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## Appeal Decision

Site visit made on 29 October 2019

**by Brendan Lyons BArch MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 6<sup>th</sup> December 2019**

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**Appeal Ref: APP/J3720/W/19/3233351**

**Land opposite Cedar House, Moreton Paddox, Warwick CV35 9BT**

- 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 Steven Smith against the decision of Stratford-on-Avon District Council.
  - The application Ref 19/00232/FUL, dated 15 March 2019, was refused by notice dated 10 May 2019.
  - The development proposed is the construction of a single-storey dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of a single-storey dwelling at Land opposite Cedar House, Moreton Paddox, Warwick CV35 9BT, in accordance with the terms of the application Ref 19/00232/FUL dated 15 March 2019, subject to the conditions set out in the schedule annexed to this decision.

### Main Issues

2. The main issues in the appeal are:
  - whether the proposed development would accord with national and local policy on the location of rural housing; and
  - the quality of the proposed design and its effect on the character and appearance of the local area.

### Reasons

3. Moreton Paddox was an Edwardian country house, complete with a full range of outbuildings and formal gardens. Following the house's demolition in 1959, its site and the land to each side of its two parallel drives were developed over a period of years with individual detached houses standing on private plots. The appeal site forms part of the domestic curtilage of one of these, Cedar House, but is separated from it by the Main Drive that carries on to give access to a number of other houses.
4. The site, which is a rectangular plot some 0.17ha in extent, has open frontages to Main Drive and to a branch drive that serves a newly built dwelling known as The Ghost House. On the other two sides it adjoins the gardens of large detached houses. The site is mainly covered by grass, and has mature trees of differing heights and species around its four sides.

5. Permission is now sought to erect a single-storey house on the site. The house would comprise a series of flat-roofed mirror glass pavilions arranged in a loose semi-circle connected by short link elements clad in opaque white glass. The structures would be designed to appear to float above the ground, and under the canopies of the trees, all of which except for two would be retained. Gas tanks, bins and garden equipment would be enclosed in an enclosed structure along the side boundary, clad in black timber. This would be shared with The Ghost House, which is currently in the same ownership.

*Site location*

6. In seeking to achieve sustainable development, Policy CS.1 of the Stratford-on-Avon Core Strategy 2011-2031 ('CS'), adopted in 2016, requires development to be located and designed so that it will contribute to the maintenance of sustainable communities in the District. Policy CS.15 promotes a pattern of balanced dispersal of development, based on the character and function of a range of sustainable locations. Under this policy, Moreton Paddox would fall within the category of 'All other settlements', where development is to be restricted to small-scale community-led schemes to meet identified local need. This is reflected in the distribution of housing development set out by Policy CS.16, which seeks provision of about 2000 homes in Local Service Villages and approximately 750 homes in Other Rural Locations.
7. The Council state that the proposal is contrary in principle to Policy CS.15 because it is not a community-led scheme. But the restriction imposed by Policy CS.15 is not absolute. In setting the Area Strategy for Countryside and Villages, Policy AS.10 outlines other acceptable forms of development for new housing, including replacement dwellings and conversions, in addition to local need community-led proposals. A further exception, allowed by part (j) of the policy, is for the construction a new single dwelling in the open countryside which is of exceptional quality and design and which makes a positive contribution to the character of the local area.
8. The appellant argues that the appeal proposal fully complies with this criterion. Matters of design and character are considered later in this decision, but the first issue is whether the site location should be seen as 'open countryside'. The term is not defined by Policy AS.10 or its supporting text. The appellant's interpretation is that it should cover all of the area to which the policy applies, that is all parts of the District outside the built-up areas of the main town and rural centres and the boundaries of designated growth areas.
9. The title of the policy is 'Countryside and Villages', suggesting a clear distinction between land within and outside settlements. The policy's list of acceptable forms of development includes several that are specific to villages, including one that relates only to Service Villages (part (b)), and others that cover villages in general (such as parts (a) and (c)). But the list is introduced as 'development and uses in the countryside...'. This tends to suggest that all areas covered by the policy, including villages, are regarded as 'countryside', and that the many items on the list that are not specifically attributed to a particular type of location would be acceptable in principle whether they were within a village to not.
10. However, part (j) of the list is one of three forms of housing development that are only acceptable in the 'open countryside' (with parts (d), (e) relating to conversions). By my reading, the policy thus draws a distinction between sites

within villages or settlements, and sites in the 'open countryside' that are outside any settlement.

11. It is common ground that Moreton Paddox is a settlement, but in the lowest tier of the Policy CS.15 hierarchy, and that the site is within the settlement. The Council concludes that Policy AS.10 (j) does not apply for that reason. In reaching that conclusion it relies heavily on comparison between the exception allowed by the policy and the statement in paragraph 79 of the National Planning Policy Framework ('NPPF') that the development of isolated homes in the countryside should be avoided, unless specific circumstances apply, one of which is that the design of the dwelling is of exceptional quality. Policy AS.10 (j) may well have been drafted with the intention to reflect the NPPF<sup>1</sup> provision, but they are not identically framed.
12. The Council had advised before the planning application was submitted that the site was within the 'open countryside'. Its re-appraisal during consideration of the application was influenced by the 'Braintree' judgement of the Court of Appeal ('CoA')<sup>2</sup>. That decision confirmed the earlier judgement of the High Court<sup>3</sup> on the interpretation of 'isolated' in the NPPF. As Policy AS.10(j) does not refer to 'isolated' homes, I agree with the appellant that the CoA judgement is not critical to the application of the policy. The terms of the CS policy and the NPPF are not mutually interchangeable in this instance.
13. Having regard to the CoA judgement, in so far as it is relevant to the general issue of building homes in the countryside, and to the provisions of the CS, I conclude that the appeal site, being clearly located within a settlement, cannot be regarded as being in 'the open countryside'. The exception allowed by Policy AS.10(j) would therefore not be applicable to the appeal proposal, nor any other of the policy's exceptions. The proposal would not in principle accord with the strategy for distribution of new housing outlined by Policies CS.15 and CS.16.

#### *Design quality and local character*

14. The Council contend that even if the site were suitably located, the proposal would not provide the exceptional quality of design sought by Policy AS.10(j). But irrespective of the site's status, design quality is an important consideration in the appeal.
15. The NPPF advises that 'great weight' should be given to outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.<sup>4</sup> In seeking to secure high quality design, CS Policy CS.9 encourages design innovation where it would reflect and complement the immediate local environment and maximise sustainability benefits.
16. The proposal is supported by a comprehensive Design and Access Statement ('DAS') that sets out the genesis of the concept and its later refinement, and also an Addendum that focuses on the proposal's compliance with policy.

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<sup>1</sup> Similar wording was included in paragraph 55 of the 2012 NPPF, current at the time of the CS's adoption

<sup>2</sup> Braintree District Council v SSCLG and Others [2018] EWCA Civ 610

<sup>3</sup> Braintree District Council v SSCLG and Others [2017] EWHC 2743 (Admin)

<sup>4</sup> NPPF paragraph 131

17. The supporting text to Policy CS.9 echoes the NPPF<sup>5</sup> in endorsing the value of independent design review. In this case, the proposal was presented to the local expert design review panel at an early stage. A subsequent review of the refined proposal showed that the panel's initial recommendations had been taken on board in the evolution of the design. The review concluded that the proposal was 'of outstanding architectural quality, sensitive to its setting and an enhancement of its immediate surroundings'<sup>6</sup>. The proposal was confidently supported as meeting the requirements of NPPF paragraph 79. It was later confirmed that this would also address the expectations of Policy AS.10(j). The panel's analysis provides a measured assessment of the proposal's design merit, to which significant weight should be given.
18. The Council acknowledge that the proposed design would be of high quality, being 'intelligent and responsive' in regard to the constraints of the site and the retention of virtually all of the existing trees, but they consider that it would fall short of being 'truly outstanding or innovative'. Emphasis is placed on the word 'truly' as an indicator of a particularly high bar in terms of quality. However, that word does not appear in NPPF paragraph 131 or in Policy CS.9, or even in Policy AS.10. The Council seeks to apply the terms of NPPF paragraph 79 while having decided that this is not the relevant test. In any event, the conclusion of the design panel review was that the test would be met.
19. The Council's stated reasons for concluding that the proposed design would not be innovative or outstanding are not borne out. It may well be that raised pavilions have been used elsewhere as a way of building close to trees, but the appeal proposal goes further in its suggestion of floating structures, whose apparent lightness would be enhanced by their mirrored finish. That the proposal draws support from the evolution of Moreton Paddox as a series of individual houses does not undermine the strength and uniqueness of the current design solution. There is no evidence to support the proposition that the proposal's adjacent relationship with The Ghost House would compromise the quality of either house's design response.
20. The Council considers that the proposal would not be in keeping with the 'inherently residential' character of Moreton Paddox. But this is inconsistent with the acceptance that the settlement is made up of a sequence of house designs reflecting the period of their construction. The relatively brief period of its development, combined with its planned layout, gives Moreton Paddox a very distinctive self-contained quality. Not all of the houses are of high architectural quality, and the character of Stables Drive appears to have a more conventional almost suburban quality than the more generously scaled development of Main Drive. But there is evidence that recent interventions, both in the ambition of several newly built houses and in the updating of some of the original dwellings, are setting high standards. There is no consistency of form, and the Council accepts that there is no conformity of materials. The appeal proposal would introduce a new highly original form and a highly unusual material, but there is no reason to conclude that it would not be inherently residential.
21. The appeal site currently appears as a piece of left-over space in the midst of an unbroken series of developed plots. I endorse the design review panel's conclusion that the building of a single dwelling in this location would be

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<sup>5</sup> NPPF paragraph 129

<sup>6</sup> MADE Design West Midlands: Desktop Design Review Report, 1 March 2019

appropriate. Contrary to the Council's assessment, the site has limited value as a piece of open space, particularly as the settlement is entirely private. Its most distinguishing characteristic is its tree cover, and even if many of the trees are not individually of outstanding quality, collectively they help to bring something of the quality of the surrounding Special Landscape Area well into the developed area. The decision to put retention of trees at the heart of the design concept thus represents a very significant response to the landscape context.

22. For these reasons, I find that the proposal would represent a highly assured unique design response that would fit well with the form and layout of its surroundings. The proposal can be classed as outstanding and innovative. Its construction, which would be likely to receive some publicity, would help to raise standards of design standards in the area. The proposal's well considered sustainability credentials are not disputed.
23. I conclude on this issue that the proposal would comply with the terms of CS Policies CS.9 and CS.12 and with the design improvement objectives of the NPPF.

#### *Other matters*

24. The DAS provides analysis to show that concerns of adverse effect on neighbours from reflected sunlight or car headlights would not be borne out.

#### ***Balance of considerations***

25. I have accepted that there would be an in-principle conflict with the CS development strategy arising from the site's location in a lowest order settlement. The Council has not expanded on the nature and degree of harm that would arise from the proposed development. As the proposal involves only a single house the overall impact on the development strategy would be very modest.
26. The conflict with the strategy arises only because the proposal would be private rather than community-led. The Council's conclusion that the plan-led approach to the delivery of housing would be undermined is somewhat called into question by the range of housing development opportunities in rural areas supported by Policy AS.10. These sit in the context of a total of 750 dwellings envisaged for the 'all other settlements' by Policy CS.16.
27. The CS pattern of balanced dispersal is based on the distinctive character and function of a range of sustainable locations. Moreton Paddox has a highly distinctive character as an enclave of predominantly recent residential development. The appeal proposal can be seen as a form of infilling of an incomplete plot within that pattern. The settlement has not been identified as a sustainable location but the addition of a further dwelling to the 70 houses already present would not significantly alter the settlement's overall sustainability impact. National policy on rural housing recognises that where there are groups of smaller settlements, development in one village may support services in a village nearby<sup>7</sup>. That is particularly relevant in this case, where the appellant states that Moreton Morrell, which is classed as a Local Service Village, is less than one mile from the site, while Wellesbourne and Kineton, which comprise two of the District's eight Main Rural Centres are

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<sup>7</sup> NPPF paragraph 78

respectively two and three miles away. The Council does not dispute that there are public transport services to these and larger places.

28. All of this suggests that the proposal's impact on the sustainable pattern of dispersed development would be less than similar development on a site in many other locations in the lowest tier of the settlement hierarchy. Noting the conclusion of the expert design review, which I accept, it would be ironic that the proposal could be in accordance with the development strategy if on a more isolated site. The Council itself acknowledges that the proposed design would be seen differently in such a location. Having regard to the Braintree judgements, I agree with the appellant that a location within a settlement, even one without its own services, must be seen as inherently more sustainable than a remote location.
29. While I acknowledge that proposals for individual dwellings could over time contribute incrementally to a harmful effect, for the above reasons I give only moderate weight to the conflict with the development plan in the particular circumstances of this case. Other proposals would have to be assessed on their own merits.
30. Set against this is the great weight to be given to outstanding or innovative designs. The appeal proposal represents an ambitious fully considered design solution to the challenge of inserting a new dwelling into a distinctive context. The local environment would be significantly enhanced by its construction and it is worthy of support for that reason.
31. The appellant argues that there are other material considerations to be placed in the balance. I accept that the proposal would make a modest contribution to the housing supply, but at this scale this is a matter of very limited weight.
32. On the claimed fall-back position, the Council have accepted that a lawful start has been made on a single-storey swimming pool building, and the appellant has stated his intention to proceed with this project in the event of the rejection of the appeal proposal. I accept that this amounts to a realistic prospect of implementation. I agree with the Council that the sustainability impacts of a swimming pool as an ancillary domestic facility would not be equivalent to those of another house, in terms of transport and access to services. But I also accept that it would be worse than the appeal proposal in its impact on the character and appearance of the area through its relatively utilitarian appearance and the potential loss of trees, although the plan provided suggests that the most important perimeter trees could be retained. Overall, I find that the net impact of the fall-back proposal would be neutral compared with the appeal proposal. No extra weight is added to the balance in favour of the proposal.
33. Nonetheless, having taken all factors into account, I find that there are specific considerations in this case that would outweigh the conflict with the development plan strategy.

### **Conditions**

34. The Council has put forward conditions to be applied in the event of the appeal being allowed, to which the appellant has made no comment. I have reviewed

and modified the Council's wording in order to improve compliance with the tests for conditions set by the NPPF<sup>8</sup>.

35. In addition to the standard condition on commencement time, a condition to ensure compliance with the approved plans is necessary to define the permitted development and the scope for later amendments. The approval and implementation of the details of materials and landscaping are necessary to protect the character and appearance and natural environment of the area, and to ensure that their implementation would secure the proposed high quality of design. These details must be submitted and approved before commencement of development in order to avoid potentially abortive unacceptably harmful development. The protection of existing trees in accordance with the submitted Arboricultural Report is also necessary to protect the character and appearance and natural environment of the area.
36. The provision of bins to allow suitable refuse collection arrangements is necessary to prevent any adverse effects of pollution. The provision of a water butt would not be reasonable, given the proposed design and the specific details put forward to ensure rain water is stored and fed to tree roots. I have amended the wording of the draft condition to refer to details of rainwater harvesting and dispersal. The provision of electric vehicle charging is necessary to encourage the use of low-emission vehicles and support carbon reduction measures in accordance with CS policy. I have amended the Council's wording to reflect the proposal being for a single house.
37. The appellant has indicated acceptance of the two pre-commencement conditions.

### **Conclusion**

38. For the reasons set out above, and having taken account of all submissions, I conclude that the appeal should be allowed and planning permission granted subject to the conditions set out in the attached schedule.

*Brendan Lyons*

INSPECTOR

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<sup>8</sup> NPPF paragraph 55

**Appeal Ref: APP/J3720/W/19/3233351**

**Land opposite Cedar House, Moreton Paddox, Warwick CV35 9BT**

**Schedule of conditions Nos.1-8**

1. The development hereby permitted shall commence not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 2387.0000 PL2 Location Plan
  - 2387.0050 PL1 Existing Site Plan
  - 2387.1100 PL1 Indicative Foundation Plan
  - 2387.1102 PL1 Proposed Roof Plan
  - 2387.1200 PL1 Proposed East and West Elevations
  - 2387.1201 PL1 Proposed North and South Elevations
  - 2387.1202 PL1 Proposed Enclosure Elevations
  - 2387.2000 PL1 Proposed Sections 1
  - 2387.2001 PL1 Proposed Section 2
  - 2387.1101 PL1 Proposed Ground Floor Plan
3. Prior to the commencement of development hereby permitted, a schedule of materials and finishes (including samples and trade descriptions/brochure details) to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
4. Prior to the commencement of development hereby permitted, a scheme of soft and hard and landscaping shall be submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall include:
  - a. planting plans and schedules indicating the location, number, species, density, form and size of proposed tree, hedge and shrub planting;
  - b. the method of planting, establishment, protection, management and maintenance of all retained and new tree, hedge and shrub planting;
  - c. existing landscape features, accurately plotted such as trees, hedges and shrubs which are to be retained or removed;
  - d. existing and proposed finished levels (to include details of grading and contouring of earthworks);
  - e. the means of accommodating change in level (e.g. steps, retaining walls and ramps);
  - f. hard surfacing materials and finishes (including samples and trade descriptions/brochure details);
  - g. the position and design of all site enclosures;
  - h. car parking layout and any other vehicular and pedestrian areas;
  - i. a timetable for the implementation of the soft and hard landscaping scheme.

The approved soft and hard landscaping scheme shall be carried out in accordance with the approved timetable of implementation and shall thereafter be retained and managed in accordance with the approved details.

Except for trees, hedges or shrubs identified for removal on the plans and schedules approved under this condition, no retained tree, hedge and shrub planting shall, within a period of five years from the date of completion of the approved landscaping scheme, be felled, uprooted, removed or

destroyed, and if any such tree, hedge or shrub dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, it shall be replaced by another tree, hedge, shrub as originally approved, unless the Local Planning Authority gives its written approval to any variation. This replacement planting shall be undertaken before the end of the first available planting season (October to March inclusive for bare root plants), following the removal, uprooting, destruction or death of the original trees, hedge or shrub.

5. The development hereby permitted shall be carried out in accordance with the tree protection measures included within the Arboricultural Report (dated 04.02.2019, prepared by Gary Winn Consultant Arboriculturist). The approved measures shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site.
6. The dwelling hereby permitted shall not be occupied until bins for the purposes of refuse, recycling and green waste have been provided, in accordance with the Council's bin specifications.
7. The dwelling hereby permitted shall not be occupied or used until details of rainwater harvesting and dispersal 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, which shall be retained thereafter.
8. The dwelling hereby permitted shall not be occupied until details of the provision of at least one electric vehicle charging point at a minimum 7kW have been submitted to and approved in writing by the Local Planning Authority. Such details shall include siting, numbers, design and appearance of the charging point(s). Thereafter, upon completion, the approved charging point(s) shall be retained and maintained in perpetuity, unless the Local Planning Authority gives prior written approval to any variation.