



Appeal Decision

Site visit made on 28 June 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2022

Appeal Ref: APP/K3415/W/22/3292794

Land To West Of Cartersfield Lane, Stonnall, Walsall WS9 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr N Misselke (Elford Homes) against the decision of Lichfield District Council.
 - The application Ref 21/01523/OUT, dated 20 August 2021, was refused by notice dated 6 January 2022.
 - The development proposed is described as "demolition of B8 unit to deliver residential development".
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Decision

1. The appeal is allowed and outline planning permission is granted for proposed residential development including demolition of existing B8 unit at land to west of Cartersfield Lane, Stonnall, Walsall WS9 9EF in accordance with the terms of the application, Ref 21/01523/OUT, dated 20 August 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The description of proposed development in the header is taken from the application and appeal forms. It is clear from the submissions the proposal includes not just the demolition of the B8 unit but also the construction of a new residential development. For clarity purposes, in my decision I have used the description of development from the Council's decision notice, although I have omitted the superfluous reference to an outline application with all matters reserved. As it is used by the Council and the appellant, no injustice would be caused by basing my assessment on this revised description.
3. Outline planning permission is sought with all matters reserved for future consideration. In line with paragraph 5(3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015, the drawings show the area where the access to serve the development would be situated. I have taken this information into account. The drawings also show details of the layout and elevations of the proposed development. However, the plans are marked as indicative and so I have treated them as such in my assessment.
4. As part of the appeal submissions, the appellant provided 4 unilateral undertakings under the provisions of section 106 of the Act. These are identical but signed separately by the 4 different owners of the appeal site. None of these UUs are dated and so are incomplete.
5. Subsequently, a further single unilateral undertaking has been provided which is signed by all the owners and is dated (the completed UU). This requires a

financial contribution to be made towards mitigation measures that offset the impact of recreation at Cannock Chase Special Area of Conservation (SAC). The Council has had the opportunity to submit comments on the completed UU. Also, I have consulted Natural England (NE) on the issue of the proposal's effect on the integrity of the SAC. Consequently, I am satisfied that no injustice would be caused by taking the completed UU into account in my assessment.

Main Issues

6. Having regard to the Council's refusal reasons and the appeal submissions, I consider the main issues are:-
- whether the scheme would be inappropriate development in the Green Belt in light of the National Planning Policy Framework (the Framework) and policies of the Lichfield District Local Plan Strategy 2015 (LPS);
 - the effect of the development on the integrity of the SAC;
 - whether the development would be in a suitable location having regard to the LPS policies and the Framework; and
 - whether other considerations indicate that planning permission should be granted regardless as to any identified conflict with the development plan.

Reasons

Whether inappropriate development in the Green Belt

7. LPS policy NR2 states that the construction of new buildings are to be regarded as inappropriate development in the Green Belt, unless it is an exception as identified in the Framework. Under paragraph 149 (g) of the Framework, the redevelopment of previously developed land is defined as not inappropriate development in the Green Belt. This is subject to the proposal having no greater impact on the openness of the Green Belt than existing development.
8. The site contains a building described as being in Class B8 or storage and distribution use. An area of hardstanding surrounds the building on all sides. There is also a drive from the road, a short line of trees alongside the drive and a small, grassed area behind the trees. Allotments lie to the rear of the site.
9. The demolition of the existing building and the construction of new residences would represent the redevelopment of the plot. Also, there is no dispute between the main parties that the site constitutes previously developed land. I agree as it largely contains a permanent building and associated hardstanding. As such, the proposal would represent redevelopment of previously developed land and would not be inappropriate development in the Green Belt provided it has no greater effect on openness than the existing situation.
10. The store building is sizeable and its volume has a detrimental effect on the spatial openness of the site. The footprint of the store is relatively small compared to the size of the plot but hardstanding makes up a large part of the remainder. A significant portion of the external area could be used for the parking of vehicles including lorries as well as outdoor storage in association with the authorised class B8 use. Such activities would also harm the openness of the site. It appears to me that the reintroduction of a storage or distribution use is a realistic prospect as there is no evidence to suggest otherwise. As such, this fallback position is a significant factor in my assessment.

11. The property is not prominent due to the screening effect of roadside vegetation. Even so, the store and the area of hardstanding to the front are visible from the road through the access. Also, they can be viewed by those going to and from the adjacent allotments. Therefore, the development on the site has an effect on visual, as well as spatial, openness.
12. The demolition element of the scheme would in itself lead to a significant improvement to the openness of the plot. In their comments on the effect of the proposed residential development, both main parties rely on the details as shown on the appeal drawings. However, the drawings only provide an indication as to how the proposal might appear. The description of development does not specify the number of proposed dwellings and details of layout and scale are reserved for future consideration. As such, I attach limited weight to any comparison made by the Council and the appellant between the existing development and the indicative scheme.
13. Given the scale of the store and the extent of hardstanding, I am satisfied that a residential development could be designed that would have a similar or less harmful effect on spatial openness compared to the existing situation. Moreover, a scheme could be provided with houses, associated parking or garden areas set further back into the site so that they would be less noticeable from the road than the store.
14. New residential development would introduce domestic activities, associated paraphernalia and parking, which would all affect openness. However, even if visible from the access through to the allotments, I am satisfied a residential scheme would not have a greater impact on spatial or visual openness than the current situation if sensitively designed. An acceptable design in these respects could be ensured through the approval of reserved matters process. The proposed change in use and character of the site would not inevitably affect its openness.
15. Therefore, the proposal would be the redevelopment of previously developed land which would not have a greater impact on openness than the existing situation. As such, I conclude it would not be inappropriate development in the Green Belt and so in these regards it would accord with LPS policy NR2 and the Framework.

Effect on the SAC

16. The SAC has been designated for its nature value, in particular its dry heathland habitat. In addition to the important vegetation, the SAC supports several populations of scarce invertebrates and it is an important breeding site for European nightjars.
17. The appeal site lies within the 15km zone of influence associated with the SAC. As such, the latest evidence that I am referred to indicates it is likely that the development would generate recreational visits to the SAC. These visits would increase the risk of disturbance to the protected habitat. As such, it is likely the proposal would cause significant adverse impacts to the integrity of the SAC. In such circumstances, it is necessary for me to conduct an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) as to the effect of the development on the integrity of the SAC.

18. LPS Policy NR7 states that development must not have an adverse effect on the integrity of the SAC having regard to avoidance or mitigation measures. It goes on to explain that the Council and relevant partners will develop a mitigation strategy to address the harm that visitors may cause. I am referred to Guidance to Mitigate the Impact of New Residential Development on the SAC (the Guidance), dated March 2022. This explains how the Council with other local authorities have agreed to collect financial contributions from housing developments within 15km of the SAC and to spend these on a package of measures to mitigate harmful impacts. The Guidance also states the Council will require an agreement or undertaking to be entered into to secure the required contribution.
19. In line with the Guidance, the completed UU requires a financial contribution to be made towards the package of mitigation measures. NE and the Council raise no objections to the terms of the completed UU and I am satisfied it would secure the contribution as required.
20. As part of an appropriate assessment, the Regulations require me to consider measures that could be delivered so as to avoid adverse effects on the integrity of protected sites. In light of the secured financial contribution towards mitigation measures, I conclude the development would not adversely affect the integrity of the SAC. In these regards, it would accord with LPS Policy NT7.

Suitability of location

21. LPS Core Policy 1 sets out a spatial strategy and identifies locations where the majority of future development is to be directed. In terms of rural locations, Core Policy 1 identifies 5 key settlements where new housing will mainly be directed. In addition, the policy states smaller villages will accommodate housing to meet local needs. However, LPS Core Policies 1 and 6 generally limit new residential development to sites in defined settlement boundaries.
22. Stonnall is not one of the locations where the majority of future development is to be directed, nor one of the key rural settlements identified under LPS Core Policy 1. However, Policy H1 of Stonnall Neighbourhood Plan 2014 to 2029 (NP) allows housing development within the defined settlement boundary that meets local need.
23. There is no evidence before me to demonstrate the proposal would meet any identified need. Also, the appeal site lies outside the settlement boundary as defined in the NP. Moreover, the proposal would not comply with any of the other acceptable forms of residential development in rural areas as set out under LPS Core Policy 6 or Policies Rural 1 and 2. As such, the scheme would conflict with the LPS spatial strategy and NP policy H1.
24. In arriving at this view, I have had regard to the referred to appeal decision reference number APP/K3415/W/18/3217357. In that case, the Inspector found the proposal would be in a suitable location and would not be contrary to LPS Core Policies 1 and 6 despite being outside any settlement boundary. However, the Inspector noted the close proximity of the site to various public transport links and so it is not comparable to this appeal scheme. As such, this previous decision fails to affect my opinion.

25. The site is only a short distance from Stonnall's settlement boundary. Given its proximity to other properties in the village, the proposal would not provide isolated homes as generally resisted under the terms of the Framework.
26. Moreover, Stonnall contains a range of facilities including a doctor's surgery, primary school, shops and pub. Also, nearby bus stops would provide access to public transport services although I have little information on the frequency of buses or their destinations. The facilities in the village would be within a reasonable walking distance for future residents of the development.
27. The lack of a roadside pavement between the site access and the built up extent of the village would discourage some walking trips as it would force pedestrians into the road. However, the appellant accepts a planning condition that would require the provision of a new roadside footway to link the site to existing pavement. As this condition is suggested by Staffordshire County Council as highway authority, I am satisfied that there is a reasonable prospect of such a footway being delivered. Therefore, it would be appropriate to secure its provision through a planning condition.
28. The fairly short distance to local facilities means the development would be conveniently located for occupants to help enhance or maintain the vitality of Stonnall. The extension of the pavement would also promote walking. In these respects, the development would accord with the aims of the Framework.
29. In summary, I conclude the development would not conform with the LPS spatial strategy and so it would not be in a suitable location in light of the LPS Core Policies 1 and 6 and Policies Rural 1 and 2. However, any harm in this respect is tempered by the scheme's accordance with the Framework's provisions on the location of rural housing and promoting sustainable forms of travel.

Other concerns

30. A number of other concerns have been raised. The appellant has submitted a transport assessment that indicates the development would result in a reduction of traffic compared to the existing class B8 use. In the absence of any firm evidence to the contrary, it is reasonable to conclude the proposal would not prejudice highway safety. The development could be designed so as to not obstruct access to the adjacent allotments or fields.
31. In light of the appellant's ecological submissions, I am satisfied the proposal would not harm or cause risk of harm to protected species using the site, including bats. There is no indication that the development would result in the removal of any trees.
32. There is no information that clearly demonstrates the site lies in a mineral safeguarding zone. In any event, given the existing development on the site, I find no sound reason why the proposal would prejudice mineral extraction. Also, the development would be far enough away to ensure noise and dust from a local quarry would avoid unacceptable living conditions.
33. I note the evidence of surface water on the road but there is no reason to find the development would be at flood risk or exacerbate flood risk elsewhere. Indeed, the proposal could reduce the amount of hardstanding on the site and so lead to a decrease in surface water run-off. A planning condition could be imposed to ensure the provision of an appropriate drainage system. Severn

Trent Water Authority raise no objections and so I am satisfied the development would avoid problems in terms of foul water drainage.

34. The existing building was previously used for agricultural purposes but there is no evidence to indicate it would return to this use if the appeal was dismissed. In any event, I am directed to no policy that seeks to retain agricultural buildings. In the absence of firm reasons to dismiss the appeal on any of the above grounds, the concerns raised do not affect my overall conclusion.

Other considerations and planning balance

35. The proposal would comply with Green Belt policy and would not lead to harm to the integrity of the SAC. However, it would be contrary to LPS policies on the location of housing and so it would not accord with the development plan when read as a whole. It follows to consider whether other factors justify allowing the appeal contrary to the development plan policies.
36. The existing building is unsightly and activities associated with the class B8 use could be harmful to the character and appearance of the locality. The site is not prominent from the road although it is seen through the access and is also viewed by visitors to the allotments. Through sensitive and sympathetic design, the proposal would enhance the appearance of the site and would either maintain or increase its openness. Such an improvement to the visual qualities of the site and its surroundings attracts moderate weight in favour of the scheme.
37. The proposal would make effective use of previously developed land. The Council is able to demonstrate a significant supply of land suitable for housing, well in excess of the 5 year minimum figure as stipulated under the terms of the Framework. Nevertheless, the scheme would help boost the housing stock. Also, it would generate construction employment and future residents would support local businesses. Given the likely scale of the development, these benefits together also attract moderate weight.
38. It is likely the scheme would reduce the amount of hardstanding and so would reduce surface water runoff from the site. Furthermore, dwellings are less likely than the existing class B8 building to generate noise, although there is no evidence that indicates any significant disturbance has been caused in the past. Even so, these benefits attract modest positive weight.
39. Whilst contrary to LPS policies on the distribution of residential development, the scheme would allow residents to walk to a range of local services and so help maintain the vitality of the rural community. In such circumstances, the conflict with the development plan spatial strategy attracts only modest weight. Having regard to all factors in favour and against, I find that the benefits of the proposal when considered together outweigh the harm that would be caused. Therefore, other considerations provide sufficient justification to grant planning permission contrary to the development plan.

Conditions

40. I have considered the conditions suggested by the Council, having regard to the tests set out in the Framework. Where appropriate, I have amended the wording for precision reasons and to avoid pre-commencement conditions.

41. The first 3 conditions are required by law and as outline planning permission is sought. There is no need or justification to impose a condition that requires the development to be carried out in accordance with the submitted drawings as these have been provided for indicative purposes only.
42. In light of the conditions on reserved matters, there is no need for separate conditions that require details of access, design of buildings, parking and turning area layout, boundary treatment and landscaping to be submitted and approved. Also, there is no need for conditions that set out required standards in relation to reserved matters, such as the minimum width of the site access. The acceptability of such details can be assessed through reserved matters applications. Furthermore, no justification has been provided for the suggested condition relating to site and finished floor levels and I find no reason why it is necessary for such details to be subject to approval.
43. A condition is imposed to protect trees so as to avoid unnecessary harm to existing natural features and as insufficient information is provided in the appellant's tree report. In the interests of highway safety, a condition regarding construction management is required. However, there is no need for this condition to require details on the time of deliveries or duration of the works as the development would be set away from the nearest residences and so would not cause unacceptable disturbance. Similarly, I find no justification for a condition that limits the times of construction works.
44. Conditions in respect of ground contamination are necessary to ensure the development does not lead to pollution or harm to future occupiers. Also, to avoid pollution and flooding, a condition is imposed on foul and surface water drainage. To ensure bats are adequately protected, a condition is included that refers to recommendations in the submitted bat surveys.
45. For accessibility reasons, a condition is imposed that requires the provision of a new footway along the road. In the interests of highway safety, I impose a condition in respect of visibility splays at the access. However, I have not imposed a condition that requires gates to be set back from the access as the acceptability of any such feature can be assessed under applications for reserved matters.
46. Also in the interests of highway safety, conditions are required in respect of parking, turning areas and bin collection points being provided prior to the first occupation of the development. To ensure the long term satisfactory appearance of the scheme, a condition is included in respect of replacement planting in the event that approved landscaping is removed or fails.

Conclusion

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

Jonathan Edwards

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place. The development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall be begun either before: (i) the expiration of five years from the date of this permission, or (ii) before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) Before the development hereby permitted is commenced, including any demolition and/or site clearance or any equipment, machinery or materials is brought onto the site, full details of protective fencing and/or other protective measures to safeguard existing trees and hedges on and adjacent to the site shall be submitted to and approved in writing by the local planning authority. The agreed protective measures shall thereafter be provided in accordance with the British Standard 5837 2012 and retained for the duration of construction (including any demolition and/or site clearance works). No fires, excavation, changes in levels, storage of materials, vehicles plant or pedestrians shall occur within the protected areas. The approved measures 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.
- 5) Before the development hereby permitted is commenced including any works of demolition, a construction method statement shall be submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for :-
 - a site compound with associated temporary buildings;
 - the parking of vehicles of site operatives and visitors;
 - storage of plant and materials used in constructing the development;
 - wheel wash facilities.
- 6) Before the development hereby permitted is commenced, the site shall be subject to a detailed investigation and recording of any ground contamination and a survey report shall be submitted to and approved in writing by the local planning authority. The report shall identify any contamination of the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation scheme shall thereafter be completed and a validation report submitted to and approved in writing by the local planning authority within 1 month of the approved remediation being completed.

- 7) If during development any ground contamination or evidence of likely ground contamination is identified that has not been previously identified or considered then a written scheme to identify and control that contamination shall be submitted to and approved in writing by the local planning authority. This scheme shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A, and appropriate remediation proposals with implementation timetable. The approved remediation scheme shall be fully implemented.
- 8) Apart from the demolition of the existing building, no development hereby permitted shall commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before any part of the development is first occupied.
- 9) All works hereby permitted shall adhere to the recommendations and methods of working detailed within the submitted bat survey by Dr Annmarie Hanlon and dated 2020 and subsequent addendum to the bat survey.
- 10) No dwelling hereby permitted shall be first occupied until a 2m wide footway has been provided along the western boundary of Cartersfield Lane extending from the site access to the existing footway to the south.
- 11) No dwelling hereby permitted shall be first occupied until details of vehicular visibility splays for the site access junction with Cartersfield Lane to include details of any frontage planting and/or vegetation required to be removed or cut back have been submitted to and approved in writing by the local planning authority. The approved visibility splays shall be provided prior to the first occupation of any dwelling hereby approved and shall thereafter be retained free of any obstruction to visibility.
- 12) No dwelling hereby permitted shall be first occupied until the vehicular access to Cartersfield Lane, associated parking and turning areas to serve the dwellings and bin collection points have been provided in accordance with details approved in response to reserved matters applications. Such access, parking, turning and bin collection facilities shall thereafter be retained for such uses.
- 13) Any tree, hedge or shrub planted as part of an approved landscape reserved matters scheme (or replacement tree/hedge) and which dies or is lost through any cause during the period of 5 years from the date of first planting shall be replaced in the next planting season with other of a similar size and species.