



Appeal Decision

Site visit made on 14 August 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 07 October 2019

Appeal Ref: APP/P3420/W/19/3229732

Land off Liverpool Road East, Kidsgrove, Staffordshire ST7 3AD

- 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 Matt Thompson against the decision of Newcastle-under-Lyme Borough Council.
 - The application Ref 18/00912/FUL dated 21 September 2018 was refused by notice dated 7 February 2019.
 - The development proposed is residential development for 4 dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development for 4 dwellings at land off Liverpool Road East, Kidsgrove, Staffordshire ST7 3AD in accordance with the terms of the application, Ref 18/00912/FUL dated 21 September 2018, subject to the conditions in the attached schedule.

Procedural Matters

2. A revised National Planning Policy Framework (the Framework) was published in February 2019 after the issue of the Council's decision. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.
3. Planning permission was granted by the Council Ref 19/00098/FUL on the 22 May 2019 for two dwellings on the appeal site (the previous permission).
4. The Council's refusal notice included a reason relating to the loss of a visually significant and protected beech tree. However, the appellant has subsequently commissioned a tree survey and the Council has accepted that the beech tree needs to be removed on the grounds of safety. The removal of the tree is also addressed by way of a condition within the previous permission.
5. As a result of the tree survey, the appellant also proposed minor amendments to the layout plans which would allow more space in the vicinity of trees identified as T5 and T6. With the tree issue resolved and on the basis of amended plans, the Council therefore no longer wishes to proceed with the tree related reason for refusal.

6. As the parties are in agreement that the amended plans which are Drawings 00535 AL(0) 11 and 00535 AL(0) 12 represent an improvement for the remaining trees, I do not consider that parties would be prejudiced by their inclusion in place of previous Drawings 00535 AL(0) 03 and 02.

Main Issue

7. The main issue is therefore whether the proposal would be inappropriate development within the Green Belt.

Reasons

8. The Framework identifies that the fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open. It states that inappropriate development is harmful and should not be approved other than in a limited number of exceptions.
9. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions. The appellant seeks to rely upon the exception contained in paragraph 145 e) which relates to limited infilling in villages.
10. Policy S3 of the Newcastle-under-Lyme Local Plan 2011 (the Local Plan) was adopted in 2003 and seeks to control development in the Green Belt. It states that development for residential purposes of a small gap (no more than 1 or 2 plots in width) within the built up area of the village of Keele may be permitted so long as the gap makes no material contribution to amenity of the locality. However, the Local Plan was adopted some years before the publication of the Framework and is more restrictive than the Framework exception relied upon. In view of the conflict with the Framework, I attach limited weight to Policy S3 of the Local Plan.
11. The appeal site is an overgrown parcel of land on the northern side of the A50 Liverpool Road East between dwellings at Nos 47 and No 57. Opposite the appeal site, there are a number of businesses including a garage and showroom. The Council accepts that the appeal site does constitute a gap within a continuous ribbon of development extending from the defined urban area of Kidsgrove and can be considered to be in a village. From my site visit, I agree that the appeal site is in a village for the purposes of "limited infilling in a village".
12. The Council does not however consider that 4 dwellings is limited. Two other appeal decisions¹ are referred to by the parties with regard to the interpretation of limited. The Council considers that the two decisions illustrate that limited infilling in villages includes an assessment of location with regard to surrounding development to qualify under the exception. Each case will need to be assessed on its own merits. In the appeal decisions referred to, there was no agreement that the appeal sites were in a village location and a detailed assessment of the location was therefore necessary. The Council has however accepted that the appeal site is within the village and has recently granted planning permission for two dwellings on the appeal site. The appeal proposal for four bungalows would continue the existing row of bungalows and would not appear to be

¹ APP/M3645/W/16/3141780 and APP/RO660/W/173170279

overdevelopment or out of context having regard to surrounding development.

13. There is no Framework definition of limited infilling. However, The Oxford English Dictionary defines limited as restricted in size, amount or extent. Having regard to that definition and the agreement that the appeal site is in a village, I do consider that the appeal proposal for four dwellings would fall within the exception of limited infilling within a village.
14. As an exception falling within Paragraph 145 e) of the Framework, the appeal proposal is therefore not inappropriate development in the Green Belt.

Other Matters

15. The Council is of the view that the appeal proposal of 4 dwellings would have a greater impact upon Green Belt openness than the previous permission which allowed 2 dwellings. However, openness only becomes a consideration if the appeal proposal is found not to fall within the exception relied upon and is found to be inappropriate development.
16. The Council has raised no other concerns about the appeal proposal and accepted the principle of development on the appeal site with the recent grant previous permission and considers the design and scale of the appeal proposal to be appropriate. I have had regard to the one letter of support and one letter of objection in reaching my decision.

Conditions

17. I have considered the conditions put forward by the Council and other parties against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency, clarity and omitted others. In the interests of certainty and proper planning I have included conditions relating to commencement and plans. A tree protection condition is necessary and required precommencement so that there is no harm caused to trees at any stage of the development.
18. A construction management plan condition is required to protect the amenities of neighbouring properties and to ensure that the site operates safely during the construction period. The condition is required to be precommencement so that the approved details are in operation when construction starts. A condition controlling the hours of operation during the construction period is required to ensure that any impacts upon health and quality of life arising from potential pollution for neighbouring developments are mitigated. A drainage condition is required to ensure adequate drainage to the site and is required to be precommencement to reduce the risk of flooding. A coal mining condition is required as the appeal site is in an area where there has been past coal mining activity. The condition is required to be precommencement to ensure that any required remedial measures are carried out before development commences.
19. Land contamination conditions are required to be precommencement to enable an assessment of the nature of the risks involved and the need to control any risks. Land contamination has been identified as a potential issue in view of the proximity of the development site to the Venator

works. Details of facing materials, roofing materials and boundary treatments are required in the interests of amenity. Details of visibility splays are required in the interests of highway safety.

20. Conditions relating to materials for surfacing materials together with means of surface water drainage for those areas and delineation of parking spaces are necessary to ensure a satisfactory appearance of the development. Conditions requiring schemes for landscaping, planting and where appropriate replacement planting and for a replacement tree for the beech tree are required in the interests of amenity. A condition requiring electric charging points for electric cars is necessary in the interests of the environment. I have not included conditions requiring soil testing or noise levels for the appeal dwellings and amenity areas as they are dealt with under other legislation. I have also not included the condition requiring the access to remain ungated as I have limited information as to why that requirement is necessary.

Conclusion and Planning Balance

21. I have found that the appeal proposal falls within the exception of limited infilling in the village and is therefore not inappropriate development. The appeal proposal does accord with the development plan as a whole with the exception of Policy S3 of the Local Plan. However, in that respect, I have attached substantial weight to the more up to date Green Belt provisions contained in the Framework. Therefore, on balance, the appeal is allowed subject to conditions.

E Griffin

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: Site Location Plan 00535 AL(0)01; House type 1 Plot 1 and 4 00535 AL(0)11; and House type Plot 2 and 3 00535 AL(0)12.
- 3) No development, site clearance or preparatory work shall take place until the scheme for the protection of retained trees set out in Section 5 of the Arboricultural Report of Tree Heritage Limited dated the 29 March 2019 has been implemented and the scheme shall remain in place for the duration of the construction period.
- 4) Prior to commencement of development a Construction Method Plan(CMP) shall be submitted to and approved in writing by the Local Planning Authority. Details to be submitted shall provide for the location of a site compound and any associated temporary buildings, parking areas for visitors and site operatives, loading and storage of plants and materials and measures to prevent deleterious material on the highway. The approved details shall be implemented in accordance with an approved timetable and remain in place for the construction period of the development.
- 5) No development shall commence until a detailed foul and surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to first occupation of the dwellings and retained for the life of the development.
- 6) Prior to the commencement of development, the investigatory boreholes recommended in the Coal Mining Risk Assessment by Sladen Associates shall be undertaken and the findings together with any necessary remediation measures arising from the investigations shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved remedial measures and implemented prior to commencement of development.
- 7) No development shall commence the scope of a site investigation to assess the nature and extent of any land contamination on site shall be submitted to, and approved in writing by, the local planning authority. Site investigation works shall be undertaken by competent persons and in accordance with the requirements of: BS10175 (2011) + A2 (2017) Investigation of Potentially Contaminated Sites - Code of Practice and BS8576 (2013) Guidance on Investigations for Ground Gas - Permanent

Gases and Volatile Organic Compounds. The findings of the site investigation shall be used to assess the potential risks from land contamination to: human health, controlled waters, property, ecological systems, archaeological sites and ancient monuments. The development hereby permitted shall not begin until a report of the results of the site investigation works, together with a risk assessment has been submitted to, and approved in writing by, the local planning authority.

- 8) In the event that contamination is identified under Condition 7 above, the development hereby permitted shall not begin until a detailed remediation scheme to bring the site to a condition suitable for its intended use has been submitted to and approved in writing by the local planning authority. The scheme shall include all remediation works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The remediation works shall be carried out in accordance with the approved details and a verification report which demonstrates its effectiveness shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development.
- 9) No development hereby permitted above slab level shall take place until details of all facing materials, roofing materials and boundary treatments have been submitted to and approved in writing by the local planning authority.
- 10) No development hereby permitted above slab floor level shall take place until details of visibility splays of 2.4 metres x 43 metres at the access have been submitted to and approved in writing by the Local Planning Authority. The visibility splays shall thereafter be provided in accordance with the approved plan prior to occupation of any of the dwellings hereby permitted and kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level and thereafter retained for the lifetime of the development.
- 11) No development hereby permitted above slab level shall take place until details of surfacing materials together with means of surface water drainage for those areas and delineation of parking spaces have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details and the access, parking and turning areas shall be completed prior to the first occupation of any of the dwellings hereby permitted.
- 12) No construction work or deliveries relating to construction shall take place outside of the following times during the period of construction
Weekdays: 08:00-18:00
Saturdays: 08:00-13:00
- 13) Prior to the occupation of any of the dwelling houses hereby permitted, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of a replacement tree for the felled beech tree, indications of all existing trees and hedgerows on the land and identify those to be retained; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants

noting species, plant supply sizes and proposed numbers/densities where appropriate.

- 14) All planting, seeding or turfing comprised in the approved details of landscaping 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.
- 15) Prior to occupation of each dwelling, at least one car parking space per dwelling shall be provided with a fully operational dedicated electric vehicle charging point to be retained for the lifetime of the development.

END OF SCHEDULE