



Appeal Decision

Site visit made on 25 January 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2022

Appeal Ref: APP/J3720/W/21/3281552

Garages adjacent to 27 Leigh Crescent, Long Itchington CV47 9QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Bain Developments Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 21/00561/VARY, dated 18 February 2021, was refused by notice dated 9 July 2021.
 - The application sought planning permission for demolition of existing garages and erection of 3 No. dwellings without complying with a condition attached to planning permission Ref 20/01850/FUL, dated 11 December 2020.
 - The condition in dispute is No 10 which states that:
The development shall not be occupied until a scheme for the continuous use of public access to the Grand Union Canal (adjacent to the site) has first been submitted and approved by the Local Planning Authority. The public access shall be maintained and retained thereafter in perpetuity.
 - The reason given for the condition is:
To ensure all reasonable steps have been put in place to promote sustainable travel to and from the site minimize the need to travel, while respecting and maintaining the existing public access for public convenience and use to the tranquil setting of the Grand Union Canal thus promoting healthy, inclusive communities, in accordance with Policy AS.10, CS.25 and CS.26 of the Stratford on Avon Core Strategy (2011-31).
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing garages and erection of 3 No. dwellings at garages adjacent to 27 Leigh Crescent, Long Itchington CV47 9QS, in accordance with application 21/00561/VARY without complying with Condition 10 previously imposed on planning permission Ref 20/01850/FUL, subject to the other conditions set out in the Schedule to this decision.

Procedural Matter

2. I note that there is a pending application to designate a route through the appeal site a Public Right of Way. However, this is not a matter for me, under a section 78 appeal, and thus I have not taken it into account in coming to my decision.

Application for costs

3. An application for costs was made by Bain Developments Ltd against Stratford-on-Avon District Council. This application is the subject of a separate decision.

Background

4. In December 2020 planning permission was granted for the construction of 3 dwellings subject to a series of conditions. In doing so the Council imposed a condition for public access through the site to the canal behind. The appellant is seeking to remove this condition.

Main Issue

5. The main issue is whether removal of the footway link would result in an unsustainable form of development with regard to accessibility to local facilities.

Reasons

6. The appeal site is formed of disused garages located in Leigh Crescent. A narrow route extends between the garages and a neighbouring fence line providing a route between houses and the Grand Union Canal, which is a local recreational feature.
7. Based on the evidence before me the appeal site has provided an informal cut through between Leigh Crescent and the canal for a number of years. However, the land is privately owned and no public right of way exists.
8. I acknowledge that public access through the site would provide an additional link to the canal encouraging walking and use of the neighbouring waterway. However, in my view the number of people that it would benefit would be relatively small as it would provide a shorter walking route and link to the canal for people living on a section of Leigh Crescent.
9. Access through the site is not the only access to the canal network in the area. A formal public route exists between Leigh Crescent and the canal, approximately 300m west of the site. This route also connects to Stockton Road. A further public route exists approximately 45m east of the site linking the canal to Keepers Meadow forming part of a recently completed housing development.
10. These routes provide legible and suitable physical environments for cyclists and pedestrians including children and parents with prams and those with reduced mobility through the village. At the time of the site visit I noted people using these routes. Whilst this is a snapshot in time it is evident that these routes are well-used and there is nothing before me to suggest that they would not remain so in the foreseeable future. As such, I am satisfied that the path of the other routes and the overall distances are not unduly convoluted or would discourage residents from walking to the canal. Nor is it likely that the proposal would deter narrow boat visitors or people from frequenting local facilities including the village shop, public houses and school.
11. The proposed development in terms of its overall appearance and layout would be read as an appropriate extension of the existing built form, well integrated and connected to Leigh Crescent. The absence of public access through the site would not result in a divorced form of development and would not unacceptably undermine the ability of existing and future residents to utilise the canal.
12. For the above reasons I conclude that the proposed condition is not necessary or reasonable and there would be no conflict with Policy CS.9 of the Stratford-

on-Avon Core Strategy (2015) which, amongst other things, seeks well integrated proposals with existing built form, network of streets and footpaths.

Other Matters

13. Based on observations at my site visit and taking into account the advice of the Highways Authority, there is no credible evidence to suggest that the absence of public access through the site would adversely affect pedestrian safety.
14. I note that the Long Itchington, Bascote and Bascote Heath Neighbourhood Development Plan (NDP) has been submitted for examination. The National Planning Policy Framework (the Framework) in paragraph 48 sets out that the weight to be given to relevant policies in emerging plans varies according to the stage of preparation, the extent to which there are any unresolved objections and consistency with the Framework. As the NDP has not been "made" I afford it negligible weight in coming to my decision.

Conditions

15. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The PPG also indicates that a grant of planning permission under Section 73 should not extend the time period for implementation.

Conclusion

16. I therefore have found that the Condition is not necessary or reasonable. For this reason, the appeal is allowed and the planning permission varied by deleting Condition 10.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development to which this permission relates must be commenced not later than the expiration of three years from the date of planning permission 20/01850/FUL, dated 11 December 2020.
- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings: Site Location Plan Dwg No: CCT 350 SUR 001; Proposed Site Layout Dwg No: CCT 350 PA 001 Rev A; Plot 1 Proposed Plans and Elevations Dwg No: CCT 350 PA 100; Plots 2 & 3 Proposed Plans and Elevations Dwg No: CCT 350 PA 200 Rev A and Topographical Survey Job No. 1267.

The development shall also be carried out in accordance with the Planning Statement (July 2020) unless otherwise required by conditions attached to this permission.

- 3) Notwithstanding the details indicated on the submitted drawings, the materials to be used externally on the development hereby permitted shall comply in colour, form and texture with details set out in a schedule of materials and finishes (including trade descriptions/brochure details where appropriate, which shall first have been submitted to and approved in writing by the Local Planning Authority, prior to any part of the development progressing above slab level.
- 4) Prior to progression of any part of the development hereby permitted above ground floor level, a scheme of hard and soft landscaping detailing treatment of all parts of the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall include:

- (1) planting plans (to a recognized scale) and schedules indicating the location, number, species, density, form and size of proposed tree, hedge and shrub planting;
- (2) the method and specifications for operations associated with planting establishment, protection, management and maintenance of all retained and new tree, hedge and shrub planting;
- (3) written specifications including cultivation and other operations associated with tree, plant and grass establishment;
- (4) existing landscape features such as trees, hedges, shrubs and ponds which are to be retained and/or removed, accurately plotted (where appropriate);
- (5) existing and proposed finished levels (to include details of grading and contouring of earthworks and details showing the relationship of proposed mounding to existing vegetation and surrounding landform where appropriate);
- (6) the means of accommodating change in level (e.g. retaining walls, steps, railings, walls, gates or other supporting structures, ramps);
- (7) location, type and materials to be used for hard surfacing, where applicable, including specifications and details of manufacturer, type and design, colour and bonding pattern where appropriate. Samples may be required to be submitted and approved;

- (8) the position, design, materials, means of construction of all site enclosures and boundary treatments and protection of the landscape zone (e.g. fences, walls, railings, hedge(banks)), where appropriate;
- (9) car parking layout and any other vehicular and pedestrian access and circulation areas;
- (10) a timetable for the implementation of the soft and hard landscaping scheme.

There shall be no excavation or raising or lowering of levels within the prescribed root protection areas of retained trees unless previously approved in writing by the Local Planning Authority.

The approved soft and hard landscaping scheme shall be carried out strictly in accordance with the approved timetable of implementation and shall thereafter be protected, maintained and managed in accordance with the approved details.

- 5) Development shall not commence until clauses (a), (b) and (c) have been complied with:

(a) A Phase 1 Desk Study and site walkover shall be carried out. The Desk Study shall provide results of the site walkover; detail a full history of the site uses; and identify any unacceptable risks to human health and the environment. The Desk Study shall be submitted to and approved in writing by the Local Planning Authority.

(b) Where unacceptable risk is identified by the Desk Study, a detailed Site Investigation shall be carried out and a Site Investigation Report submitted to and approved in writing by the Local Planning Authority. The Report shall detail all investigative works and sampling on site, together with results of analysis and risk assessment to any receptors.

(c) Where unacceptable risk is identified by the Site Investigation Report, a proposed Remediation Strategy (including a Quality Assurance Scheme) shall be submitted to and approved in writing by the Local Planning Authority. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.

- 6) Prior to occupation of the development clauses (a), (b) and (c) shall be complied with:

(a) All remediation work approved under the Remediation Strategy in Condition 5 above shall be completed as approved and be carried out under the Quality Assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. 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.

(c) A certificate signed by the developer shall be submitted to the Local Planning Authority confirming that the appropriate works have been undertaken as detailed in the Completion Report.

- 7) The development shall not be occupied until space has been provided within the site for the parking and manoeuvring of cars in accordance with drawing number CCT 350 PA 001 Rev A.
- 8) No development on Plots 2 and 3 (including any demolition works to remove the southernmost garage block on the site) shall take place until a Method Statement detailing all proposed demolition works, earthmoving and construction works, including the design and means of constructing the foundations, has first been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the agreed Method Statement and any mitigation measures identified therein.
- 9) No demolition, site clearance or building operations of any type shall commence or equipment, machinery or materials brought onto site (for the demolition of the necessary garages and associated development of Plots 2 and 3) until a scheme for the protection of all existing trees and/or hedges has been submitted to and approved in writing by the Local Planning Authority. The tree/hedge protection measures within the scheme shall include and make reference to:
 - (a) the submission of a Tree Protection Plan and appropriate working methods
 - (b) details of the erection of stout protective fencing in accordance with British Standard BS5837:2012, Clause 6.2; and
 - (c) fencing shall be shown on the Tree Protection Plan and installed to the extent of the tree Root Protection Area (RPA) as defined in BS5837:2012 and as agreed in writing by the Local Planning Authority.

The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site.

Furthermore, the following work shall not be carried out within the Root Protection Area (RPA) of any retained tree or hedgerow, except with the prior written approval of the Local Planning Authority:

- (i) No materials, equipment, machinery or structure shall be attached to or supported by a retained tree or hedgerow, nor stored or stacked within said RPA;
- (ii) No mixing of cement or use of other contaminating materials or substances shall take place within, or close to, a RPA that seepage or displacement could cause them to enter a RPA;
- (iii) No fires shall be lit within any RPA or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of any

retained tree or hedgerow within or adjacent to the site as per the requirements of BS5837 :2012;

(iv) Levels shall not be raised or lowered in relation to the existing ground level within the RPA of any retained tree or hedgerow;

(v) No roots shall be cut, trenches dug or soil removed within the RPA of any retained tree or hedgerow;

(vi) No buildings, roads or other engineering operations shall be constructed or carried out within the RPA of any retained tree or hedgerow; and

(vii) No vehicles shall be driven over the area within the RPA of any retained tree or hedgerow.

- 10) No works shall commence until a scheme for foul and surface water disposal has first been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such approved details prior to the first use or occupation of the building(s) hereby permitted and shall be retained thereafter.
- 11) The dwellings hereby permitted shall not be occupied until 3 bins for the purposes of refuse, recycling and green waste have been provided [for each of the approved dwellings], in accordance with the Council's bin specifications. Any siting of domestic refuse bins shall be at the rear of the building or within any suitably screened area for bin storage. Details of any proposed bin store to be erected or constructed shall be submitted to and approved in writing by the Local Planning Authority prior to erection or construction.
- 12) No dwelling(s) hereby permitted shall be occupied until electric vehicle charging points (EVCPs) have been provided at its associated parking spaces as follows:
- for each home with up to and including 3 bedrooms, at least one dedicated parking space with an EVCP rated at a minimum of 16 amps; and
 - for each home with more than 3 bedrooms, at least one dedicated parking space with an EVCP rated at a minimum of 32 amps; and
 - 20% of any communal or visitor parking spaces shall be provided with 32 amp EVCPs; and
 - all other communal or visitor parking spaces shall be provided with cabling to allow installation of 32 amp EVCPs in future.
- The provision shall be in accordance with details previously submitted to and approved in writing by the Local Planning Authority. Such details shall include siting, numbers, design, rating and appearance of the EVCP's.
- 13) No dwelling that has a downpipe within the development hereby permitted shall be occupied or used until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.
- 14) No dwelling shall be occupied until it has been provided with connection(s) to facilitate superfast Broadband connectivity.
- 15) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as

amended) (or any order revoking, re-enacting or modifying that Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express grant of planning permission, other than that expressly authorised by this permission:)

- (#) Part 1, Class A (enlargements, improvements or other alterations);
- (#) Part 1, Class B (roof additions);
- (#) Part 1, Class C (other roof alterations);
- (#) Part 1, Class D (porches);
- (#) Part 1, Class E (incidental buildings, enclosures, swimming or other pools).