



Appeal Decision

Site visit made on 21 February 2023

By David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/Q1825/W/22/3307902

Land at Birchfield Road, Redditch B97 6QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Whitbread PLC against the decision of Redditch Borough Council.
 - The application Ref 21/01216/OUT, dated 4 June 2021, was refused by notice dated 30 June 2022.
 - The development proposed is 'the development of up to 3 houses with associated access, car parking, landscaping and circulation space'.
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Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 3 houses with associated access, car parking, landscaping and circulation space at land at Birchfield Road, Redditch B97 6QA in accordance with the terms of the application, Ref 21/01216/OUT, dated 4 June 2021, subject to the conditions in the attached schedule.

Procedural Matters

2. The application is made in outline with all matters reserved for future consideration. I have therefore dealt with the appeal on this basis, treating the submitted plans detailing potential site layout, floor plans, and elevations as indicative.

Main Issue

3. The main issue is whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to noise and the provision of outdoor amenity space.

Reasons

4. The appeal site is an unkempt parcel of land that fronts onto Birchfield Road and is situated in-between an existing residential development at Baxters Court and a public footpath. Notwithstanding the nearby petrol station and vacant former hotel and public house, the surrounding area is predominantly residential in character. A short distance to the rear of the site is the A448 dual carriageway which is elevated above the ground level of the appeal site. Several trees line the south-eastern and south-western boundaries of the site which largely screen any views into the site from Birchfield Road.
5. The appeal proposal would see the erection of up to 3 dwellings. Indicative plans detailing site layout, floor plans, and elevations show a pair of semi-detached dwellings located towards the rear of the site, with a detached

dwelling located towards the site's frontage and side on to Birchfield Road. As the application is made in outline, details of the access, appearance, landscaping, scale, and layout would be determined at reserved matters stage, should outline planning permission be granted.

6. The site lies in close proximity to the A448 dual carriageway, which comprises four lanes of fast-moving traffic. The Council's concerns regarding the impact of the resultant noise on the residential amenity of future occupants of the proposed dwellings is therefore understandable. Section 12 of the National Planning Policy Framework (the Framework) and Policy 40 of the Borough of Redditch Local Plan No. 4 (adopted January 2017) (LP) both seek to achieve well-designed places which create better places to live. Whilst paragraph 130 (f) of the Framework seeks to create places which promote health and well-being with a high standard of amenity for existing and future users, neither sets any standards for acceptable levels of noise for residents.
7. The application was accompanied by a Noise Intrusion Assessment (NIA), with an associated technical note (TN) submitted with the appeal. Both documents were prepared by suitably qualified experts. The NIA establishes that the dominant noise source at the site was from road traffic travelling on the A448. Noise levels in the external amenity areas of the semi-detached dwellings shown on the indicative plans to be nearest the A448 would be expected to reach 65dB during the daytime. Good practice guidance contained within BS 8233:2014¹ recommends that it is desirable for noise levels in external amenity areas to not exceed an upper guideline value of 55dB.
8. However, BS 8233:2014 also states that the guideline values are not achievable in all circumstances where development might be desirable, recognising that in higher noise areas such as city centres or urban areas adjoining the strategic transport network, a compromise may be warranted between elevated noise levels and other factors such as the convenience of living in these locations and making efficient use of land resources. In such instances, the guidance indicates that development needs to be designed to achieve the lowest practicable levels in these external amenity spaces but should not be prohibited.
9. I find that the site is in a location where residential development would be desirable. The site is allocated for housing in the LP and is located in a predominantly residential area with good access to the local road network, public transport links, and local services and facilities. Accordingly, the site is in a sustainable location with the Council accepting that residential development on the site is acceptable in principle.
10. In this instance, the inclusion of timber acoustic fencing would aid in achieving the lowest practicable level of noise. The TN concludes that the provision of 2-metre-high fencing along the north-eastern boundary of the gardens would reduce the noise levels in the lower part of each garden by about 5db. A 1.5-metre-high fence along the edge of the patio adjoining each dwelling would reduce the noise level in the raised part of the garden by around 4dB. As a result, whilst noise levels in the gardens would still exceed the upper guidance level by around 5dB, any exceedance would be far more marginal.

¹ BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings*

11. The appellant contends that the rear boundaries of the existing properties on Baxters Court comprise timber acoustic fencing measuring between 2 - 2.5 metres in height, which has not been disputed by the Council. Although the ground levels of the appeal site are slightly lower than those of Baxters Court, and whilst acknowledging that matters such as layout and landscaping are reserved, I find no compelling reason why acoustic fencing of a similar height could not be erected along the north-eastern boundary of the appeal site. The provision of such fencing would to my mind provide adequate mitigation which would ensure that the lowest practicable levels of noise in external amenity areas would be achieved, and that the living conditions of future occupiers would not be materially harmed with regards to the impact of noise.
12. Whilst layout is a matter for future consideration, the Council are concerned that the detached dwelling shown on the indicative drawings would not meet the requirements of the Borough of Redditch High Quality Design SPD (adopted June 2019) (SPD) with regards to the provision of outdoor amenity space. The SPD states amongst other things that private amenity space for dwellings should be a minimum of 70sqm (excluding space under tree canopies or on a steep gradient), and that the rear private amenity space for a two-storey dwelling would usually be expected to be a minimum of 10.5 metres in length.
13. Although a large proportion of the area shown on the indicative plans to form part of the amenity space of the detached dwelling would currently be under the canopies of the trees, the Council's Arboricultural Officer raised no objection to the tree works proposed within the Arboricultural Implications Assessment submitted as part of the application. Following these works, the area of amenity space at the detached dwelling which would be outside of any tree canopies would be greatly increased, with the appellant stating it would result in approximately 106sqm of amenity space being provided.
14. Furthermore, whilst the indicative plans show a rear garden that would appear to fall short of the expected minimum garden length stipulated in the SPD, any shortfall would be mitigated by the significant width of the plot which ensures that adequate external amenity space would still be provided. Overall, I find that the indicative plans indicate that the size of the outdoor amenity spaces at each of the plots would be both appropriate and commensurate with the size of many rear gardens in the surrounding area. There is therefore no convincing reason before me as to why suitable provision of outdoor amenity space could not be achieved when the site's layout is considered in more detail at reserved matters stage.
15. For the reasons given above, I am satisfied that the proposal would provide acceptable living conditions for future occupiers, having particular regard to noise and the provision of outdoor amenity space. It would therefore accord with Policies 39 and 40 of the LP which together require development to contribute to making places better for people to live. The proposal would also comply with the SPD and the Framework which seek to ensure a high standard of amenity is provided for existing and future residents.

Other Matters

16. I have taken into consideration the letters of objection by a third party at both the application and appeal stage. Even though the application is in outline, I consider that there is unlikely to be any greater harm caused to the living conditions of neighbouring residents in terms of overlooking and loss of privacy

than would normally be experienced in an established residential area. Concerns were also raised regarding highway safety, including the proximity of existing vehicular access points and bus stops to the appeal site, the potential for on-street car parking, and the speed of traffic travelling along Birchfield Road. Whilst I have given due consideration to these points, I am satisfied that the proposed development would not compromise highway safety. I also note that the Local Highway Authority did not object to the proposal, as it concluded that there would not be an unacceptable impact.

17. Matters pertaining to potential disruption during the construction phase and the adequate provision of bin stores/collection points can be suitably controlled through planning conditions which would make the development acceptable by minimising any disturbance to nearby residents. These matters would not therefore support the dismissal of the appeal.

Conditions

18. I have had regard to the conditions suggested by the Council and have assessed them against the tests set out in paragraph 56 of the Framework. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions. However, some of the suggested conditions relate to matters of detail, including access arrangements, layout, landscaping, and materials, that will be dealt with under reserved matters submissions and are not necessary given the outline nature of the proposal.
19. I have imposed conditions relating to the commencement of development, the submission of reserved matters and the time limits associated with this to provide certainty of the outline planning permission granted. I have also included a condition specifying the relevant plan as this provides certainty as to the extent of the development site. I have however not included the illustrative plans titled Site Plan, House Type Y Floor Plans and Elevations (drawing no AL201 Rev A), and House Type Z Layout and Elevations (drawing no AL202 Rev A), as all matters are reserved.
20. In addition to these standard outline conditions, I have also imposed a range of other conditions to control the development. These include the need to submit and implement a Construction Environmental Management Plan to minimise any disturbance to neighbouring residents, and a requirement to address any unexpected contamination on the site so that such matters can be properly managed. In order to ensure that retained trees are adequately protected a condition has been attached stipulating that protection must be afforded throughout the construction period in accordance with BS5837:2012. A further condition stipulating that any works carried out to retained trees on the site must be in accordance with BS3998:2010 recommendations has also been attached.
21. I have also imposed conditions requiring the submission and implementation of a scheme for surface water drainage to ensure appropriate drainage, and the submission and implementation of details regarding biodiversity enhancements on the site including bird nesting boxes and bat roosting boxes.
22. The Council also suggested a condition to secure the provision of an electric vehicle charging point (EVCP) for each dwelling. The amended Building Regulations, which came into force on 15 June 2022, require the installation of

an EVCP at new dwellings. Planning decisions should not duplicate the function of other regulatory bodies or controls, and therefore as the development would be subject to the amended Building Regulations, and as I have not been provided with any evidence to suggest that the provision of an EVCP is a requirement of the LP, it is not necessary to impose such a planning condition.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

David Jones

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 and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this decision.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan – AL07 Rev P1.
- 5) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. This shall include but not be limited to:
 - Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway.
 - Details of site operative parking areas, material storage areas and the location of site operatives facilities (offices, toilets etc).
 - The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring.
 - Details of any temporary construction accesses and their reinstatement.
 - A highway condition survey, timescale for re-inspections, and details of any reinstatement.

The measures set out in the approved plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives parking, material storage and the positioning of operatives facilities shall only take place on the site in locations approved in writing by the local planning authority.

- 6) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be

reported immediately to the local planning authority. The applicant is advised to immediately seek the advice of an independent geo-environmental consultant experienced in contaminated land risk assessment, including intrusive investigation and remediation.

No further works should be undertaken in the areas of suspected contamination, other than that work required to be carried out as part of an approved remediation scheme, unless otherwise agreed by the Local Planning Authority, until requirements 1 to 4 below have been complied with:

1. Detailed site investigation and risk assessment must be undertaken by competent persons in accordance with the Environment Agency's 'Land Contamination: Risk Management' guidance and a written report of the findings produced. The risk assessment must be designed to assess the nature and extent of suspected contamination and approved by the Local Planning Authority prior to any further development taking place.
2. Where identified as necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
3. The approved remediation scheme must be carried out in accordance with its terms prior to the re-commencement of any site works in the areas of suspected contamination, other than that work required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority.
4. Following completion of measures identified in the approved remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval of the Local Planning Authority prior to the occupation of any buildings on site.
- 7) All retained trees within the site should be afforded protection in accordance with BS5837:2012 recommendations throughout any ground or development work on the site.
- 8) Any root or crown pruning on the trees to be retained must be in accordance with BS3998:2010 recommendations.
- 9) Prior to any works above foundation level commencing on site a scheme for surface water drainage will be submitted to and approved in writing by the local planning authority. The scheme should provide appropriate levels of surface water attenuation. This scheme should be indicated on a drainage plan and the approved scheme shall be completed prior to the first use of the development hereby approved.

- 10) Prior to any works above foundation level commencing on site, details of biodiversity enhancement shall be submitted to and approved in writing by the local planning authority. The details shall include bird nesting boxes, bat roosting boxes, amphibian/reptile refugia, and appropriate native species planting to take account of the need to recreate habitat for wildlife and biodiversity in accordance with the Worcestershire Biodiversity Action Plan. The approved details shall be fully implemented prior to the first occupation of the development.