditions

26. The appeal being allowed, I attach conditions securing the development in accordance with the approved plans for certainty. A condition for the submission of materials has been included in the interests of the character and appearance. Ensuring the construction of the visibility splays, parking areas and turning head is necessary in the interests of highway safety. Additionally, I have included a condition restricting the use of the garages in accordance with the response from the PLTD.
27. Conditions relating to hard and soft landscaping and its maintenance, and the boundary treatments have been included in the interests of the character and appearance of the area. A condition relating to drainage is necessary to ensure sufficient water disposal. A condition requiring the submission of a Construction Method Statement is required to ensure that the developers have consideration for neighbouring occupiers and the highway network. Additionally, I have required Conditions controlling the hours of construction, and external lighting in the interests of preserving the living conditions of neighbouring occupiers.
28. Permitted development rights have been removed from some dwellings to extend the habitable accommodation, and the ability to install additional windows and openings, in order to protect and maintain the living conditions of existing neighbouring occupiers. However, I have not removed the ability for future occupiers to erect domestic outbuildings, as I consider that such structures would not materially harm neighbouring occupiers, and in the absence of any other evidence to justify their removal, it would be unreasonable to prevent future occupiers the ability to erect, such domestic outbuildings as garden sheds/greenhouses, especially as the Town and Country

Planning (General Permitted Development) (England) Order 2015 sets parameters, in order to protect the living conditions of neighbouring occupiers.

29. I have included Conditions relating to contaminated land and gas protection measures to ensure the protection of future occupiers. I have included a Condition to check the site for wildlife and the installation of tree protection measures before development commences, in the interest of the local ecology. However, I do not believe that a new ecological report is necessary. Additionally, given the location of the residential units and the nature and volume of traffic on Church Road, I do not consider that an acoustic attenuation scheme is required to safeguard the living conditions of future occupiers. This can be secured through the submission of a future Building Regulations application. I have included a Condition for one vehicle charging point to be installed in every dwelling to give future occupiers the option for using electric powered vehicles.
30. I have reviewed the Council's suggested conditions where necessary to better reflect the requirements of the Planning Practice Guidance (PPG).

Conclusion

31. I have found that the proposed development would not conflict with the development plan and there are no other considerations which indicate that planning permission should be refused. Consequently I conclude that the appeal should be allowed.

Wayne Johnson

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 strict accordance with the following approved plans: 1953/P1A; 1953/P2A; 1953/P3A; 1953/P4A; 1953/P5A; 1953/P6A and 1953/P10E.
- 3) Prior to the commencement of the development, a scheme for the landscaping of the site (including hard surfaces, and wherever appropriate the retention of existing trees) shall be submitted to, and approved in writing by, the local planning authority. The approved landscaping scheme shall be fully implemented within one year of either the first occupation or use of the development or its completion, whichever is the sooner, and shall be maintained thereafter for a period of not less than five years. The maintenance shall include the replacement of any tree or shrub which is removed, destroyed or dies by a tree or shrub of the same size and species as that which it replaces.
- 4) Prior to the commencement of the development, details for the disposal of surface water shall be submitted to and approved in writing by the local

- planning authority, and the works shall only be carried out in accordance with those details so approved. Such water disposal shall whenever practical be disposed of on site without the need for connection to any mains system.
- 5) Prior to the commencement of the development, a Construction Method Statement (to include controls in relation to traffic management, hours of operation, dust, noise, vibration, waste, stockpiling, emissions, vehicle sheeting and wheel washing, road sweeping, lighting, energy efficiency, machinery and plant including cranes) for the development shall be submitted to and approved in writing by the local planning authority. The approved measures shall be undertaken at all times during construction.
 - 6) Prior to the commencement of development, details of all materials to be used externally shall be submitted to and approved in writing by the local planning authority. The development shall be built in the materials approved.
 - 7) Prior to first occupation of the development, details of all proposed and retained boundary treatments (including all walls, fences and acoustic fences and other means of enclosure on the boundaries of and within the site) shall be submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be provided prior to occupation and retained at all times thereafter.
 - 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, replacing and re-enacting that Order with or without modification) no windows or other form of opening above ground floor level shall be introduced into the rear elevations of the residential Plots 4,5,6,7,8, 9 and the side elevation of the three storey town house at Plot 10; of the buildings hereby permitted.
 - 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other revoking, replacing and re-enacting of that Order with or without modification) there shall be no extensions to any of the dwellings any on Plots 4,5,6,7, 8, and 9 of the development hereby permitted, without planning permission first being obtained.
 - 10) Prior to first occupation of the development, vehicular visibility splays shall be provided in accordance with the details shown on the approved drawings; Such splays shall thereafter be permanently maintained free from obstruction to visibility above a height of one metre above the level of the adjacent carriageway.
 - 11) Prior to the first occupation of the development hereby permitted, the parking areas shown on the approved plan shall be provided and shall thereafter be kept available for the parking of vehicles in connection with the use hereby approved, at all times.
 - 12) Prior to the first occupation of the development hereby permitted, the turning space, shown on the approved plan shall be provided and shall thereafter be kept available for the turning of vehicles in connection with use hereby approved, at all times.

- 13) The garages hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.
- 14) Prior to the commencement of the development, details of gas protection measures incorporated into the foundation design of the dwellings hereby approved shall first be submitted to and approved in writing by the local planning authority. The development shall be built incorporating the agreed foundation design details.
- 15) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.
- 16) During the construction phase of this development, working hours and commercial vehicle movements to or from the site during construction shall not be undertaken outside 0800hrs to 1800hrs Mondays to Fridays and 0800hrs to 1300hrs Saturdays, and at no time on Sundays or Bank and Public Holidays.
- 17) Prior to the commencement of the development, the recommendations as stated in the Badgers Report shall be implemented (Dr Underhill's earlier March 2016 Report), which includes a recommendation that the site should be checked by an ecologist for badgers just before work starts on site. If, during the course of the inspection or development, any badgers are found which have not been previously identified, work shall be suspended and additional mitigation measures shall be submitted to and approved in writing by the local planning authority.
- 18) Prior to the commencement of development, details of protective fencing (type and position) around tree(s) to be retained shall be submitted and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored

or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.

- 19) Prior to first occupation of the development, details of external lighting shall be submitted to and approved in writing by the local planning authority. External lighting shall be provided in accordance with the approved details prior to occupation and retained at all times thereafter.
- 20) Prior to first occupation of the development, a scheme for the provision of one electric recharging point per dwelling, in accordance with the "type 1" mitigation requirements in the Black Country Air Quality Supplementary Planning Document, shall be submitted for written approval by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of the development and shall be maintained for the life of the development.

Details of Type 1 Mitigation can be found at the following link:
<http://www.wolverhampton.gov.uk/CHttpHandler.ashx?id=11036&p=0>