
Appeal Decision

Site visit made on 14 October 2019

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2019

Appeal Ref: APP/K0235/W/19/3234052
35 Sandy Road, Willington MK44 3QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jim Gill (c/o J.C.Gill Developments Ltd) against the decision of Bedford Borough Council.
 - The application Ref 19/00303/FUL, is dated 7 February 2019.
 - The development proposed is construction of three detached dwellings and garaging.
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Decision

1. The appeal is allowed and planning permission is granted for construction of three detached dwellings and garaging at 35 Sandy Road, Willington MK44 3QS in accordance with the terms of application 19/00303/FUL, dated 7 February 2010, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal results from the Council's failure to determine the planning application within the statutory period. The evidence sets out that had they been in a position to determine the application they would have refused it on the grounds of the effects on highway safety.
3. Seeking to address an objection from the highway authority ('the HA') the appellant submitted amended plans on 24 June 2019, albeit beyond the Council's statutory period of 5 April 2019. Although the Council had still not determined the application, they still chose not to accept the plans because I am told that they do not accept amendments unless requested by a case officer or consultee. Further, they considered the changes to be 'substantial' alterations. The appellant has submitted the amended plans with the appeal. In accordance with the so called Wheatcroft principles the main consideration is whether the changes result in a substantial difference that is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
4. The amendments made to the scheme principally relate to changes to the internal layout and extent of hard surfacing to allow for more parking and turning space. This is so vehicles could manoeuvre and turn safely within the site so they can leave in a forward gear. In my view these are minor alterations to the internal layout, albeit important in the context of the objection from the HA. They do not alter the nature or substance of the application which remains as applied for and are not substantial.

5. Given the type of appeal, background and the extent and nature of the issues involved, I gave the Council an opportunity to clarify their position during the appeal and to seek further comments from the HA who duly responded¹, withdrawing the objection. Overall, I find that no party would be prejudiced by my consideration of the plans and I have therefore determined the appeal on the basis of the amendments. I have also taken the appellant's name in the banner heading above from the appeal form as it is more accurate.

Background and Preliminary Matter

6. The proposal before me follows the refusal of previous applications for residential development and an allowed appeal in 2017² which granted outline permission for 2 detached dwellings. That was followed by an application for reserved matters which was approved and a full application for the erection of 3 dwellings, which was refused. In the most recent appeal, the Inspector concluded that highway safety would not be affected but dismissed the appeal on the grounds of character and appearance.
7. Whilst I have had regard to the previous appeal decision the changes to the scheme originally submitted included the re-siting of some buildings and additional space along the site frontage for landscaping. The Council do not object on the grounds of character and appearance and I am satisfied that the changes made have addressed the comments of the previous inspector and that in this regard, there would be no conflict with the development plan policies referred to by the Council.

Main Issue

8. Given the above the main issue is the effect of the proposal on highway safety.

Reasons

9. The most recent appeal is a significant material consideration in this regard as the Inspector found no harm to highway safety by virtue of turning space, room for visitors and the parking provision, including use of garaging and tandem spaces. In this appeal Plot 1 is shown to have private vehicular access with plots 2 and 3 sharing an access. Three vehicle spaces are shown for each plot, 1 in a suitably sized garage and 2 other spaces which would meet adopted standards. Although just below the width standard of 3.6 metres, the space could still be used and there is more than adequate space for loading and unloading and for vehicles to turn and leave the site in a forward gear.
10. For Plots 2 and 3 the hardstanding area has increased and is sufficient for a vehicle to turn within the site even if some of the space was occupied by parked vehicles. For all plots this is also demonstrated by the amended drawings showing the tracking of vehicles and the HA no longer object. On such a modest scheme parking would also be managed by future occupiers and overall, the parking and turning spaces would not lead to vehicles reversing onto the highway and I have no other highway safety concerns, subject to conditions.

¹ Letter dated 12 November 2019.

² APP/K0235/W/17/3173291.

11. For these reasons, the proposal would not cause harm to highway safety. It would accord with Policy BE30 of the Bedford Local Plan insofar as it requires consideration of additional traffic expected to arise from the development, either in relation to highway capacity or general disturbance, and that provision made for car parking and that access arrangements are suitable. There would be no conflict with the highway safety objectives of the National Planning Policy Framework ('the Framework').

Conditions

12. I have considered the conditions put forward by the Council and subsequently by the highway authority and I have amended the wording where necessary in the interests of clarity and simplicity. The appellant has confirmed acceptance to the wording of pre-commencement conditions relating to the submission of details of materials, a hard and soft landscaping scheme and approval of details for the access. Conditions 3, 4 and 7 are therefore conditions precedent and such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interest of a combination of the effects on the character and appearance of the area and highway safety.
13. The Council have requested a condition removing permitted development rights³ for fences, gates, walls, extensions, outbuildings and hardstandings. Given the size and shape of the site and dwellings, in order to protect the character and appearance of the appeal site and living conditions of future occupiers, to my mind there is clear justification for a restriction on future extensions and outbuildings under Classes A, B and E. However, fences, walls, other means of enclosure and hard surfaces are essentially hard landscaping details which I have imposed a condition for. Such further restrictions are not therefore necessary.
14. To ensure the proposed parking and turning facilities are satisfactorily provided and thereafter retained, a condition is required for these to be provided and laid out prior to occupation of the dwellings. Parking is clearly shown on the plan and other than securing implementation there is no justification for further details, other than visitor cycle stores and refuse. A condition is necessary for details of the access junctions to be agreed and implemented as such, in the interest of highway safety. To minimise flood risk details and implementation of a drainage scheme is also required. To ensure an energy efficient and more sustainable development, an energy statement is also necessary.

Planning balance and conclusion

15. For the reasons given above, I have identified no harm to highway safety and there are no other objections from the Council to the proposal. The proposal would accord with the development plan, when read as a whole.
16. Further, the Council have confirmed that they cannot currently demonstrate a 5 year housing land supply⁴. Because this is an application involving the provision of housing the so called tilted balance in paragraph 11 d ii) of the Framework is engaged, in accordance with footnote 7. In a Borough with a significant current under supply an additional dwelling to the 2 previously allowed would make a small but valuable contribution. There would also be some small economic and

³ Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

⁴ 3.01 years as per paragraphs 7.2-7.3 of Council's statement of case.

social benefits arising from the proposal, both during construction and from some future support for local services and facilities.

17. The adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. As such, the proposal would be the sustainable development for which local and national policy indicates a presumption in favour⁵. The latter being a significant material planning consideration that weighs in favour of the proposal.
18. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with the plan. Having regard to all other matters raised, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR

⁵ Policy AD1 of the Bedford Borough Allocations and Designations Local Plan 2013.

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: JD/2018-01/02B, JD/2018-01/08A, JD/2018-01/11A, JD/2018-01/12A, JD/2018-01/06, JD/2018-01/07, JD/2018-01/09, JD/2018-01/10, 19-01, 19-02 and 19-03.
- 3) No development shall take place above slab level until details of the materials to be used in the construction of the external surfaces of the development 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) No development shall take place until details of the soft and hard landscaping of the site, including details of boundary treatments and any retaining walls/fences have been submitted to and approved in writing by the local planning authority. The details shall also include schedules of plants noting species, plant sizes and proposed numbers/densities, an implementation program and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment. Development shall be carried out in accordance with the approved details.
- 5) All planting, seeding, turfing and other details 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.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development under Schedule 2, Part 1, Classes A, B or E shall take place other than those expressly authorised by this permission.
- 7) No development shall take place until details of the junction of the proposed vehicle access, between the appeal site and the highway (including details of works to the existing access) shall have been submitted to and approved in writing by the local planning authority. Such details shall include the layout, specification and levels of the access and visibility splays. The junction shown on the approved plans shall be constructed to base course level prior to the commencement of any other development on the site. The development shall not be occupied until the access has been constructed in accordance with the approved details. The access shall thereafter be retained in the approved form.
- 8) The dwellings hereby permitted shall not be occupied until the areas shown for the parking and turning of vehicles shown on the approved plans have been provided, surfaced and drained in accordance with

details that have been previously submitted and approved in writing by the local planning authority. Subsequently, the parking and turning areas shall not be used for any purpose other than the parking and turning of vehicles.

- 9) Prior to occupation, details of facilities for the storage and collection of refuse, recycling and cycle storage shall be submitted to and approved in writing by the local planning authority. The facilities shall be provided in accordance with the approved details prior to first occupation and thereafter shall be retained as approved.
- 10) Prior to occupation details of the drainage works for foul and surface water shall have been submitted to and approved in writing by the local planning authority. None of the dwellings hereby permitted shall be occupied until the foul and surface water drainage works shall have been completed in accordance with the submitted and approved details.
- 11) No building shall be occupied until an energy statement has been submitted to and approved in writing by the local planning authority. The energy statement shall include:
 - An assessment of the actual effect on carbon dioxide emissions demonstrating the measures previously agreed as part of the energy audit have achieved a reduction of at least 10% in carbon emissions below the normal requirement set by the Building Regulations.
 - A statement of how the layout, orientation, design and materials used in the development have actually been influenced by the energy audit.

Development shall be carried out in accordance with the approved details.

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