



Appeal Decision

Site Visit made on 26 October 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/T3725/W/21/3278602

Land fronting Red Lane, Burton Green, Kenilworth CV8 1PB

- 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 and Mrs Davies against the decision of Warwick District Council.
 - The application Ref W/20/2161, dated 29 December 2020, was refused by notice dated 22 June 2021.
 - The development proposed is the erection of dwelling and associated garage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling and associated garage on the land fronting Red Lane Burton Green, Kenilworth CV8 1PB in accordance with the terms of application Ref W/20/2161, dated 29 December 2020, subject to the conditions attached to a Schedule at the end of this decision.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development within the Green Belt for the purposes of the Framework and the relevant development plan policy
 - the effect of the proposal on the character and appearance of the locality with particular regard to the Ancient Arden landscape character
 - the effects on the ecological value of the site
 - whether or not the location provides a suitable location for new housing
 - if the development is inappropriate, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

4. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt. However, an exception is made at Paragraph 149 e) in the case of limited infilling in villages.
5. Policy DS18 of the Warwick District Local Plan 2011-2029 [2017] (WDLP) states that the Council will apply national policy to proposals within the Green Belt. The term 'limited infilling in villages' is not defined within the Framework.
6. Policy H11 of the WDLP explains what the Council considers to be "limited infilling" in the context of the district's Green Belt. In summary, it states that infill is for no more than 2 dwellings, should relate to a small gap fronting the highway between an otherwise largely uninterrupted built-up frontage, be visible as part of the street scene, and, be subject to the site not forming an important part of the integrity of the village, the loss of which would have a harmful impact upon the local character and distinctiveness of the area.
7. The Policy is directed at proposals within defined Limited Infill Villages, which are washed over by the Green Belt. However, the provision in Paragraph 149 e) of the Framework has a wider application. In the interests of consistency, I have used the above interpretation of infill in the assessment of this appeal.
8. The site lies at the northern extent of a long ribbon of development lying between Red Lane and the Kenilworth Green Way footpath. The site is bordered by open land to the east and west; to the north is a small area of woodland.
9. There is no dispute between the main parties that the site lies outside but adjacent to the boundary of an allocated Growth Village. However, as asserted by the appellant, the location of a site beyond a defined settlement boundary is not in itself determinative in assessing whether it lies within a village or not. Following the principles set out in *Julian Wood*¹, the matter is one of planning judgement having regard to the facts on the ground.
10. The plot is within a short distance of a recently delivered housing estate on the western side of Red Lane. The new development area consolidates development about the junction of Hob Lane, Cromwell Lane and the northern end of Red Lane. Beyond the junction area these roads splay outwards and, on Red Lane and Cromwell Lane particularly, the lines of built form extend for some distance. This is often as single depth development on one or both sides of the roads.
11. On the ground, despite the positive green interlude of the adjacent woodland, there is no clear or strong edge to the settlement to distinguish between development on Red Lane as distinct from the settlement area. Whilst the Council describe the development on Red Lane beyond the settlement boundary to be sporadic, I saw that it consists of a substantially uninterrupted line of predominantly large residential plots with few breaks in continuity.
12. Accounting for the consented village hall, which would infill a gap between the caravan site and houses east of the junction, the plot would lie within a largely built-up frontage. There is little to distinguish between the ribbons of

¹ *Julian Wood v The Secretary of State for Communities and Local Government*, *Gravesham Borough Council* [2015] EWCA Civ 195

development along the corresponding road frontages to identify them as separate areas or as parts of different settlements. For all intents and purposes, the local development appears as a single linear rural settlement extending along consecutive road frontages.

13. Therefore, whilst the site lies beyond the defined village boundary, it presents as part of the characteristic distribution of built development in the locality and appears to form part of the settlement. Furthermore, the loss as an isolated area of scrub, which is distinct from developed plots or open agricultural fields about the settlement, would not harm the integrity of the village.
14. Accordingly, the proposal would appear as a modest infill on a plot commensurate with others in the row. As a single unit of a scale comparable to other houses nearby, I find the development would be of a limited nature in the context of local development.
15. For the above reasons, I conclude that the development would comprise 'limited infilling within a village' for the purposes of Paragraph 149 e) of the Framework. It would not constitute an inappropriate form of development in the Green Belt or have an undue effect on its openness. The proposal would thereby comply with Policy DS18 of the WDLP and very special circumstances are not required to justify the development.

Character and appearance

16. Development in the locality is mostly housing of different ages. The 1 and 2-storey buildings range from large individually designed detached properties in large plots through to modern detached and semi-detached homes set within a planned residential estate. Houses on the main roads are predominantly set behind mature landscaped garden areas bordered by hedging. The ribbons of development lie within a broader rolling landscape of hedged arable fields and blocks of woodlands.
17. The location of the site lies close to the boundary of the Arden Parklands and the Ancient Arden landscape character types. Here it forms part of an historic small field pattern. However, the proposal does not seek to change the existing site borders such that any remnant boundaries would be retained. Whilst the scheme would see new development on the site, this would be consistent with the linear pattern prevalent on this part of the road. It would reflect the existing landscape of development surrounded by open land.
18. The site area and plot ratio would be comparable to other residential properties in the locality. To assimilate the development, the retention of the roadside trees and reinstatement of a hedged frontage are aspects of the development which could be controlled and secured through suitably worded planning condition/s. The buildings would have similar form and style to others in the locality and be finished in materials reflecting others found locally.
19. For those reasons, I find that the proposal would integrate with the character and appearance of development in the vicinity without harm to historic landscape features. It would align with Policy NE4 of the WDLP as it requires development proposals to have regard for the local landscape and townscape contexts.

Biodiversity

20. At the time of the Council's consideration of the planning application, the advice from its ecology advisors in response to a Biodiversity Impact Assessment provided by the appellant remained outstanding. However, for the purposes of the appeal, the Council has now provided a response from Warwickshire County Council Ecological Services. Subject to securing both a Landscape and Ecological Management Plan and a Construction Ecological Management Plan through planning condition/s, the Council's advisor has little doubt that a biodiversity net gain would be achieved on the site without harm to existing ecological interests. Having reviewed the relevant documents and visited the site, I concur with the Council's conclusions.
21. I acknowledge the comments of third parties in relation to the use of the site by various forms of wildlife and the effects of displacement caused by the ongoing works associated with HS2. However, there is little substantive evidence to support claims relating directly to the proposed development site or indicate that prior clearance of the site resulted in any offence under the Wildlife Acts. I am therefore unable to attribute significant weight to those arguments.
22. For the above reasons, I find that the proposal would meet the requirements of Policies NE2 and NE3 of the WDLP as they seek development proposals to protect biodiversity interests, including protected species, and to deliver biodiversity net gain.

Locations for housing

23. Policy H1 of the WDLP supports new small scale housing development where it lies adjacent to a Growth Village and meets a local need. It also requires the proposal to provide good access to services, protect environmental assets and preserve the character of the locality.
24. There is no dispute that the proposal would be small scale and adjacent to the settlement area where access to local services via safe walking routes exists. As I have found above, the proposal would not have an adverse effect on ecological interests or the character of the locality and the wider landscape.
25. In regard to housing need, there is no dispute between the main parties that the Council is able to demonstrate a 5-year housing land supply. However, there is little evidence before me to demonstrate the current state of play in relation to housing need or delivery in the locality.
26. In support of the proposal, the appellant directs me to the fact that the Council have included an allowance for up to 1,010 houses to be delivered from windfall sites and that the proposal would deliver housing in an otherwise constrained area to make best use of an underused site. As a district-wide estimate of contribution to overall housing delivery, the windfall element is not necessarily bound to the locality of the site.
27. Conversely, despite Burton Green's allocation as a Growth Village for the term of the local plan, it is the Council's position that the recent development of houses in the nearby estate has met the local housing need. However, neither case is backed by any objective analysis and therefore I find those arguments are not adequately supported in evidence.
28. Nevertheless, in the context of the Government's objective of significantly boosting the supply of homes, the Framework recognises the importance that

small sites can make to meeting the housing requirement in an area. Furthermore, it encourages Council's to support the development of windfall sites within settlements. Taking these matters together with the site's location adjacent to an area identified for growth, and the substantial absence of evidence to demonstrate that local housing need has been met, I find the proposal would be in broad alignment with the requirements of Policy H1 of the WDLP as it seeks to direct new housing development to sustainable locations.

Other Matters

29. I acknowledge the concerns of local residents in relation to potential highway safety concerns. However, the appellant has provided evidence that a suitable visibility splay can be achieved at the site. Subject to a requirement to implement and retain the splay, the Council's highway advisors have raised no objection.
30. In order to provide the access and splay, it is noted that relocation of an existing highway sign would be required. Having sought the further views of the main parties on this matter, there is little before me to suggest that could not be achieved within the standard timeframe of a planning permission. As such, those aspects of the development could be reasonably secured through a 'Grampian' condition to secure the off-site works.

Conditions

31. The Council have suggested conditions which I have considered alongside the advice in the Framework and Planning Practice Guidance. I find the majority to be reasonable and necessary in the circumstances of this case. However, some have been edited for precision and clarity. I have re-ordered the conditions to reflect the likely order in which they will need to be satisfied.
32. In addition to the standard time condition, I have specified the relevant plans as this provides certainty.
33. Conditions requiring tree protection measures and a Construction and Environmental Management Plan are necessary to protect and preserve wildlife interests and the existing trees within the site which are of amenity value. These are of necessity pre-commencement conditions to secure the health of the trees and ecological interests during the site preparation and construction phases of the development.
34. In the interests of securing a quality appearance and assimilation of the development, conditions in relation to the external materials of the buildings and landscaping of the site are reasonable.
35. A condition requiring a landscape and ecological management plan to secure the initial and long-term benefits of biodiversity net gain on the site are necessary to meet local and national planning policy requirements. A condition restricting outdoor lighting is necessary in the interests of sustaining local bat populations.
36. Conditions to secure suitable and safe access to the site before works take place, and to provide for parking and turning during the site's use, are necessary in the interests of highway safety.

37. To ensure sustainable forms of drainage on the site details are necessary before development takes place as these may be incorporated into the first phases of the development. In the interests of reducing resource consumption and mitigating air quality impacts, conditions requiring prescribed standards in the development plan are reasonable.

Conclusion

38. For the reasons given, I conclude that the proposal would comply with the local development plan taken as a whole and therefore the appeal should succeed.

R Hitchcock

INSPECTOR

Schedule of Conditions to Planning Permission Ref W/20/2161

- 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: Location plan Promap v2, 453-01, 453-02, 453-03 and 453-04.
- 3) No development or other operations (including demolition, site clearance or other preparatory works) shall commence unless the tree protection measures identified in the Tree Survey Report for Land at Red Lane, Burton Green, Kenilworth, CV8 1PB by Cotswold Wildlife Surveys 3865-CWS-02, dated 7 December 2020, have been put into place in full accordance with the approved details and thereafter shall remain in place for the full duration of any such construction work. In addition no excavations, site works, trenches or channels shall be cut or pipes or services laid, and no fires shall be lit within 10 metres of the nearest point of the canopy of any protected tree(s); no equipment, machinery or structure shall be attached to or supported by a protected tree(s); no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area such 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; and, that 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).
- 4) The development hereby permitted, including site clearance work, shall not commence until a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details concerning pre-commencement checks for protected species including badgers, bats and breeding birds, and appropriate working practices and safeguards for wildlife that are to be employed whilst works are taking place on site. The agreed Construction and Environmental Management Plan shall thereafter be implemented in full.
- 5) No development shall commence until the road traffic sign sited roadside of the application site and as indicated on Drawing 453.01, has been re-sited in accordance with details submitted to and approved by the Highway Authority.
- 6) The access to the site for vehicles shall not be used unless a public highway verge crossing has been laid out and constructed in accordance with the standard specification of the Highway Authority.
- 7) No development shall commence unless and until details of surface and foul water drainage works have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.

- 8) No development shall be carried out above slab level unless and until samples of the external facing materials (brickwork and roof tiles) to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
- 9) The development hereby permitted shall not be occupied until a scheme which satisfies the requirements set out in the Council's adopted Air Quality and Planning Supplementary Planning Document (January 2019) has been submitted to and approved in writing by the Local Planning Authority and implemented in full accordance with the approved details. The approved scheme shall be retained and maintained as such at all times thereafter.
- 10) The development hereby permitted shall not be occupied unless and until a scheme showing how a water efficiency standard of 110 litres per person per day based on an assumed occupancy rate of 2.4 people per household (or higher where appropriate) will be achieved has been submitted to and approved in writing by the Local Planning Authority. The dwelling shall not be occupied until the works within the approved scheme have been completed in strict accordance with the approved details and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.
- 11) The development hereby permitted shall not be occupied until visibility splays have been provided to the vehicle access site with an "x" distance of 2.4 meters and a "y" distance of 120 meters to the near edge of the public carriage highway. No structure or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 meters above the level of the public highway carriageway.
- 12) The development hereby permitted shall not be occupied until a detailed Landscape and Ecological Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include details of planting and maintenance of all new planting. Details of species used and sourcing of plants should be included. The plan should also include details of habitat enhancement/creation measures and management, such as native species planting, wildflower grassland creation, woodland and hedgerow creation/enhancement, and provision of habitat for protected and notable species (including location, number and type of bat and bird boxes, location of log piles). Such approved measures shall thereafter be implemented as an integral part of the development in full and be maintained in accordance with the approved plan for the duration of the development.
- 13) The development hereby permitted shall not be occupied unless and until the car parking and manoeuvring areas indicated on the approved drawings have been provided and thereafter those areas shall be kept marked out and available for such use at all times.
- 14) The development hereby permitted shall not be occupied unless and until a hard and soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. Details of hard landscaping works shall include boundary treatment, including full details of the proposed

boundary walls, railings and gates to be erected, specifying the colour of the railings and gates, footpaths, and hard surfacing, which shall be made of porous materials or provision shall be made for direct run-off of water from the hard surface to a permeable or porous area. The hard landscaping works shall be completed in full 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 in 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 the same size and species as that originally planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 - Transplanting Root-balled Trees and BS4428 - Code of Practice for General Landscape Operations.

- 15) No external lighting shall be provided on the site until details of all external light fittings and external light columns have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in full accordance with such approved details.

END