



Appeal Decision

Site visit made on 30 August 2018

by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25th September 2018

Appeal Ref: APP/R3705/W/18/3203467

Land east of Pooley Lane, Polesworth B78 1JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr K Holloway against North Warwickshire Borough Council.
 - The application Ref PAP/2018/0053, is dated 23 January 2018.
 - The development proposed is residential development of up to 40 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 40 dwellings at Land east of Pooley Lane, Polesworth B78 1JB in accordance with the terms of the application, Ref PAP/2018/0053, dated 23 January 2018, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr K Holloway against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The application was submitted in outline form with all matters except access reserved for later consideration. I have determined the appeal on the same basis.
4. Since the appeal was lodged, the government have published a revised National Planning Policy Framework (the 'Framework'). Both parties have had the opportunity to comment on the implications of the new Framework on the proposal and I have taken their comments into account.

Main Issue

5. The main issue is whether it is necessary for the development to provide affordable housing and contributions towards healthcare facilities, public rights of way and community facilities, and if so whether an appropriate mechanism for securing these has been provided.

Reasons

6. The Council state that they have no objection to the proposal subject to appropriate planning conditions and contributions being secured comprising:

- The provision of not less than 40% of the dwellings to be affordable housing;
- £23,059 for the cost of providing health care services at The George Eliot Hospital NHS Trust;
- £2,048.15 for the cost of improving public highways, footpaths, bridleways or cycle routes within 3 miles of the site;
- £52,000 for on-site open space and enhancing the open space, built sports facilities and playing pitches at Abbey Green; and
- £876 towards improvements to public libraries within 3 miles of the site.

The appellant has submitted a unilateral undertaking which includes obligations which aims to secure all these contributions.

7. The affordable housing obligation includes the provision of 10 social rented units and 6 shared ownership dwellings which must be constructed before the occupation of half of the open market houses. I consider this obligation meets the tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and paragraph 56 of the Framework, and I am able to take it into account. The proposal in this respect would accord with policies NW6 and NW22 of the Core Strategy which seeks to secure appropriate levels of affordable housing in development.
8. With respect to the other obligations, I am satisfied that the contribution to the George Eliot Hospital NHS Trust is necessary, is directly related to the development and is reasonably related in kind and scale to the development. Regulation 123 states that, where a CIL charging schedule is not in place, only 5 contributions to each project can be collected. In this case, as the contribution would relate to the running costs of the Trust, not an infrastructure project, it is not limited by this pooling restriction.
9. The contribution for improvements to public footpaths locally is necessary, directly related to the development and the value and nature is reasonably related to the development. The Council have confirmed no other contributions have been made for such improvements. Likewise, I have evidence to demonstrate that mitigation would be required by the way of enhancements to the nearby Abbey Green park. The scale and nature of the intended contribution is reasonably related to the development and has been fairly calculated, but does not seem to account for any on-site open space provision. Nonetheless, I am able to take these obligations into account.
10. These obligations would accord with policy NW10 of the Core Strategy which aims to maintain local services, promote sustainable forms of transport and enhance recreation facilities, and policy NW22 of the Core Strategy which seeks to secure appropriate contributions to mitigate for the effect of development on this infrastructure.
11. With respect to the contribution to libraries however I have little information by which to assess if the £876 required is fairly related in scale to the development or if there is a library close to the site such that it could be considered directly related to the development. I cannot therefore take this obligation into account in my decision.

Other Matters

12. I understand there is a Grade II listed building north of the site at Pooley Hall. However due to the area of dense woodland around the north boundary of the site, there is no visual relationship between the site and this building such that its setting would be affected by the dwellings. Also I have no evidence of any historical connection. As such I consider the setting of this listed building would be preserved by the development.
13. Issues relating to a loss of privacy to, or outlook from, neighbouring properties can only be fully considered at the reserved matters stage when details of the layout and appearance of the houses would be given. The Inspector of the previous appeal¹ considered that the development would cause no harm to the character and appearance of the area, including the 'meaningful gap' and I have no grounds on which to arrive at a different view. I understand the Local Plan is still emerging, but as advised by the Planning Practice Guidance (PPG), prematurity is unlikely to justify a refusal of planning permission and I see no reason to depart from this guidance.

Conditions

14. I have considered the Council's suggested conditions against the advice in the PPG and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect this guidance.
15. I have imposed the standard conditions relating to the commencement of development, submission of reserved matters and specifying the relevant plan in order to provide certainty.
16. It is not necessary to limit the development to 40 dwellings, as that is inherent in the terms of the planning permission, nor the number of storeys, as that would be considered at the reserved matters stage. I also have not imposed the condition relating to the provision of an on-site play area as contributions are to be made for off-site provision, and there seems no justification for both.
17. As this planning permission includes matters of access, I have amended the Council's suggested conditions relating to the access onto Pooley Lane, in the interests of highway safety. Whilst it is necessary to require further details of its dimensions, particularly to ensure HGVs can access the site, and the visibility splays, its position is part of the proposal I have considered and it would be inappropriate to facilitate its possible relocation by a condition. The access from Pooley Lane to Tamworth Road is an established junction serving many houses and businesses and I see no reason why its ability to accommodate HGV movements needs to be demonstrated.
18. I have considered the condition relating to passing places. From my site visit I saw at least two passing places between the position of the proposed site access and Tamworth Road. I do not consider therefore that it is necessary for this to be secured by a planning condition.
19. I have not included the conditions relating to a Construction and Environmental Management Plan or Ecological Management Plan. This is because the layout and landscaping of the site are reserved matters and so the impact on biodiversity, and the biodiversity impact score of the development, cannot be

¹ APP/R3705/W/17/3179922

accurately calculated. The site is deemed to be of low ecological value, and I consider the effects on biodiversity would be more appropriately addressed within the landscaping details to be submitted at the reserved matters stage.

20. I have included conditions relating to the floor levels of the dwellings as this would be necessary in the interests of protecting the character and appearance of this sloping site.
21. Improvements to the right of way which crosses the site are necessary to encourage its use and in the interests of highway safety.
22. The conditions relating to the submission of a Construction Management Plan, a lighting strategy, archaeological investigation, surface and foul water drainage and fire hydrants are necessary to protect the living conditions of nearby residents, ecological protection, archaeological protection, minimising flood risk and fire safety, respectively.
23. Some conditions require compliance prior to the commencement of development so that the effects of the proposal are properly mitigated in order to make it acceptable.

Conclusion

24. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed and planning permission granted.

Andrew Owen

INSPECTOR

Schedule of Conditions

- 1) Details of the 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 approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan:9323.20 revision B, but only in respect of those matters not reserved for later approval.
- 5) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 6) No development shall commence on site until such time as the dimensions of the access into the site and its appropriate vision splays have first been submitted to and approved in writing by the local planning authority. The details to be submitted shall be informed by a HGV vehicle swept path diagram and a speed survey in Pooley Lane that has first been undertaken and completed in accordance with a written brief that itself shall first have been agreed in writing by the local planning authority.
- 7) The development shall not be occupied until the public right of way AE16 has been improved so as to provide for surfacing in a bound material and street lighting for its length between the proposed development and the footway of the public highway of the B5000 Tamworth Road in accordance with a scheme that shall first have been approved in writing by the local planning authority.
- 8) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) storage of plant and materials used in constructing the development;
 - iii) delivery, demolition and construction working hours;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust during construction;
 - vi) noise control during construction;
 - vii) site lighting details; and
 - viii) details of the contact for any local concerns with the construction activities on the site.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 9) Prior to the installation of any external lighting a 'lighting design strategy for bats' shall be submitted to and approved in writing by the local planning authority. The strategy shall:
- i) identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance; and
 - ii) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the bats using the woodland habitats.

All external lighting shall be installed in accordance with the strategy, and these shall be maintained thereafter in accordance with the strategy.

- 10) No development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:
- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment and analysis;
 - iii) the provision to be made for publication and dissemination of the analysis;
 - iv) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - v) the submission of an Archaeological Mitigation Strategy to be submitted to and approved in writing by the local planning authority.

The Strategy shall then be implemented as approved.

- 11) Development shall not commence until detailed surface and foul water drainage schemes for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted to and approved in writing by the local planning authority. The schemes shall be implemented in accordance with the approved details before the development is occupied.
- 12) The development hereby permitted shall not commence until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes at the site has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the scheme has been implemented as approved.