
Appeal Decision

Site visit made on 3 May 2016

by **S D Harley BSc(Hons) MPhil MRTPI ARICS**

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

Decision date: 11 May 2016

Appeal Ref: APP/J3720/W/16/3144057

Cank Farm, Well Lane, Tanworth-in-Arden, Solihull, B94 5AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Summers Holdings Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 14/02144/OUT, dated 14 August 2014, was approved on 1 December 2015 and planning permission was granted subject to conditions.
 - The development permitted is *"outline planning application with means of site access from Well Lane to be determined (internal access, layout, scale, appearance and landscaping reserved for subsequent approval) for the demolition of existing slaughterhouse buildings, erection of up to 18 dwellings (Class C3), garages, new footpaths, stairs, resurfacing of public footpath SD250 and resurfacing and reduction in size of existing layby and associated development"*.
 - The conditions in dispute are Nos 2 and 3 which state that: (2) *"Application for approval of the reserved matters shall be made to the District Planning Authority before the expiration of a period of 12 months from the date of this permission"* and (3) *"The development hereby permitted shall be begun before the expiration of a period of six months from the date of approval of the last of the reserved matters to be approved"*.
 - The reason given for both conditions is: *"To comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004)"*.
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Procedural Matter

1. The planning application was for demolition of slaughterhouse buildings and erection of up to 18 dwelling houses (Class C3), garages, new footpaths, re-surfacing of public footpath SD250 and layby and associated development. The description of development was altered during the course of the application. The revised description as it appears on the decision notice and the appeal form is set out above and I have considered the appeal on this basis.

Decision

2. The appeal is allowed and the outline planning permission with means of site access from Well Lane to be determined (internal access, layout, scale, appearance and landscaping reserved for subsequent approval) for the demolition of existing slaughterhouse buildings, erection of up to 18 dwellings (Class C3), garages, new footpaths, stairs, resurfacing of public footpath SD250 and resurfacing and reduction in size of existing layby and associated development Ref 14/02144/OUT at Cank Farm, Well Lane, Tanworth-in-Arden, Solihull, B94 5AH granted on 1 December 2015 is varied by deleting conditions numbers 2 and 3 and substituting for them the following conditions:
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- 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 begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Application for costs

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

Background and Main Issues

4. Section 92 of the Town and Country Planning Act 1990 (the Act) requires that where outline planning permission is granted for building or other operations it is granted subject to default timescales of 3 years for the submission of reserved matters and 2 years for the commencement of development.
5. The Act provides for the Council to impose longer or shorter timescales for the submission of reserved matters and/or commencement of development provided regard is had to the provisions of the development plan and any other material considerations. The Planning Practice Guidance (the PPG) says that if different timescales are imposed the Council must clearly give the justification for doing so. Paragraph 206 of the National Planning Policy Framework (the Framework) says that planning conditions should only be used where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in every other respect.
6. In granting the outline planning permission Ref 14/02144/OUT for residential development the Council's Planning Committee (West) imposed timescales of 12 months for the submission of reserved matters and 6 months for the commencement of development following approval of the last of the reserved matters.
7. Although not set out on the decision notice the Council's Statement indicates that the reasons for imposing shorter timescales are to ensure the development contributes more quickly to the provision of housing; and to facilitate the removal of the slaughterhouse use, which is described as a "bad neighbour" due to the effects on living conditions of nearby residents.
8. Taking the above into account I consider the main issues are whether it is reasonable to impose the shorter timescales as conditions of development; and the effects of removing the shorter timescales on the supply of housing and on the living conditions of occupiers of nearby houses.

Reasons

Reasonableness

9. The appeal site is previously developed land. The outline permission is subject to a further 19 conditions in addition to the two disputed ones. More than half of the conditions require submission of schemes/details for subsequent approval. Some of the conditions such as those relating to drainage/flood risk, remediation of any on site contamination and effect on birds and habitats require extensive modelling, investigations and/or survey work. A significant

amount of time is likely to be needed to fulfil all these requirements. Although some of these could be addressed simultaneously, until some of the details such as drainage have been approved, it is likely to be difficult to satisfactorily finalise the detailed layout, scale and landscaping.

10. The site is occupied by an industrial slaughterhouse business employing about 100 people. Condition 6 of the outline permission requires all buildings, containers, portacabins and structures to be demolished or removed prior to the commencement of development. The Planning Statement submitted with the application indicated that although alternative sites for the business had been investigated in 2008 securing and developing an alternative would be a long and expensive process which would rely on the release of capital arising from residential development on the appeal site.
11. Finding a developer to undertake residential development may well take some time and developers may well be wary of committing to sites with significant pre commencement conditions to satisfy within condensed timescales. Although no detailed evidence on timescales has been put forward on the balance of probabilities I consider it is not reasonable to require the submission of the reserved matters within 12 months or the commencement of development within 6 months of the final approval of reserved matters.

The supply of housing and living conditions

12. The proposed development would provide 18 houses of which 35% would be affordable houses as required by the terms of the legal agreement completed under s106 of the Town and Country Planning Act 1990. This would make a welcome, albeit modest, addition to the availability of local housing in conformity with the development plan and would help boost the supply of housing as sought by the Framework. The Council considers the shorter timescales would allow the site to be reasonably counted towards the five year supply of available housing land and would ensure that housing would be available sooner rather than later for the overall benefit of future occupiers and the local community.
13. However, Paragraph 47 of the Framework says that to be considered deliverable sites should have a realistic prospect of houses being delivered within 5 years and that sites with planning permission should be considered deliverable until permission expires. Accordingly the shorter timescales imposed by the disputed conditions do not make a significant difference to whether the site is considered deliverable for the purposes of calculating the overall housing land supply. Moreover, for the reasons set out above the retention of the disputed conditions means there is a greater risk that the conditions would not be met and that the permission would expire.
14. There have been a number of complaints about noise, smells and other nuisance from the site over the past few years and third parties have expressed support for redevelopment provided the slaughterhouse use ceases. This would accord with Policy PR.11 of the Stratford-on-Avon District Local Plan Review. Whilst the desire for early closure of the slaughterhouse on these grounds is understandable, for the reasons set out above I conclude that the shorter timescales imposed by the disputed conditions would be more likely to risk the permission expiring than to speed up its re-location. Moreover, even though outline planning permission has been granted there is no certainty that the land owner will choose to implement it.

15. For the reasons set out above I conclude that removing the shorter timescales would not have a significant harmful effect on the supply of housing or on the living conditions of occupiers of nearby houses.

Conditions

16. The Council has proposed as an alternative 18 months and 1 year respectively for Conditions 2 and 3 as striking a balance between the aims of seeking earlier development with the concerns raised by the appellant. Whilst these would give the appellant and any subsequent developer more time I am not convinced that similar risks of the expiry of the permission would be sufficiently mitigated. Moreover, with a willing land owner and developer there is nothing to prevent the development coming forward within these times whether or not more restrictive timescales are imposed. The appellant seeks the standard timescales of 3 years and 2 years respectively and I find these to be reasonable in this case and to meet all the tests set out in the Framework.
17. I have considered the remaining conditions attached to the planning permission; the reasons given for these by the Council; and the obligations of the s106 Agreement in the context of the principles of the Framework and the advice in the PPG. I have seen no reason to come to any different conclusions on these matters.

Other matters

18. The appeal site is adjacent to the Tanworth-in-Arden Conservation Area. Neither the Council or the appellant have identified any effect on the character or appearance of the Conservation Area or the Listed Church of St Mary Magdalene or the West Midlands Green Belt as a result of the different timescales proposed by the appellant. I see no reason to disagree.

Conclusion

19. As set out above I have concluded that the disputed conditions are not reasonable and on that basis would not meet one of the tests set out in the Framework. Moreover, the harm arising from the risk that these conditions would not be met, and therefore the outline permission lapsing, outweighs the intention of seeking earlier implementation of the proposed development and the associated benefits of housing provision and improvements in living conditions for local residents.
20. For the reasons given, and taking into account all relevant matters raised, I conclude that the planning permission should be varied as set out in the formal decision above.

SDHarley

INSPECTOR