



Appeal Decision

Site visit made on 15 September 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/U4610/W/20/3254612

145 Warwick Road, Coventry CV3 6AU

- 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 S Hussey - Kingswood Properties (West Midlands) Ltd against the decision of Coventry City Council.
 - The application Ref FUL/2019/2733, dated 25 October 2019, was refused by notice dated 27 May 2020.
 - The development proposed is demolition of existing dwelling and outbuildings and the erection of a new apartment building to provide 24 apartments with associated landscaping, car parking and cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and outbuildings and the erection of a new apartment building to provide 24 apartments with associated landscaping, car parking and cycle storage at 145 Warwick Road, Coventry CV3 6AU, in accordance with the application Ref. FUL/2019/2733, dated 25 October 2019, subject to the 15 conditions set out in the attached schedule.

Main Issue

2. The main issue is whether the proposal makes adequate provision for any additional need for affordable housing and other necessary infrastructure contributions arising from the development.

Reasons

3. Paragraph 64 of the National Planning Policy Framework (the Framework) sets out amongst other things that for major development involving the provision of housing, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership. Exceptions include where this would exceed the level of affordable housing required in the area.
4. The number of units proposed and the site area fall below the thresholds of 25 dwellings or more, or more than 1ha, whereby 25% of the dwellings would be expected to be affordable homes under the requirements of Policy H6 (Affordable Housing) of the Coventry City Council Local Plan (adopted 2017) (the LP). The development plan for the area therefore does not require an affordable housing contribution to be made in this instance.
5. The level of affordable housing required in the area would have been comprehensively assessed in the preparation and examination of the LP and this would have informed the thresholds in Policy H6. This is consistent with the

requirements of the Framework. Policy H6 should therefore be considered as being the up-to-date and commensurate approach to meeting the assessed requirements for affordable housing in the area.

6. The Council has referred to there being a high demand for affordable homes in Coventry and refers to the numbers of households on the waiting list. However, there is no substantive evidence before me to demonstrate that the level of affordable housing required in the area has significantly changed since the thresholds in the LP were set. Therefore, the provision of 10% of the proposed apartments for affordable home ownership would exceed the identified level of affordable housing required in the area. This would be contrary to the requirements of the Framework.
7. Footnote 29 of the Framework also confirms that 10% affordable home ownership should be part of the overall affordable housing contribution from a site. This further persuades me that the reference in the Framework to the provision of 'affordable home ownership' relates to affordable housing mix and should not be interpreted to mean that all major residential developments should provide a 10% affordable housing contribution regardless of locally assessed requirements.
8. Accordingly, having regard to the requirements of the LP and the Framework, I find that an affordable housing contribution is not required in this instance. Given my findings, the affordable housing contribution under Schedule 2 of the Unilateral Undertaking (UU) dated 14 September 2020 should not be triggered.
9. The UU also sets out the other infrastructure contributions that would be provided. Education contributions are included totalling £101,646 which would be made towards the expansion of Finham Park School or Barr's Hill School. University Hospitals Coventry and Warwickshire NHS Trust is currently operating at full capacity in the provision of acute and planned healthcare. A healthcare contribution of £38,967 is included to address the funding gap created by each potential patient. Furthermore, there would be a contribution of £50,400 towards off-site improvement works to the footpath outside the appeal site and the upgrade of the nearest pedestrian crossing to 'Toucan' standard.
10. The levels of contributions in the UU correspond with those figures calculated by the respective consultees. There is no dispute between the parties in terms of the contributions being necessary to make the development acceptable in planning terms, being directly related to the development and being fairly and reasonably related in scale and kind to the development. The Council has been given an opportunity to comment on the UU and has not raised any concerns. Based on the evidence before me, I am satisfied that the infrastructure contributions have been adequately justified and meet the relevant tests at Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations.
11. I conclude that an affordable housing contribution is not required in this instance having regard to the level of affordable housing required in the area in accordance with Policy H6 of the LP and paragraph 64 of the Framework. The planning obligation provided would ensure the remaining infrastructure contributions, necessary to make the development acceptable would be provided.

Other Matters

12. I note the concerns raised by interested parties. I am satisfied that the design of the development would appropriately respond to the character and appearance of the CA.
13. Provided that a condition is attached restricting the obscure glazed windows facing No 143 Warwick Road to be retained as such, with any opening parts at least 1.7 metres above internal floor levels, the separation distances between the building and the windows and gardens serving the nearest neighbouring residential properties, would be sufficient to ensure that there would be no material harm to neighbouring living conditions in terms of levels of outlook, privacy or light. These relationships would be further protected by boundary treatments and vegetation, details of which could be secured by condition. Any noise and disturbance associated with development of the site could be controlled by way of a Construction Management Condition.
14. With regards to the potential impact on traffic levels and highway safety, the Highway Authority have not raised any concerns. I also concur with the Highway Authority that the levels of parking are appropriate having regard to the sustainable location of the site close to the services and facilities in Coventry City Centre. From the evidence before me and from what I saw on site, I find no reason to conclude that the development would have a detrimental impact on traffic levels or the safety of road users and pedestrians.
15. The suggestion that the proposal would result in increased danger to neighbouring occupiers has not been set out in any substantive detail. However, the above considerations in respect of neighbouring living conditions and highway safety persuade me that this would be unlikely to be the case.

Conditions

16. I have given regard to the Council's suggested conditions and note that the appellant has raised no specific concerns. Condition 2 is required in the interests of certainty and to ensure that the development is carried out in accordance with the approved drawings and the methodologies intended to protect the arboricultural interests of the site. I have not included reference to the Heritage Statement, Bat Survey Report, Planning Statement or Design and Access Statement in this condition as these documents do not set out specific requirements to be carried out beyond those detailed on the drawings.
17. Pre-commencement conditions are attached to ensure materials respond to location of the development within the Kenilworth Road Conservation Area (CA) and requiring 'Secure by Design' details to be incorporated in the interests of safety and security. Given the scale of the development and its location accessed off Warwick Road, a condition requiring a Construction Management Plan would be reasonable and necessary to protect highway safety and the living conditions of neighbouring occupiers. For health and safety reasons I also attach the suggested pre-commencement condition to address potential unexploded ordnance contamination.
18. The site is located within an Air Quality Management Area. Conditions to ensure suitable air quality is provided for future occupiers, requiring electric vehicle charging points to be provided and for emission rates to be limited on any gas boilers installed are reasonable and necessary to meet the

requirements of Policies DS3 (Sustainable Development Policy) and EM7 (Air Quality) of the LP and the requirements of the Framework. A condition to ensure the tree protection measures are in place before development or other site operations commence is necessary to protect those trees which make a positive contribution to the appearance of the site and its position within the CA.

19. Details of parking spaces are already indicated on the layout drawings and a separate condition is not required. However, precise details of surfacing for the spaces and demarcation thereof can be ascertained through the condition requiring precise details of hard and soft landscaping to ensure the finished scheme suitably responds to biodiversity, the character and appearance of the area and is suitably drained.
20. In order to ensure an acceptable means of surface water disposal is provided in accordance with Policy EM5 (Sustainable Drainage Systems SuDS), I have attached an appropriate condition, albeit using alternative wording to that suggested by the Council. The attached condition will ensure that an assessment is first carried out to establish the potential for sustainable drainage techniques to be utilised in accordance with Policy EM5.
21. Whilst a location is indicated on the drawings, precise details of secure appropriate cycle storage are not. A pre-occupation condition is therefore necessary to ensure implementation of facilities to encourage alternative modes of transport. Precise details of bin storage are indicated on the approved drawings. Therefore, I have attached a more concise condition to that suggested by the Council which requires its implementation prior to first occupation of the development. I have also attached the aforementioned condition relating to the obscure glazed windows facing No 143 Warwick Road.
22. The Council's suggested condition in respect of noise is unclear in terms of expected works to be undertaken and would not give the appellant sufficient certainty that the results of any such surveys could be mitigated to the satisfaction of the Council. There are neighbouring residential buildings and the building would be set back from the road. There is no substantive evidence before me to suggest that a suitable residential environment would not be provided for residents of the building with respect to noise. In the circumstances it has not been demonstrated that such a condition would be reasonable or necessary.
23. I am not persuaded that the proposal represents 'new employment development' as referred to in Policy JE7 (Accessibility to Employment Opportunities) of the LP. Without any substantive evidence to demonstrate otherwise, the Council's suggested pre-commencement condition to target and utilise local people is not justified and has the potential to delay the development from being implemented in a timely manner. On this basis, I do not consider it would be reasonable to attach such a condition in this particular instance.

Conclusion

24. For the reasons set out, the appeal is allowed.

M Russell 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: the 'BS5837 Arboricultural Report 25th July 2019 (Amended 24.01.20)'; Proposed visual from South East dwg no. 45; Proposed visual from South West dwg no. 44; Proposed Elevations and Section A-A dwg. no. 43; Proposed Elevations dwg. no. 42; Proposed Elevations dwg. no.41; Proposed Street Scene dwg. no. 40A; Proposed Third Floor Plan dwg. no. 23; Proposed Second Floor Plan dwg. no. 22; Proposed First Floor Plan dwg. no. 21; Proposed Ground Floor Plan dwg. no. 20B; Proposed Building Heights Plan dwg. no. 14; Existing Building Heights Plan dwg. no. 03; Existing Site Plan dwg. no. 02; Location Plan dwg. no. 01; Proposed Site Plan dwg: 10D; Proposed Hardstanding dwg: 11A; Proposed Block Plan Dwg: 12A; Proposed Compliance Plan dwg: 13A; Bin Store Plan Dwg: 24 Rev B.
- 3) Prior to their incorporation into the development, details of the following shall be submitted to and approved in writing by the local planning authority:
 - elevational materials including brick, stone, and roofing tiles;
 - material samples of new rainwater goods;
 - large scale details, to include material, colour as well as cill/hood details, of proposed windows and doors;
 - material samples/details of new surface materials; and
 - large scale details and material samples of the new front boundary.

Once approved in writing, the development shall be completed in full accordance with the approved details prior to the first occupation of the apartments and thereafter shall be retained and shall not be removed or altered in any way.
- 4) Prior to their incorporation into the development hereby permitted, a scheme to meet 'Secured by Design' guidance which includes: CCTV, vandal proof lighting and access control systems, shall be submitted to and approved in writing by the local planning authority. These measures shall be installed in full accordance with the approved details prior to the first occupation of the development and thereafter shall be retained.
- 5) No development (including any demolition) shall take place unless and until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of:
 - hours of work;
 - hours of deliveries to the site;
 - the parking of vehicles of site operatives and visitors during the demolition/construction phase;
 - the delivery access point;
 - the loading and unloading of plant and materials;
 - anticipated size and frequency of vehicles moving to/from the site;

- the storage of plant and materials used in constructing the development;
- the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate;
- wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- measures to control the emission of dust and dirt during demolition and construction;
- measures to control the presence of asbestos;
- measures to minimise noise disturbance to neighbouring properties during demolition and construction;
- details of any piling together with details of how any associated vibration will be monitored and controlled; and
- a scheme for recycling / disposing of waste resulting from demolition and construction works.

Thereafter, the approved details within the CMP shall be strictly adhered to throughout the construction period and shall not be amended without the prior written agreement of the local planning authority.

- 6) The development hereby permitted shall not commence unless and until a Desk Study for Potential Unexploded Ordnance Contamination and a risk mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall only proceed in strict accordance with the approved details.
- 7) The development hereby permitted shall not commence unless and until an air quality assessment has been submitted to and approved in writing by the local planning authority. The air quality assessment may be performed using a suitable dispersion model as specified in LAQM.TG(16) due to the complexity and size of the development and shall demonstrate:
 - a) that the modelled NO₂ data has been validated and corrected against monitoring data from at least 3 months (preferably 6 months) diffusion tube monitoring performed in accordance with LAQM.TG(16);
 - b) that concentrations of NO₂ and PM-10 at the building façade have been ascertained;
 - c) that a sensitivity test has been undertaken to establish the discrepancy between future-year concentrations, with the previously expected emission reduction and without (as NO₂ concentrations have not been decreasing year-on-year as previously predicted). Background values and emission factors used in the test should be from 2010 (as these are worst case);
 - d) that the meteorological data used is from Church Lawford or Coleshill weather stations and the year used is within the last five years (with the date stated);
 - e) the source of the traffic data used;
 - f) what methods of mitigation will be provided, should the assessment show that concentrations of NO₂ and/or PM10 at the facades of the residential buildings exceed the air quality standards;
 - g) how consideration has been given to the impact of demolition and construction works; and
 - h) what measures will be taken to reduce the air quality impacts from demolition and construction;

The mitigation measures set out within the approved air quality assessment shall be carried out in full prior to first occupation of the development and these measures shall be maintained in accordance with the approved details thereafter and shall not be removed or altered in any way.

- 8) Prior to occupation of the development, one electric vehicle charging point shall be provided per residential unit. The installed electric vehicle charging shall not be removed or altered in any way and shall be kept available for such use by residents at all times. In addition, any gas boilers to be installed shall have a dry NOx emission rate of <40mg/kWh.
- 9) No development or other operations (including any demolition, site clearance or other preparatory works) shall commence unless and until the tree protection measures identified on the Tree Protection Plan (1st Phase) in the 'BS5837 Arboricultural Report 25th July 2019 (Amended 24.01.20)' have been put into place. The measures shall remain in place during all construction work and shall only be modified in accordance with the Tree Protection Plan (2nd Phase) at a time to be first agreed in writing with the local planning authority. In addition no excavations, site works, stock piling, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy or root protection area of any protected tree(s); no equipment, machinery or structure shall be located within this zone; no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area or any other works carried out in such a way as to cause damage or injury to the tree(s) by interference with their root structure. No soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the tree(s).
- 10) Prior to the first occupation of the development hereby permitted, precise details of both hard and soft landscaping works shall be submitted to and approved in writing by the local planning authority. Details of hard landscaping works shall include parking space surfacing and demarcation, boundary treatments including full details of the proposed boundary walls, materials and colours to be incorporated in any railings and gates, footpaths, and other hard surfaced areas (which shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area). The hard landscaping works shall be completed in strict accordance with the approved details within three months of the first occupation of the development hereby permitted; and all planting shall be carried out in accordance with the approved details within the first planting and seeding seasons following the first occupation. Any tree(s) or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes; in the opinion of the local planning authority; seriously damaged, defective or diseased shall be replaced in the next planting season with another of similar size and species. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS 8545:2014 Trees: from nursery to independence in the landscape - Recommendations and BS4428 - Code of Practice for General Landscape Operations.
- 11) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an

assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- include a timetable for its implementation; and,
- provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

- 12) Notwithstanding the details shown on the approved plans; prior to occupation of the dwellings hereby permitted, precise details of cycle parking facilities shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be provided in full accordance with the approved details prior to first occupation and thereafter those facilities shall remain available for use at all times and shall not be removed or altered in any way.
- 13) Prior to the first occupation of the development hereby permitted details of details of landscaping and planting and biodiversity features such as bird/bat boxes attached to trees within the area shall be submitted to and approved in writing by the local planning authority. The biodiversity features shall be fully installed in strict accordance with the approved details prior to the first occupation of the development and thereafter shall be retained and shall not be removed or altered in any way.
- 14) The bin storage provision shown on the approved drawings shall be provided in full accordance with the approved details prior to first occupation of the development and thereafter shall remain available for bin storage purposes at all times.
- 15) The windows to the side elevation facing No 143 Warwick Road shall be obscure glazed at all times and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.