
Appeal Decision

Site visit made on 27 August 2019

by S D Castle BSC(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/R3705/W/19/3229569

Land to the rear of 6 to 20 Spon Lane, Grendon, Warwickshire CV9 2QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Helen Evans against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2018/0209, dated 6 June 2018, was refused by notice dated 15 January 2019.
 - The development proposed is residential development of 9 no. dwellings with access.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was submitted in outline form with all matters except access reserved for later consideration. I have determined the appeal on the same basis.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the safe and efficient operation of the highway.
 - The effect of the proposed development on the living conditions adjacent dwellings with particular regard to No.s 20 and 20a Spon Lane.

Reasons

Policy Context

4. The development plan includes the North Warwickshire Core Strategy adopted in 2014 (CS) and saved policies in the North Warwickshire Local Plan 2006 (LP).
5. I understand that the Emerging Local Plan (ELP), the North Warwickshire Local Plan Submission Version (March 2018), has not yet been found sound. I have not been provided with any details regarding whether, and to what extent, there are unresolved objections to any policies. Consequently, I am not able to attach significant weight to the policies in the ELP.

6. The Council refers to recent appeal decisions (Daw Mill¹ and Ansley²) establishing that CS Policy NW2 (Settlement Hierarchy) is out-of-date in so far as it relies upon development boundaries or defined areas on the Proposals Map. I concur that the restrictive nature of Policy NW2 means only limited weight can be attributed to the policy. Policy NW2 is, however, consistent with the National Planning Policy Framework (the Framework) in so far as it seeks to direct residential development towards more sustainable settlements, away from isolated rural locations which have limited access to services and facilities. There is no substantive evidence before me, however, to indicate that the proposal conflicts with these aspects of the policy.
7. I find Policy ENV14 of the LP and Policy NW10 of the CS broadly consistent with the Framework in so far as they seek to ensure safe and suitable access to the site can be achieved for all users. Policy NW10 of the CS is also broadly consistent with the Framework in so far as it seeks to avoid unacceptable impacts upon neighbouring amenity. I give these policies substantial weight.
8. I regard the adopted development plan policies listed on the refusal reason, along with Policy NW2, as the most important policies for determining the application. Taken as a whole, I do not consider them out-of-date for the purposes of this decision.

Highways

9. The site is located to the east of Spon Lane and to the north of Watling Street, a classified road (A5). The site includes an existing private drive, Willows Lane, that is located between dwellings at 20 and 20a Spon Lane. As well as providing access to the appeal site itself, Willows Lane also serves 7 dwellings (including the garage to No 20a), with dwellings off the access located to the north and east of the site. A dropped kerb crossover on the eastern side of Spon Lane provides vehicular access to Willows Lane. This dropped kerb extends to the front of No 20 and, at the time of my site visit³, two cars were parked within the front driveway of No 20. The boundary between Willows Lane and No 20 predominantly consists of a timber post and rail fence, backed by a timber closed boarded fence. The boundary between Willow Lane and No 20a includes a mix of brick wall and metal railings.
10. Spon Lane, in close vicinity to the site, is residential in character, with housing and pavements located on both sides. Most dwellings have dropped kerb crossovers providing access to parking areas to the front of dwellings. There are no signed restrictions on parking in the public highway. The eastern side of Spon Lane includes sections of grass verge and street trees between the highway and pavement. On the western side of Spon Lane, sections of grass verge are located between the pavement and the dwellings. Street lighting and telegraph poles are located on both sides of the highway. A long section of dropped kerb crossover is located on the western side of Spon Lane, to the front of Church Hall Gardens, opposite the entrance to Willows Lane. At the southern end of Spon Lane, there is a turning head and no through road to the adjacent Watling Street. A shop, bus stop, post-box and public bench are located adjacent to the turning head.

¹APP/R3705/W/16/3149827

²APP/R3705/W/17/3189584

³ 1330h to 1500h Tuesday 27 August 2019

11. The Council's refusal reason raises concerns regarding the safety and suitability of the dropped kerb crossover at the junction of Willows Lane and Spon Lane given the additional traffic that would be generated by the proposal. There is no currently adopted design guidance before me that requires a certain number of dwellings (or higher) to be served by a bellmouth access. Manual for Streets (MfS) is not prescriptive in this regard either. Nevertheless, it is contended by the Council that a bellmouth access is required to provide: pedestrians safe access into and out of the site in an area of conflict; people with mobility issues access to the site; and to ensure vehicles would not park in close proximity to the access making swept paths easier so there would be less damage to the public highway.
12. MfS advises that the kerbed separation of footway and carriageway provides a number of benefits including, amongst others, offering protection to pedestrians and assisting blind or partially-sighted people in finding their way around. In relation to this development, the Road Safety Audit (RSA) submitted by the appellant advises that a crossover is preferable to a priority junction with radius kerb arrangement given that it maintains priority along Spon Lane for pedestrians.
13. The RSA goes on to raise a concern regarding the lack of intervisibility between vehicles on Willows Lane and pedestrians approaching the access from the south west. This intervisibility is limited by virtue of the boundary fence to the front of No 20. The RSA advises that pedestrians waiting at a radius kerb may not have a clear view of vehicles approaching from the development and this could lead to collisions if pedestrians suddenly step out from a radius kerb into the path of a vehicle. The RSA recommends a vehicular crossover arrangement to ensure pedestrians have priority and do not have to wait in a position where they may be hidden from the view of drivers.
14. The photos within the RSA show a single car parked on the driveway to the front of No.20 and a further car parked on the pavement to the front on No.20. On my site visit, I noted two cars parked within the driveway to the front of No.20, with one of those cars parked adjacent to, and with the rear of the car projecting past, the existing boundary fence. The parking of cars adjacent and forward of the boundary fence of No.20 further exacerbates the limited pedestrian and vehicular intervisibility identified within the RSA.
15. The RSA advises a number of other recommendations, including the provision of a strip of corduroy paving between Willows Lane and the highway to aid visually impaired pedestrians; and the planting or other suitable structures (perhaps seating) at 20m and 40m from the crossover to restrict forward visibility on the access and slow vehicle speeds. The submitted plans do not, however, include this corduroy strip and only includes a single chicane approximately 30m from the access. The Traffic and Road Safety Group's consultation response also raises the concern that the proposed Willows Lane/footway interface gives no encouragement for vehicular traffic to give way to footway users.
16. I note that the proposal includes different coloured surfacing to delineate a central vehicle track from the required pedestrian visibility splays. I also note that surfacing materials to indicate a shared surface access drive and indicative locations for street lighting are proposed. I am not persuaded, however, that the proposed features will meet the key aims for shared surfaces set out in

MfS, including, amongst others, encouraging low speeds and creating an environment in which pedestrians can walk, or stop and chat, without feeling intimidated by motor traffic. The length of the access drive and the omission of safety features recommended by the RSA will not encourage low speeds. The lack of a corduroy strip would create problems for blind or partially-sighted people who rely on such features, in the absence of kerbs, to find their way around. Given the high boundary treatments along the access to Willows Lane and the adjacent driveway at No 20, non-motorised users would feel threatened by having no clearly defined space protected from vehicles.

17. The submitted swept path analysis shows that two cars can pass when entering and exiting Willows Lane, but also that there would be conflict between cars and larger wheel-base vehicles using the junction. Whilst the number of driveways onto Spon Lane may reduce parking and speeds along Spon Lane, they would also result in vehicular movements within close vicinity to the Willows Lane junction. Images provided by the Council and an interested party show that parking occurs on Spon Lane to the front of Nos 20 and 20a. Such parking would inevitably prevent vehicles tracking in the manner depicted in the submitted swept path analysis plans. The additional traffic from the development would inevitably increase the frequency of conflict at the Willows Lane junction.
18. The appellant accepts that, given the turning head at the end of Spon Lane is sometimes blocked, vehicles, including the refuse truck and delivery vehicles, reverse back down Spon Lane and use Willows Lane as a turning head by reversing into it and then coming back out in forward gear to exit Spon Lane northwards. Whilst the different coloured surfacing to delineate a central vehicle track highlights the pedestrian visibility splay, it doesn't prevent vehicles entering these splays when vehicular conflict occurs. Such manoeuvres would be detrimental to highways safety particularly given the crossover is proposed to enable pedestrians to continue walking along the footway without stopping despite limited visibility from the south-west.
19. I note the Council's concerns that the proposal will exacerbate existing damage to the highway as a result of larger vehicles 'dry steering' and overrunning kerbs whilst accessing Willows Lane. Whilst I find the evidence before me regarding additional damage to the highway inconclusive, submitted images clearly show large vehicles overrunning the kerbs to the front of Church Hall Gardens and the difficulty large vehicles currently have manoeuvring within the bounds of Spon Lane whilst accessing and egressing Willows Lane.
20. The Highways Authority has, however, previously accepted that dwellings on Willows Lane can be serviced by large refuse vehicles⁴. From the evidence before me⁵, it would appear that refuse vehicles of different sizes have, indeed, previously accessed Willows Lane. Furthermore, the proposals include the reconstruction of the crossover to a more robust engineering standard. As such, I am not persuaded that the additional dwellings would result in additional trips of refuse vehicles to the site, or that the increased weight of refuse vehicles would result in additional damage to the highway.
21. In terms of the frequency of traffic in the area, I have limited evidence before me and there is variation in the existing traffic counts provided by the appellant

⁴ Fieldgate Consultants Ltd Transport Proof of Evidence - Appendix C PAP/2015/0691 Access Plan

⁵ Fieldgate Consultants Ltd Transport Proof of Evidence - Appendix D Existing Refuse Collection Photos

and an interested party. The interested party's count shows that, on 16 July 2018 (Monday), there were movements of 29 pedestrians, 1 cyclist and 44 cars near the junction of Willows Lane between 0700h and 0900h. The appellant's statement includes a table showing a lower limit, mid-range and upper limit projections for future morning peak hour (0800h to 0900h) car trips in Willows Lane. The table shows a predicted upper limit of 9 vehicles per hour in the morning peak hour on Willows Lane, comprising 5 additional vehicular movements (based on 0.6 vehicles per dwelling in the peak hour). No projections have been provided regarding the increase in pedestrian and cyclist movements along Willows Lane, but 9 dwellings would inevitably produce an increase in the number of such movements. A limited increase in larger vehicles, such as delivery vehicles, would also result from the development.

22. Whilst additional traffic numbers would be relatively light, I find they would be significant given the concerns set out above regarding the safety of the design of the shared space, the potential for conflict at the proposed crossover, and the evidence of existing unsafe vehicular manoeuvres. The cumulative impact of the additional traffic would be unacceptably detrimental to highway safety. In reaching this view, I have had regard to the planning permission granted by the Council at The Liberal Club, Baddesley Ensor. From the information before me, the development at The Liberal Club differs from the current appeal in so far as the layout and features within that site slow traffic speeds. I also note that the railings forming the access boundary treatments do not impede pedestrian intervisibility to the same extent as the high fence to the front of No 20 Spon Lane. In this regard, The Liberal Club development better reflects the suggestion within paragraph 7.8.4 of MfS for footway visibility splays to be provided using boundary railings rather than walls. Notwithstanding this, I have considered this appeal on its own merits.
23. For the above reasons, I find that the development would not preserve the safety and efficient functioning of the local road network without problems of congestion, danger or intimidation caused by the size and number of vehicles and is therefore contrary to LP Policy ENV14. It would not provide for appropriate vehicle access and manoeuvring contrary to CS Policy NW10 and would not represent an inclusive design contrary to CS Strategic Objective 6. Furthermore, I find the proposal would fail to provide safe access, including for walking and cycling to the surrounding area without detriment to the safety of the existing frontage development contrary to ELP Policies LP29 and LP32. The development would not minimise the scope for conflicts between pedestrians, cyclists and vehicles or address the needs of people with disabilities and reduced mobility in relation to all modes of transport and would represent an unacceptable impact on highway safety by failing to ensure safe and suitable access to the site can be achieved for all users contrary to the provisions of the Framework, including paragraphs 108 and 110.

Living Conditions

24. The proposal would result in increased traffic along Willows Lane in close proximity to the dwellings at 20 and 20a Spon Lane. This is, however, an established residential area with existing traffic movements adjacent to both Nos 20 and 20a, including along both Spon Lane and Willows Lane.
25. Whilst the Willows Lane facing elevation of No 20 includes the main entrance and a number of windows serving habitable rooms, given the boundary

treatment and the separation distance to Willows Lane, the increase in traffic from 9 additional dwellings would not result in unacceptable levels of disturbance through noise or light pollution, taken cumulatively or otherwise. The effect on the living conditions of 20a would also be acceptable, given additional traffic would primarily pass adjacent to a side elevation and a high boundary wall. Given the majority of additional traffic resulting from 9 dwellings would be private cars not large delivery or refuse vehicles, the realignment of the access road adjacent to the gardens of Nos 20 and 20a would not result in unacceptable harm to living conditions through either disturbance, light pollution or noise.

26. I have no substantive evidence before me to indicate that the increase in vehicular movements would lead to unacceptable levels of air pollution, taken cumulatively or otherwise.
27. The details of street lighting could be appropriately controlled through the submission of a lighting scheme to avoid harm to living conditions. It is not clear at this stage what the landscaping and layout adjacent to the rear of Nos 6-20 would comprise. These details would be submitted at the reserved matters stage and there is no substantive reason before me to suggest such details would not appropriately maintain the living conditions of nearby dwellings.
28. As such, the development would not compromise the quality of life of existing adjacent occupiers and would avoid unacceptable impacts from general disturbance, noise, light and air pollution in accordance with the provisions of CS Strategic Objective 6 and CS Policy NW10. Furthermore, the development would accord with ELP Policy LP32 which sets out the requirement that, amongst others, access arrangements should not cause adverse impacts to the amenity of the existing frontage development. I have not found conflict with the provisions of the Framework with regards to this main issue, including paragraphs 127 and 180 which, taken together, require decisions should secure a high standard of amenity for existing and future users, taking into account the likely effects (including cumulative effects) of pollution on health and living conditions.

Other Matters

29. I understand the site is immediately adjacent to the development boundary of Baddesley with Grendon, an identified Local Service Centre as set out within CS Policy NW2 (Settlement Hierarchy). Policy NW2 advises that development will be permitted in or adjacent to development boundaries of Local Service Villages where it is considered to be appropriate to its place in the settlement hierarchy. The Council does not object to the principle of the development in this location and, given the surrounding residential development and local access to services, I have no reason to disagree.
30. Paragraph 64 of the Framework requires that where major development of housing is proposed, decisions should expect at least 10% of the homes to be available for affordable home ownership. CS Policy NW6 advises that for schemes of between 1 and 14 dwellings, 20% affordable housing provision will be provided. The Council contends that a condition is required to secure the provision of affordable housing at a rate of 40% of the development to accord with ELP Policy LP9. Given the ELP has not been found sound, and in the absence of any substantive evidence to the contrary, I consider the rate of

20% required by CS Policy NW6, as part of the adopted development plan, remains applicable. In the absence of a completed S106 legal agreement to this effect, a condition would be necessary to secure the required affordable housing.

31. Whilst I acknowledge that the density of the proposal is low, it would be reflective of the character of the surrounding area. Given the size of the appeal site, I am satisfied that matters relating to the character of the area, landscaping, ground conditions, open space, drainage, ecology and living conditions, could be addressed appropriately either by condition or at the reserved matters stage.
32. I note interested parties have raised concerns regarding the impact of the development on the structural integrity of adjoining properties. Issues relating to land ownership are a private matter between the relevant parties and do not have a material bearing on my assessment of the planning issues in this appeal.

Personal circumstances and the planning balance

33. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations (including the Framework) indicate otherwise.
34. I have carefully considered the objections of interested parties with regards to the potential impact of the development on the health of a local resident. In the light of this evidence, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.
35. Given the sensitive nature of the health information supplied to me as part of this appeal, it would not be appropriate for me to outline the specific health conditions of the individual concerned. Particular concerns have been raised regarding the impact of dust, during and post-construction, exacerbating the local resident's medical condition. Concerns have also been expressed regarding the impact of noise, disturbance and vehicular fumes/movements on the health and living conditions of the local resident. I have considered the health documentation relating to the local resident and, based on the evidence that is before me, I agree that the proposed development, primarily during construction, would represent a risk to the residents' health and enjoyment of property. These are personal circumstances to which I afford weight in opposition to the appeal.
36. I recognise that construction vehicles would pass in close proximity to the main entrance, windows (serving habitable rooms), rear conservatory, and outdoor amenity space, of the dwelling of the affected local resident. A high closed boarded fence encloses much of the boundary of that dwelling, but the rear garden does not contain any substantial trees or tall vegetation that might act as a barrier to the movement of dust or particles. It is noted that the local resident has to constantly undertake health monitoring at home and is encouraged to undertake healthy physical and mental pursuits such as growing fruit and vegetables and relaxing outdoors. As such, it may be necessary for

- the resident to alter patterns of behaviour when construction is particularly busy or when the prevailing south-westerly wind is in a less favourable direction. Such changes may include staying in-doors with windows shut to prevent the ingress of dust and to reduce disturbance by noise / vehicular movements.
37. The Council's Environmental Health Officer has recommended a Construction Environmental Management Plan, including a dust management plan, is secured by condition. The appellant accepts that noise and dust monitoring would be required, along with provisions to inform local residents of any abnormal occurrences, swift complaint management and appropriate management of construction to ensure access to dwellings is maintained. Such measures would significantly mitigate the risks to the health of the resident during construction.
38. Following construction, I do not have any substantive evidence before me to indicate that the additional vehicular movements in terms of levels of fumes or disturbance, given the existing urban location, would cumulatively, or otherwise, have an unacceptable impact on the health of the local resident. I do note that the mobility of the local resident is limited and therefore the detrimental impact on highway safety identified above would negatively impact on the affected local resident and this weighs against the appeal. Overall, given appropriate mitigation could be secured, the evidence does not substantively indicate that the development would give rise to more than limited risk of harm to the health of the local resident and I, therefore, give limited weight to this impact in the overall balance.
39. In weighing the personal circumstances in the balance, this has to be considered against the social, environmental and economic benefits of the proposal. Such benefits would include its contribution towards boosting housing supply at an identified Local Service Centre where the distances to services and facilities would limit the need to travel. Whilst the appellant has not challenged that the Council can demonstrate a 5-year deliverable housing land supply, I acknowledge that housing targets should not be considered as a cap on the delivery of housing and the importance of delivering housing on suitable windfall sites. Given the number of dwellings proposed, I give moderate weight to the delivery of these homes, including any affordable housing. Social and economic benefits derived from jobs provided through construction and through the support future occupiers would give to services and facilities in the area further weigh in favour of the proposed development.
40. The development would not, however, minimise the scope for conflicts between pedestrians, cyclists and vehicles or address the needs of people with disabilities and reduced mobility in relation to all modes of transport and would represent an unacceptable impact on highway safety by failing to ensure safe and suitable access to the site can be achieved by all users. I give substantial weight to this conflict with paragraphs 108 and 110 of the Framework. Whilst I have not found the policies which are most important for determining the application out-of-date, even if I were to do so, the identified harm would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
41. I give limited weight to the earlier identified conflict with ELP Policies LP29 and LP32. Substantial weight is, however, given to the identified conflict with

adopted development plan policies by virtue of the development's unacceptable detrimental impact on the safe, efficient and inclusive functioning of the access and local highway network.

42. Overall, there are no material considerations, either individually or in combination, of sufficient weight to outweigh the identified conflict with the development plan, nor do they indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

43. For the above reasons, the appeal is dismissed.

S D Castle

INSPECTOR