



Appeal Decision

Site visit made on 26 April 2022

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2022.

Appeal Ref: APP/T3725/W/22/3290656

21 Vine Lane, Warwick CV34 5BD

- 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 A Cummings on behalf of Anto Gerard Ltd against the decision of Warwick District Council.
 - The application Ref W/21/0368, dated 24 February 2021, was refused by notice dated 16 July 2021.
 - The application sought planning permission for: Erection of 2no. 2no. bedroomed dwellings without complying with conditions attached to planning permission Ref W/14/0887, dated 5 August 2014.
 - The condition in dispute is No 14 which states that: The development hereby permitted shall not be occupied unless or until a Traffic Regulation Order has been made by the Highway Authority to remove the application property from the existing Traffic Regulation Order thereby securing the removal of the rights of the applicant/ future owner/ tenants of the application property to apply for residents parking permits.
 - The reason given for the condition is: To ensure the proposed development does not result in an increase in on-street parking pressure in an area with already high demand to the detriment of highway safety and residential amenity in accordance with Policies DP8, DP2 and the Vehicle Parking Standards SPD of the Warwick District Local Plan 1996-2011.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of 2no. 2no. bedroomed dwellings at 21 Vine Lane, Warwick CV34 5BD in accordance with application Ref: W/21/0368, dated 24 February 2021, without compliance with condition 10 previously imposed on planning permission Ref: W/14/0887, dated 5 August 2014, but subject to the conditions in the attached schedule. Condition 2 is amended to reflect the revised plans and previously approved non-material amendment, condition 10 is removed, and condition 14 is retained, its wording amended only for clarity without changing its meaning.

Application for costs

2. An application for an award of costs was made by A Cummings on behalf of Anto Gerard Ltd against Warwick District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant name and company is taken from the application form for the section 73 application (dated 24 February 2022), although I note there is some inconsistency between the spelling of both within the appeal documentation.

Background and Main Issues

4. Planning permission was granted in August 2014 for erection of two dwellings (Ref W/14/0887). A non-material amendment was subsequently granted in August 2020 to address alterations to the building design, including a narrower footprint and changes to fenestration. The application subject of this appeal seeks approval for further retrospective changes to the approved drawings relating to the rear garden, including decking and boundary fencing (condition 2), removal of the requirement for the garages to be used solely for parking of vehicles (condition 10), and removal of the restriction preventing the occupants from applying for residents parking permits (condition 14). The removal of condition 14 is the condition in dispute between the main parties, with respect to its effect on residential amenity.
5. Policy BE3 of Warwick District Local Plan (September 2017) seeks to ensure developments do not have an unacceptable impact on the amenity of local residents. I accept that parking stress is not specifically referenced as an example of disturbance or intrusion in the supporting text to that policy. However, circumstances where a development contributes to the demand for parking spaces regularly exceeding supply could result in an unacceptable increase in parking stress and inconvenience for existing local residents reliant on street parking, thus harming residential amenity.
6. Therefore the main issue is whether condition 14 is reasonable or necessary in the interests of the amenity of existing residents in the locality, with regard to the convenience of access to on-street parking spaces.

Reasons

7. The appeal site is located in an existing residential area which contains a mix of houses, some with driveway parking or small private parking areas, but many being terraced houses reliant on on-street parking. The site is within a residents parking zone (RPZ) where, between 8am and 8pm non permit holders are able to park on-street for two hours, with no return within a four hour period.
8. The appeal scheme comprises 2 No two bedroom houses, each of which could feasibly require two parking spaces. That is the level of parking anticipated for two bed dwellings in the Warwick District Council Parking Standards SPD (June 2018) (the SPD). The integral garages as originally approved were 3m wide, 1m narrower than the guidance in the SPD, adopted subsequent to the original approval. Therefore, the spaces are relatively constrained. A non-material amendment has also been approved for these spaces to be narrower than originally proposed, and as constructed they are understood to be narrower still. Even as originally approved, experience dictates that occupants are unlikely to use such constrained garage spaces for car parking on a regular basis.
9. The appeal is supported by a car parking appraisal by dta (February 2021) which includes reference to a car parking survey conducted in December 2020 on two consecutive nights. The surveys identified that within the surveyed area in the vicinity of the site there were 18 and 12 parking spaces available respectively. This indicates that, whilst limited, there was some availability of on street parking on surrounding roads overnight.

10. The Council suggests that additional survey work is required to establish the availability of parking spaces within the RPZ at other times of the day. This is in light of the proximity of the site to uses such as Warwick Hospital and Warwick train station which could lead to increased pressure for parking within the RPZ. The SPD advises that additional surveys may be required where sites are close to land uses that may increase parking demand at certain times.
11. Given the two hour parking restriction, the RPZ is unlikely to be compatible with commuter parking associated with Warwick railway station. The site is not far from Warwick town centre. However, allowing for travel time, the two hour daytime RPZ parking restriction would likely limit the desirability of parking in this area for town centre visitors. In contrast, the ability to park for two hours in the RPZ is likely to be an attractive option for visitors to the hospital. It may also be used for visitors to the nearby primary school, as well as the pub and shop on Lakin Road. Consequently, there are a range of existing uses that could result in considerable demand for parking within the RPZ during daytime hours.
12. At the time of my weekday mid morning site visit, whilst only a snapshot in time on that day, on-street parking availability was relatively limited within the RPZ. The appellant's evidence includes photographs which indicate some available on-street parking spaces during the day-time, however the precise timing of these is not shown. Therefore, these are not necessarily representative of peak times for parking during the RPZ hours of restriction.
13. I have had regard to the judgement in *R (oao Khodari) v Kensington and Chelsea & Cedarpark Holdings Inc* [2017] EWCA Civ 333. Albeit that dealt specifically with the lawfulness of a planning obligation not to apply for resident's parking permits, rather than a planning condition as is the case here. Paragraph 55 of the National Planning Policy Framework (the Framework) advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
14. Whilst the TRO amendment process required by condition 14 is outside the appellant's control, there is no indication that an amendment to the TRO as specified in condition 14 would be particularly costly or protracted, the Highways Authority having suggested it as a means of limiting the effect of the appeal scheme on parking stress for nearby occupants. The associated prohibition of occupation is necessary to ensure that the condition is enforceable.
15. Furthermore, the sustainability of the site, whilst potentially conducive to travel by non-car modes, does not on its own provide sufficient certainty over the occupants' choice of whether to own one or more cars. In addition, although the appellant has indicated that the lack of parking permits has deterred potential house buyers, the timescales over which the houses have been marketed and relevant details of such marketing have not been provided. Therefore I am unable to reach a firm conclusion as to the effect of condition 14 in this respect.
16. As a result of condition 14, parking provision for the appeal properties is not compliant with the expectation in Policy TR3 of the Local Plan for developments to comply with the SPD parking standards. However, paragraph 2.4 of the SPD identifies specific circumstances where a lower parking provision may be justified. The third of these is that the development meets other planning

objectives and would not unacceptably worsen the parking situation. In this instance, the development meets the objective of delivering housing on a previously developed site. Even if occupants of the appeal scheme were to own one or more cars, this would not unacceptably worsen the parking situation in the vicinity of the site (given the presence of the RPZ and availability of spaces at night). Further, I see no reason to conclude that retaining condition 14 would unacceptably worsen parking on surrounding roads outside of the RPZ. No robust evidence is before me to indicate that that would be a likely outcome.

17. The retention of condition 14 would accord with Local Plan Policy BE3 in protecting the amenity of surrounding residents. Given the accessibility of the site to nearby services including the train station, and the potential option of parking a vehicle in the appeal scheme's integral garages, I am satisfied that condition 14 would not unacceptably compromise the amenity of occupants of the appeal scheme.
18. To conclude, the potential increase in parking demand from the removal of condition 14 would unacceptably harm the amenity of existing local residents. This harm would result from increased parking stress due to the inconvenience of more constrained on street parking during the daytime, and the associated time required to locate a parking space. Evidence before me does not clearly indicate otherwise. Therefore, condition 14 is necessary in the interests of the amenity of existing residents in the locality, with regard to the convenience of access to on-street parking spaces. Also, in the particular circumstances of this case I am satisfied that condition 14 is reasonable, and meets all six tests specified in paragraph 56 of the Framework.

Other Matters

19. The appellant has also sought to vary condition 2 of the original permission to address the decking and boundary fence installed in the rear gardens of the appeal dwellings. Due to Vine Lane being on higher ground than Paradise Street, the boundary fence at the appeal site inevitably appears more dominant than if Vine Lane and Paradise Street were level with each other. I note the objections raised by local residents in this regard. However, the fencing achieves a suitable level of privacy for existing occupants of surrounding houses as well as occupants of the appeal scheme without being excessively tall. In addition, the level of the decking is not so high as to unacceptably compromise the privacy of neighbouring occupants. Therefore, the proposed amendment to condition 2 would accord with Policy BE3 of the Local Plan in avoiding unacceptable harm to residential amenity.
20. The appellant also sought the removal of condition 10 which requires that the integral garages are not used for any purpose other than for the storage of a private motor vehicle. As reasoned above, even as originally approved, the internal dimensions of the garages are constrained for regular vehicle parking and no longer comply with the dimensions set out in the SPD. Consequently, condition 10 is not reasonable and can be removed. In any event, removal of the condition in itself would not prevent the occupants of the appeal scheme from parking within their garages if they so choose.

Conditions and Conclusion

21. The guidance in the Planning Practice Guidance 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. The time limit condition is no longer required as the development has already commenced.
22. For the reasons given above, I conclude that the appeal should partly succeed. Condition 2 (now condition 1) is varied to reflect the revised plan references. For clarity on the approved plans, this incorporates those plans approved by the local planning authority in August 2020, as a non-material amendment to the original permission. Condition 10 is no longer reasonable and necessary and is removed.
23. The disputed condition 14 (now condition 12) is reasonable and necessary and is therefore retained. For clarity and without changing its meaning, I have simplified its wording by removing reference to the process of a Traffic Regulation Order (TRO) being made by the Highways Authority to remove the appeal properties from the existing TRO. Instead it refers to the need for the TRO to be amended by removing the appeal dwelling from the list of dwellings for which residents parking permits can be issued.

Rachel Hall

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawings: (323-42 and 323-44 submitted on 6 July 2020; and 323-21, 323-43A, 323-45 and 323-46 submitted on 26 February 2021), and specification contained therein.
- 2) Samples of all external facing materials to be used for the construction of the development hereby permitted, shall be submitted to and approved by the local planning authority before any construction works are commenced. Development shall be carried out in accordance with the approved details.
- 3) The development hereby permitted shall be carried out in strict accordance with the details of surface and foul water drainage works that have been submitted to and approved in writing by the local planning authority.
- 4) Unless the Local Planning Authority certifies that suitable alternative provision has been made for the provision or improvement of open space within the catchment area of the application site in accordance with Policy SC13 of the Warwick District Local Plan 1996-2011:
 - (i) no development shall commence unless or until a scheme for such provision or improvement (identifying the size/extent, location and specification of the space and works) has been submitted to and approved in writing by the Local Planning Authority; and
 - (ii) the dwellings hereby permitted shall not be occupied until the scheme so approved has been implemented.
- 5) No works shall take place unless and until the applicant has secured and implemented a programme to photographically record the air raid shelter in the rear garden, in accordance with a written scheme which has been submitted to and approved in writing by the local planning authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development shall be carried out which comes within Class A, Class B, or Class E of Part 1 of Schedule 2 of this Order.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 1995 (or any order revoking and re-enacting that order with or without modification) the roof lights to be formed in the front facing roof slope of the building hereby permitted shall only be glazed or re-glazed with obscure glass, and the roof lights to be formed in the rear facing roof slope of the building hereby permitted shall be at least 1.7m above the floor of any room in which the window is installed.
- 8) The development hereby permitted shall not be first occupied unless and until the renewable energy scheme submitted as part of the application has been wholly implemented in strict accordance with the approved details. The works within this scheme shall be retained at all times thereafter and shall be maintained strictly in accordance with

manufacturers specifications. Microgeneration equipment no longer needed for microgeneration shall be removed as soon as reasonably practicable.

- 9) The garage doors permitted to be installed as part of the development hereby approved shall comprise remotely operated powered roller shutter doors. Those doors shall be maintained to operate in that manner at all times.
- 10) No use of the development hereby permitted shall commence unless and until a public highway footway crossing has been constructed to the site in strict accordance with the standard specification of the Highway Authority.
- 11) The access to the site shall not be reconstructed in such a manner as to reduce the effective capacity of any drain within the limits of the public highway.
- 12) The development hereby permitted shall not be occupied unless or until the Traffic Regulation Order has been amended by removing the appeal dwellings from the list of dwellings for which residents parking permits can be issued.