



Appeal Decision

Hearing held on 1 June 2021

Site visit made on 2 June 2021

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13/08/2021

Appeal Ref: APP/J3720/W/20/3262802

Development site, Corner of Waterloo Road and Wellington Road, Bidford on Avon, Warwickshire

- 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 Countryside Properties (UK) Limited and Midland Heart Limited against the decision of Stratford on Avon District Council.
 - The application Ref 19/00731/FUL, dated 13 February 2019, was refused by notice dated 9 September 2020.
 - The development proposed is the erection of 50 affordable houses.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 50 affordable houses at Development site, Corner of Waterloo Road and Wellington Road, Bidford on Avon, Warwickshire, in accordance with the terms of the application Ref 19/00731/FUL, dated 13 February 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Prior to the hearing, the Council confirmed that it would not be pursuing the first reason for refusal, which is in relation to the failure to create a balanced and sustainable community, due to the 100% provision of affordable housing proposed. The Council also confirmed it would not be pursuing the second reason for refusal, in relation to harm to the character and appearance of the area, due to the proposed acoustic walls and fencing. This was due to further evidence being provided by the appellant that the acoustic boundary treatment could be reduced in height and subject to control of the detail of the boundary treatment by condition.
3. After the hearing closed, a revised National Planning Policy Framework (the Framework) was adopted. I offered both the Council and the appellant the opportunity to comment on the revised Framework and both parties confirmed that they had no additional representations to make. I have reflected the revised Framework as appropriate throughout my decision letter.

Main Issue

4. In the light of the forgoing, the main issue is whether or not the proposal would result in the unacceptable loss of an employment site.

Reasons

5. The appeal site is located in the built-up area boundary of the village of Bidford on Avon, an identified Main Rural Centre in the Stratford on Avon District Core Strategy 2011 to 3031, dated 2016 (the CS). It is agreed between the parties, and I concur, that it constitutes brownfield land. Policy H4 of the Bidford on Avon Parish Neighbourhood Plan 2011-31, dated 2017 (the NP), supports the development of brownfield land to create new housing, subject to a number of criteria. It is agreed between the parties that the proposal complies with this policy, and I agree.
6. Policy CS.22 of the CS relates to economic development. Amongst other things, it seeks to protect existing employment sites from conversion or redevelopment to non-employment uses. In the absence of any definition in the CS, the question as to what comprises an 'existing employment site' is a matter of planning judgement.
7. In this case, the appeal site has not been used for employment purposes since at least 2009, and probably 2003. It is currently vacant with no remaining buildings which could be brought back into use. The site was most recently in use for employment, but this was at least 12 years ago and likely longer. Employment use of the site has long since ceased and no substantive evidence has been provided that any replacement or new employment use, either commercial or retail, is likely to be forthcoming. It is not the subject of any land use designations, within adopted documents, for employment use.
8. The appeal site is bordered to the north and east by commercial buildings in the Waterloo Road Industrial Estate, providing a variety of 'B' class employment uses and it would, in the past, have been considered as part of that estate. However, the current, cleared site is no longer a functional part of the estate. Although outline planning permission¹ was granted on 20 January 2016 for a retail and commercial (Class B2/B8) units on the appeal site, this was not implemented and has since expired. Both the Council and the appellant have contacted a number of retailers, as well as commercial tenants, as part of their respective cases to support the appeal. Although some high-level interest was shown, no substantive evidence has been provided of any meaningful retailer demand.
9. The appeal site is allocated in the emerging Site Allocations Plan, dated October 2020, through emerging Proposal BID.1, for public space, retail, business and commercial uses. However, this is in the early stages of consultation and several objections have been received to the proposed allocation. I was advised that it is likely to be the subject of further modifications, and it has been agreed between the main parties that it carries very limited weight at the present time.
10. Given the context as set out above, I am content that the appeal site does not fall to be considered as an 'existing' employment site for the purposes of the relevant Development Plan policies. Policy CS.22 is not, therefore, engaged.
11. Policy ECON1 of the NP protects land currently in employment use or identified for employment use. I have found that the appeal site is not currently in employment use and nor has it been for at least 12 years. It is not the subject

¹ Ref 15/00212/OUT

of any land use designations or planning permissions for employment use. Policy ECON2 of the NP resists the loss of commercial uses unless it can be demonstrated that they are no longer viable. The appeal site is vacant and the proposal would not result in the loss of commercial uses. Moreover, there is no substantiated evidence to indicate that there is any meaningful interest in developing the land for such purposes. As such, these policies are not offended by the proposal.

12. Given the current status of the land, I have found that the proposal would not result in the unacceptable loss of an employment site. It complies with Policy H4 of the NP. I find no conflict with paragraph 123 of the Framework which, amongst other criteria, seeks a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans. Since there would be no meaningful loss of a site that contributes to the economy, there would be no conflict either with paragraph 81 of the Framework which, amongst other criteria, supports economic growth and productivity.

Other Matters

13. In relation to additional concerns raised by local residents, no substantive evidence has been provided of land contamination concerns which, in any event, could be controlled by conditions. There is no substantive evidence either to support concerns regarding highway safety, traffic congestion, or overspill car parking. I note, in this regard, that the Highways Authority does not object to the proposal on these grounds. I also have not been provided with any substantive evidence that moving the proposed access from Waterloo Road to Wellington Road is necessary.
14. The effect of the future occupiers of the proposed dwellings on local infrastructure has not been raised as a concern by the Council. Impacts on local healthcare services are mitigated by the s106 Unilateral Undertaking (see below for full details), and no substantive evidence has been provided of unacceptable harm in these regards. The amount of house building in the area previously, and the fact that the Council has a healthy housing land supply position, including affordable housing, does not mean that the proposed provision of additional affordable homes is unnecessary.
15. The size of the proposed gardens has not been raised as a concern by the Council and I see no reason to believe that the proposed garden space would lead to unacceptable living conditions for future occupiers. No substantive evidence has been provided to support concerns that the proposal would lead to an increased risk of flooding, subject to control as appropriate by conditions. I also note that the Local Lead Flood Authority have not objected to the proposal.

Conditions

16. The Council suggested a number of conditions which I have considered and amended in the light of government guidance on the use of conditions in planning permissions, and further to discussions held at the hearing.
17. In addition to the standard time limit condition, a condition specifying the relevant drawings provides certainty.

18. The parking prevention condition is necessary to ensure highway safety. It is worded as a Grampian type condition, since it relates to land outwith the control of the appellant.
19. The revised details for the play area condition is necessary for health and safety.
20. The bin storage condition is necessary to ensure the appropriate provision for domestic waste management.
21. The electric vehicle charging point condition is necessary to help mitigate and adapt to climate change and to encourage the use of low emissions vehicles.
22. The artificial lighting condition is necessary to protect bats. The land contamination conditions are necessary to control the pollution risks from land contamination.
23. The materials, landscaping, tree protection, and additional design details conditions are necessary to protect the character and appearance of the area. The tree protection and landscaping conditions are also necessary to protect biodiversity.
24. The surface water drainage condition is necessary to minimise the risk of surface water flooding. The water butt condition is necessary to ensure efficient use of water, as required by Policy CS4 of the CS.
25. Noise mitigation measures are necessary to secure acceptable living conditions for future occupiers, and to protect the character and appearance of the area.
26. The Construction Management Plan condition is necessary in the interest of highway safety and protecting the living conditions of neighbouring occupiers.
27. The construction traffic, tree protection and contamination conditions are necessarily worded as pre-commencement conditions, because a later trigger for their submission and/or implementation would not allow for the appropriate controls to be agreed prior to the relevant works being undertaken.
28. The Council suggested a condition to require the provision of fire hydrants at the site. However, this is not necessary to make the proposal acceptable in planning terms since it is controlled by other legislation. The Council also suggested a condition to require a scheme of foul drainage. However, foul drainage is controlled by Building Regulations and no particular concerns have been raised regarding foul drainage or the capacity of the local network. This condition is not therefore necessary. Consequently, I have not added these conditions.

Planning Obligation

29. A signed Unilateral Undertaking (UU), dated 1 June 2021, has been submitted.
30. The UU ensures that all the proposed housing would be 'affordable' proposed. A contribution to the NHS is secured which is necessary to mitigate the increased pressure on health services from the future occupiers of the proposed houses. A Sustainable Travel Pack Contribution is secured which is necessary to ensure the promotion of low emission travel choices. A Traffic Regulation Order Contribution is secured, which relates to the requirement to prevent on-street

parking along Wellington Road as secured by condition, and is necessary to ensure highway safety.

31. The obligations secured also ensure that the proposed open space would be permanently maintained and retained as available for use by the public, together with funding for the maintenance of the open space for 20 years. The open space is necessary to create acceptable living conditions for the future occupiers. An either/or option is provided linking the provision of the open space to occupation of either 60% or 80% of the proposed homes. The appellant has highlighted that if it were required to be delivered at the occupation of 60% of the homes, this would affect construction of the proposal and the location of the site compound. I acknowledge that the earlier the provision of the open space the better it would mitigate increased pressure on existing areas of open space by incoming residents. However, there is a limited difference between 60% and 80% occupation. Taking account of the construction constraints and the potential effect this would have on existing local residents due to increased disruption, I consider that the occupation trigger should be 80% of homes.
32. The planning obligations secured deal with several matters that involve ongoing commitments beyond the initial build period. As such, I consider the general monitoring contribution provided for to be necessary to make the development acceptable in planning terms, and is fairly and reasonably related to it in scale and kind.

Conclusion

33. For the reasons above, I conclude that the appeal be allowed.

O S Woodward

INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANT:

Freddie Humphreys, of Counsel.
He called:

Ben Truslove MRICS	Director, Benjamin Stanley Ltd t/a John Truslove Chartered Surveyors
Sam Silcocks MRTPI	Director (Planning), Harris Lamb Property Consultancy
Paul Barton MRTPI	Senior Planner, Countryside

FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant, of Counsel.
He called:

	Planning Consultant
Alyn Nicholls MRTPI	
Steve Perrett FRICS	Planning Consultant
Louise Koelman DIPTP MRTPI	Senior Planning Officer, Stratford-on-Avon District Council

INTERESTED PERSONS:

Darren Pemberton	Bidford-on-Avon Ward Member and Deputy Leader of the Council
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ANNEX B: CONDITION SCHEDULE

1. The development to which this permission relates must be commenced not later than the expiration of three years from the date of this permission.
2. The development hereby approved shall be carried out in accordance with the following plans and drawings: 70331 D01 Rev AM, D13 Rev B, D14 Rev B, D15 Rev C, D16 Rev B, D17 Rev B, D19 Rev C, D21 Rev D, D22 Rev B, D24 Rev D, D25 Rev B, D26 Rev A, D27 Rev C, D29 Rev C, D30 Rev H, D50 Rev K, D51, D100, D900 Rev G, D903 Rev D, 222739cv-01 rev A, APTD-9102, APTD-9201, 18145 1 Rev C, 18145 2, 951-01-MDP_D30 Rev H, ENG10 1.

Pre-commencement condition

3. No development shall take place, including any demolition works, until details of a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be adhered to throughout the construction period. The Plan shall provide for, but not be limited to:
 - a. provision of on-site parking of vehicles for site operatives and visitors;
 - b. provision for the loading and unloading of plant and materials within the site;
 - c. provision of on-site storage of plant and materials used in constructing the development and stockpiling during development;
 - d. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e. wheel washing facilities;
 - f. measures to control the emission of dust and dirt during construction;
 - g. a construction waste management plan that identifies the main waste materials expected to be generated during the construction process, together with measures for dealing with such materials in a sustainable manner so as to minimise waste and maximise re-use and recycling;
 - h. works of site clearance/ground preparation and construction, including deliveries, loading and unloading shall not take place other than between the hours of 08.00 hours to 18.00 hours Mondays to Fridays, 08.00 hours to 13.00 hours on Saturdays, and at no time on Sundays or Bank/Public Holidays;
 - i. details of any piling together with details of how any associated vibration will be monitored and controlled;
 - j. the location and noise levels of any site electricity generators or industrial equipment and hours of use of such equipment;
 - k. location of access/exit points on the site for construction traffic and the erection and maintenance of signage at all vehicular exits advising drivers of preferred approach and exit routes to the site;

- l. management of surface water run-off;
- m. a point of contact (such as a Construction Liaison Officer/site manager) and details of how any complaints will be addressed, including an appropriate phone number;
- n. details of external lighting required during construction; and,
- o. measures to prevent degradation of the public highway by construction vehicles.

Pre-specific works conditions

- 4. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees/hedges and the appropriate working methods in accordance with British Standard BS 5837:2012 (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the Local Planning Authority. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 5. If vegetation removal is planned during the bird breeding season (March to August inclusive) then a prior check (within a 24-hour period preceding works) for nesting birds shall be undertaken by an ecologist. Any active nests that are found must not be moved or disturbed until fledglings have dispersed. The scheme for the protection of the retained trees shall be carried out as approved.
- 6. No development shall commence until a Land Contamination Remediation Strategy (LCRS), including a Quality Assurance Scheme, has been submitted to and approved in writing by the Local Planning Authority. The works shall be of such a nature as to render harmless the contamination identified in the LCRS, given the proposed end-use of the site and surrounding environment including any controlled waters.
- 7. Prior to works above slab level, details of the noise mitigation measures as outlined in Figure 5 of the noise.co.uk Environmental Noise Survey & Assessment Ref 1947-1-R2, dated 28 September 2020, shall have been submitted to and approved in writing by the Local Planning Authority. These agreed measures, and the glazing performance requirements as outlined in Table 13 of the same document, shall be implemented in full prior to occupation of the development.
- 8. Prior to works above slab level, there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.
- 9. Prior to works above slab level, large scale drawings of:
 - a. ridge, eaves and verge details of all buildings on site; and,
 - b. bay window and porch roofs;

shall be submitted to and approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved details.

10. Prior to works above slab level, samples of all external facing materials shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Pre-occupation conditions

11. Notwithstanding the details shown on plan Ref 70331 D903 Rev D, no more than 80% of the dwellings hereby permitted shall be occupied until the play area shown on that plan has been provided in accordance with revised details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The revised details shall include rotation of the swing frame through 180 degrees so the cradle seat is nearest to the path and additional details of the positioning of the signage on the external railings. Once provided, the play area shall thereafter be retained in accordance with the approved details.
12. 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:
- a. 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;
 - b. include a timetable for its implementation; and,
 - c. 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
13. No building hereby permitted shall be occupied unless and until clauses (a), (b) and (c) have been complied with:
- a. All remediation work approved under the LCRS shall be completed and carried out as approved. If during the works, contamination is encountered which has not previously been identified, the additional contamination shall be fully assessed and an appropriate remediation scheme and timescales shall be submitted to and approved in writing by the Local Planning Authority;

- b. A Completion Report shall be submitted to and approved in writing by the Local Planning Authority. The Completion Report shall include details of the remediation works and Quality Assurance certificates to verify that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included together with the necessary waste transfer documentation detailing the waste materials that have been removed from the site; and,
 - c. A certificate signed by the developer shall be submitted to the Local Planning Authority confirming that any necessary works have been undertaken as detailed in the Completion Report
14. None of the dwellings with direct vehicular access onto Wellington Road shall be occupied until measures to prevent on-street parking on the southern side of Wellington Road for the full length of the application site have been implemented.
15. No dwelling that has a downpipe within the development hereby permitted shall be occupied unless and until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and is connected to the downpipe.
16. Each dwelling hereby permitted shall not be occupied until the electric vehicle charging point associated with the dwelling has been provided in accordance with drawing Ref 70331 Rev AY, dated 29 March 2021.
17. Each dwelling hereby permitted shall not be occupied unless and until three bins for the purposes of refuse, recycling and green waste have been provided for that dwelling, in accordance with the Local Planning Authority bin specifications.

Post-occupation conditions

18. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five 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
19. No external lighting (excluding that in residential curtilages relating to domestic properties) shall be installed other than in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority.

=====END OF SCHEDULE=====