



Appeal Decision

Site visit made on 7 July 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2021

Appeal Ref: APP/E3715/W/20/3265719

Land to the rear of Dunsmore Garage, Coventry Road, Thurlaston CV23 9JR

- 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 Tydegate Properties against the decision of Rugby Borough Council.
 - The application Ref R20/0281, dated 2 April 2020, was refused by notice dated 30 October 2020.
 - The development proposed is erection of 4 detached dwellings with associated car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 4 detached dwellings with associated car parking and landscaping at land to the rear of Dunsmore Garage, Coventry Road, Thurlaston CV23 9JR in accordance with the terms of the application Ref R20/0281, dated 2 April 2020, and subject to the Schedule of Conditions with this Decision.

Preliminary Matters

2. Since the appeal was lodged, a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released. The main parties have been consulted on this and I have taken this into account where relevant to my Decision.
3. During the appeal the appellant has provided a Unilateral Undertaking ('UU') under the provisions of section 106 of the Town and Country Planning Act 1990. This is to provide a Biodiversity Offsetting scheme; I shall return to this later in my decision.

Main Issue

4. The main issue is whether the proposal is in an acceptable location for housing with regard to local and national planning policies.

Reasons

5. The appeal site comprises an undeveloped field with a mature screen of leylandii along its northern and western boundaries with a native hedgerow to the eastern boundary. This is located along the northern side of the B4429.
6. Policy GP2 of the Rugby Local Plan 2011-2031, June 2019 ('LP') sets out a settlement hierarchy that provides a sequential approach to the selection of locations for development. This requires that development will be allocated and

supported in accordance with the Settlement Hierarchy. On the information before me, the appeal site is located outside of any settlement and therefore within the countryside.

7. In particular, the Council refer me to Paragraph 3.14 of the LP stating that: 'Countryside locations are those which are not defined by a settlement boundary and are therefore generally unsuitable for development...the only anticipated variations to this approach will be the exceptional delivery of housing to meet a specifically identified housing need to types of development that are intrinsically appropriate to a countryside setting'.
8. Nevertheless, although Policy GP2 of the LP seeks to resist development in countryside locations there is an exception to this, in that, development will be permitted where national policy on countryside locations allows this.
9. In summary, with regard to rural housing, the Framework, 2021, states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, it goes on to state that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of certain exceptions apply.
10. Whether a site for proposed new dwellings is considered 'isolated' or not, is a matter of fact and planning judgment depending on the particular circumstances of the site. This is irrespective of whether or not this is developed or undeveloped land.
11. In this case, the site is located directly behind and would be accessed via the former Dunsmore Garage site, which has approval for four dwellings which is at an advanced stage of construction. There is also an established row of dwellings to the east of this development. On the other side of the appeal site is a nursery business, which includes built development and land to the rear of the appeal site which is occupied by a number of polytunnels associated with this business.
12. Therefore, for the purposes of Paragraph 80 of the Framework, 2021, I consider that physically this site would not be in an 'isolated' location for new housing in the countryside. Accordingly, it is not necessary for me to consider the five circumstances (exceptions) for isolated homes listed in Paragraph 80 of the Framework, 2021.
13. On the information before me, the appeal site is approximately 1 kilometre from the settlement of Dunchurch which includes a good level of services and amenities, including schools, public houses, shops, a petrol station and a village hall. Though third parties state that a school transport service in the area is being removed, on the information before me, the site is still within reasonable walking distance of bus stops which provide regular services to Coventry, Leamington Spa and Rugby.
14. Although Dunchurch is more than a short walk away, the settlement's facilities and services would nonetheless be generally accessible by foot to the development's occupiers. I therefore consider that the development would not be functionally isolated from Dunchurch. Furthermore, the proposed dwellings could further support the local services in line with the provisions of Paragraph 79 of the Framework, 2021. My conclusions, on these matters are also

supported by the approval of the existing development at the former Dunsmore Garage site.

15. Because the existing site is undeveloped the proposal would generate new vehicular traffic. However, for the reasons given above, future occupants would not be heavily reliant on private motor vehicles. Even so, if the appeal were to succeed, the Council has suggested a condition in respect of minimising air pollution. Therefore, development at the site could support the aims of the Framework, 2021 for minimising pollution and contributing to a low carbon economy.
16. Whilst the Council may be able to demonstrate a 5-year housing land supply, which support its assertions that the Boroughs housing needs have been met in sequentially preferable and more sustainable locations, housing requirements are set as minima and the development would still deliver four additional dwellings.
17. Despite the site being greenfield land, it is of a modest size and largely contained by existing development. Also, given that the Council has confirmed that the design of the development is acceptable and that it would not harm the landscape character of the area, development in this particular location would not significantly undermine the intrinsic character and beauty of the countryside.
18. For the reasons given above, I conclude that the appeal site would be a suitable location for housing with the development being consistent with the provisions of the Framework, 2021. As I have found that this rural housing proposal would be consistent with the national policy, this development would also accord with the countryside development exception stated in Policy GP2 of the LP.

Other Matters

19. Based on the submitted Phase 1 Habitat assessment, the appeal site mainly comprises improved grassland. However, the existing hedgerows support opportunities for nesting birds, and bat foraging activity on and around the site. Therefore, and subject to the proposed enhancement and mitigation measures set out in the Phase 1 Habitat assessment, the proposal would not unacceptably affect any priority species.
20. In accordance with the requirements of Policy NE1 of the LP, the provision of a Biodiversity Offsetting scheme through the completed UU would secure compensation for any biodiversity loss arising from the proposal. Based on the information before me the obligation in the UU is directly related to the development, fairly and reasonably related in scale and kind to the development. The UU also complies with the tests set out in the Framework, 2021, the advice in the Planning Practice Guidance ('PPG') and with Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended).
21. In addition to some of the matters addressed above, third parties have raised concerns in respect of a number of other issues, which include, the design and density of the scheme, access, turning and parking issues and the effects of these on highway safety. These matters were largely addressed in the Council's report on the planning application and did not form part of the Council's reason

for refusing the proposal. I have also considered these matters and I have not been provided with any strong reasons to take a contrary view. Other specific concerns relating to the consultation on the planning application and the development taking place on the former Dunsmore Garage site are for the Council.

Conditions

22. I have considered the conditions put forward by the Council in light of the requirements of the PPG and the Framework, 2021. In addition to the standard timescale condition, I have imposed a condition specifying the relevant plans and documents as this provides certainty.
23. Conditions requiring details of external materials and landscaping are necessary to ensure the satisfactory appearance of the development. The details of the landscaping and proposed ecological enhancements and mitigation measures are necessary in the interests of safeguarding and enhancing biodiversity. A condition requiring a Written Scheme of Investigation is necessary to safeguard any archaeological interests of the site.
24. For the reasons already given it is reasonable to impose a condition to mitigate any air pollution arising from the proposal. It is also reasonable to require water efficiency measures to be provided within the development to promote sustainable forms of development.
25. In the interests of safeguarding future occupants, conditions for the provision of a noise assessment, adequate water supplies and fire hydrants necessary for firefighting and to deal with on-site contamination are necessary. A condition to minimise the disruption caused by construction activity on the highway through a construction management plan is also necessary and reasonable. However, given the modest scale of the proposal (4 dwellings) I have made the requirements of this proportionate. It is also necessary to control the hours of work and deliveries associated with the development in the interests of the living conditions of neighbours.
26. The proposed development would be accessed via the existing access to the development on the former Dunsmore Garage site, as such a new dropped kerb access is not required and also the suggested visibility splay requirement for the existing access is unclear. Furthermore, there are no existing accesses within the public highway from the site which require closing. As such, the conditions suggested in respect of these matters are not necessary.
27. In accordance with the Framework, 2021, no clear justification has been provided to remove national permitted development rights in respect of certain enlargements, improvements, and ancillary buildings for the proposed dwellings, including the installation of boundary treatments in front of these. Therefore, such conditions are not necessary. Nevertheless, to ensure that the approved garages are retained for vehicle parking it is necessary to remove any permitted development rights which may allow the subsequent conversion of these in the interests of providing adequate parking for the development.
28. Conditions 3, 4, 5, 6, 7 and 8 which prevent any development approved from commencing until they have been complied with are considered fundamental to the development hereby approved. It is necessary for these to take the form of 'pre-commencement' conditions to have their intended effect. Where necessary

and in the interests of clarity and precision, I have altered the Council's suggested conditions to better reflect the relevant guidance.

Conclusion

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

M Aqbal

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must not be begun 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 documents: Design and Access Statement, Preliminary Ecological Appraisal Report (prepared by Evolution Ecology); Site Location Plan (Dwg No. 001); Proposed Site Plans (Dwg No. 002) and (Dwg. No.008A); Proposed Housetype 1_Plans and Elevations (Dwg No. 003); Proposed Housetype 2-1_Plans and Elevations (Dwg No. 004); Proposed Housetype 2-2_Plans and Elevations (Dwg No. 005); Proposed Housetype 2-3_Plans and Elevations (Dwg No. 006) and Proposed Double Garage_Plans and Elevations (Dwg. No.007).
3. No works shall commence on site, including site clearance, until a scheme for all proposed ecological enhancements and mitigation measures in accordance with the Preliminary Ecological Appraisal Report (prepared by Evolution Ecology) has been submitted to and approved in writing by the local planning authority. Thereafter, the approved development shall be implemented in accordance with the approved scheme.
4. Prior to the commencement of any works, a noise assessment undertaken by a suitably qualified person shall be submitted to and approved in writing by the local planning authority. The noise assessment should assess the existing noise levels that could adversely affect the proposed development. This includes noise from road traffic on the M45 and Coventry Road, noise from the nearby commercial operations and general residual noise from other existing operations in the area. The assessment should consider any likely change in the aural environment from planning applications that have been determined but not yet implemented. The assessment should include recommendations for any necessary acoustic mitigation works, to protect the occupants both inside the dwellings and their external amenity spaces, having regard to current guidance for the residential development.
5. Prior to the commencement of any works, including site clearance, a Construction Management Plan ('CMP') shall be submitted to and approved in writing the local planning authority. The CMP shall include details relating to:
(i) measures to prevent mud and debris on the public highway, and (ii) identify suitable areas for the parking of contractors and visitors and the unloading and storage of material. Thereafter, the development shall be carried out in compliance with the approved CMP.
6. No development other than that required to be carried out as part of an approved scheme of remediation shall commence until condition (a) to (d) below have been complied with. If unexpected contamination is found after development has begun, development shall be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority until condition (d) below has been complied with in relation to that contamination.

a) An investigation and risk assessment shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be subject to approval in writing by the local planning authority. The investigation

and risk assessment shall be undertaken by competent persons and a written report of the findings shall be produced. The written report shall be subject to approval in writing by the local planning authority. The report of the findings shall include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to human health, existing or proposed property and buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; and (iii) an appraisal of remedial options, and proposal of the preferred option(s) to be conducted in accordance with Defra and the Environment Agency's Model Procedures for the Management of Land Contamination CLR 11.

b) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared and subject to approval in writing by the local planning authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

c) The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be prepared and subject to approval in writing by the local planning authority.

d) In the event that contamination is found at any time when carrying out the development hereby permitted that was not previously identified it shall be reported in writing immediately to the local planning authority.

An investigation and risk assessment shall be undertaken in accordance with the requirements of condition (a) and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of condition (b) which shall be subject to approval in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which shall be subject to approval in writing by the local planning authority in accordance with condition (c).

7. Prior to the commencement of any works, including site clearance, details of all retained and proposed landscaping including tree planting shall be submitted to and approved in writing by the local planning authority. The details shall include the quantity, size, species, position and the proposed time of planting of all trees to be planted, along with a maintenance schedule for all retained and proposed landscaping.

If within a period of 10 years from the date of planting of any tree/shrub/hedge that tree/shrub/hedge, or any tree/shrub/hedge planted in replacement for it,

is removed, uprooted, destroyed or dies, (or becomes in the opinion of the local planning authority seriously damaged or defective), another tree/shrub/hedge of the same species and size originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variations.

8. The development hereby approved shall not commence until a programme of archaeological investigation including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions and: i) a programme and methodology for archaeological investigation and recording, including an archaeological mitigation strategy, archaeological field evaluation, excavation and archaeological watching brief; ii) provision to be made for unexpected archaeological discoveries; iii) a programme for post-investigation assessment; iv) provision to be made for analysis of the archaeological investigation and recording; v) provision to be made for publication and dissemination of the analysis and records of the archaeological investigation and recording; vi) provision to be made for archive deposition of the analysis and records of the archaeological investigation and recording; vii) nomination of a competent and appropriately qualified organisation(s) to undertake the works set out within the Written Scheme of Investigation. No development shall take place other than in accordance with the Written Scheme of Investigation approved under this condition.
9. No above ground development shall commence until details of all external facing materials including specifications for doors and windows, have been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details.
10. No above ground development shall commence until a scheme detailing the on-site measures to be incorporated within the development in order to meet air quality neutral standards or to provide suitable mitigation, has been submitted to and approved in writing by the local planning authority. Thereafter, the approved measures and/or mitigation shall be implemented as part of the approved development.
11. The garage for any dwelling hereby approved shall be provided prior to the first occupation of that dwelling. Thereafter, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any order revoking or re-enacting that order, the approved garages shall be retained for vehicle parking.
12. The dwellings hereby approved shall incorporate measures to limit water use to no more than 110 litres per person per day within the home in accordance with the optional standard 36 (2b) of Approved Document G of the Building Regulations 2010 (as amended).
13. The dwellings hereby approved shall not be occupied until a scheme for the provision of adequate water supplies and fire hydrants necessary for firefighting purposes at the site, has been submitted to and approved in writing by the local planning authority. Thereafter, the approved scheme shall be implemented prior to occupation of any dwelling.

14. Clearance or construction work and deliveries to and from the site in connection with the development hereby permitted shall only take place between the hours of 07.30 and 18.00hrs Monday to Friday and 08.00 and 13.00hrs on a Saturday. There shall be no clearance or construction work or deliveries to and from the site on Sundays or on Bank or Public Holidays.