
Appeal Decision

Inquiry held on 3 August 2016

Site visit made on 3 August 2016

by Anthony Lyman BSC (Hons) DipTP MRTPI

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

Decision date: 29 September 2016

Appeal Ref: APP/J3720/W/15/3138547

221 Banbury Road, Stratford-Upon-Avon, CV37 7HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd., and Exemplar Homes against the decision of Stratford-on-Avon District Council.
 - The application Ref 15/01068/FUL, dated 2 April 2015, was refused by notice dated 14 October 2015.
 - The development proposed is the demolition of existing building and the erection of Age Exclusive for the over 55's Housing, including landscaping and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and the erection of Age Exclusive for the over 55's Housing, including landscaping and car parking at 221 Banbury Road, Stratford-Upon-Avon, CV37 7HT in accordance with the terms of the application, Ref 15/01068/FUL, dated 2 April 2015, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appeal was originally to be dealt with by way of a Hearing which opened on 30 March 2016. However, at the Hearing it was agreed that an Inquiry would be the most appropriate method to examine the detailed evidence on five year housing land supply. Therefore, the Hearing was closed and the procedure changed to this Inquiry.
 3. The Council's Decision Notice listed three reasons for refusal. The third reason related to the lack of a Section 106 Planning Obligation to secure off-site affordable housing and open space provision. Shortly before the Inquiry opened, the parties reached agreement on these matters. A signed and dated Unilateral Undertaking to secure the planning obligations was submitted to the Inquiry, to which I will refer later in my Decision. As a result of this agreement, the parties did not call their expert witnesses who had submitted proofs of evidence on housing land supply issues.
 4. The second reason for refusal related to the impact of the proposed development on the living conditions of the occupants of the adjacent property,
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with regard to overbearing impact and loss of sunlight. Following the appellants' submission of further evidence relating to sunlight, including shadow projections, the Council accepted that the potential loss of sunlight would be minimal and did not contest that part of the reason for refusal.

5. On 11 July 2016, only a few weeks before the Inquiry opened, the Council adopted the Stratford-on-Avon District Core Strategy (CS). This supersedes the Stratford-on-Avon District Local Plan Review 1996-2011, the policies of which have all been replaced by those in the new CS. Accordingly, I have determined the appeal having regard to the recently adopted CS policies to which both parties referred at the Inquiry.

Main Issues

6. The main issues to be considered are the effects of the proposed development on, i) the character and appearance of the area with regard to scale, bulk and mass of the proposed development and the extent of the car park, ii) the living conditions of the occupants of the adjacent property, with regard to potential overbearing impact.

Reasons

Background

7. No. 221 Banbury Road is a large detached house in grounds of approximately 0.4 hectares on the edge of Stratford-Upon-Avon. The house is set well back from the highway with an ornamental front garden containing trees and hedgerows that separate it from Banbury Road. The rear part of the site is largely grassland, with border hedgerows and trees, several of which are evergreen species. There is a brick, stable type outbuilding adjacent to the rear boundary. The proposal is to demolish the house and outbuilding, and to erect a block of 21 apartments for the elderly. The accommodation would be over three floors, albeit with the upper storey in the roof space of the new building. Parking for 34 cars would be provided to the front of the property, accessed via a new central, gated driveway from Banbury Road.

Character and appearance

8. The appeal site is immediately adjacent to a row of modern dwellings known as Loxley Heights, and is the last residential plot on Banbury Road within the defined settlement limits of Stratford-Upon-Avon. The gently sloping site is on elevated ground known as Alveston Hill, and is surrounded on three sides by countryside. The Stratford-Upon-Avon Landscape Sensitivity Assessment categorises the area as landscape zone St13, with a medium-high sensitivity to development. However, due to the existing and adjacent residential development, all within the urban edge of the zone, the Council conceded that the appeal site is less sensitive to change, with which I agree. The Council also confirmed that the principle of new housing development on the appeal site is acceptable, despite most of the site not being previously developed land. The Council's concerns related mainly to the scale and bulk of the proposal and its impact on the character and appearance of the area and the street scene.
9. The proposed building would be substantial and would occupy most of the width of the plot. However, the gabled facade would be well articulated, thereby breaking up the mass of the building which would be read in the street scene as two dwellings of similar height and scale to the adjacent Loxley

Heights. The apartment block would largely maintain the building line created by the existing dwelling and the Loxley Heights development, thereby respecting the street scene and retaining the spacious, verdant and pleasant edge of town character. Given the intervening front landscaping and having regard to the existing large scale dwelling on the site, the proposed building would not have a significantly greater impact on the street scene.

Furthermore, I am not persuaded by the Council's argument that the substantial car parking area to the front of the site would harm the street scene. The car park would be well screened by existing vegetation and by the curved walls to be built either side of the proposed gateway, through which only limited glimpses of the parked cars would be gained.

10. The rear wing of the apartment block would extend most of the depth of the plot. It would run parallel with, and close to, the south eastern boundary of the site with the open countryside immediately beyond. However, both side elevations would be well articulated with recessed sections, different roof designs, occasional dormer windows and with the rearmost portion of the wing reduced to two storeys with a lower ridge height. This variety in the design would help to reduce the perceived mass of the building which would be further softened by the hedgerows and boundary trees to be retained.
11. Along the south eastern elevation two cedar trees to be retained would, in time, have the potential to overhang the building and shade some of the apartments. The Council argued that this would lead to pressure from future residents for the trees to be felled or severely pruned, and that any subsequent crown lifting would reduce the screening effect and open up views of the building from the adjacent countryside. Nevertheless, the retained trees and hedgerows, supplemented by proposed additional landscaping secured by a condition, would continue to soften and filter views of the development, and adequately ameliorate the visual impact of the building.
12. Both parties submitted detailed expert evidence on the potential landscape and visual impact of the development, particularly from various publicly accessible viewpoints around the site. Although the two experts reached different professional judgements, I have had regard to their assessments and to my own observations on my site visits.
13. From Trinity Way and the footpath to the south of the site the views would predominantly be of the front elevation which, for the reasons given above, would be in keeping with the adjacent Loxley Heights development and the street scene.
14. From some of the viewpoints on Boundary Lane and the public footpaths crossing that road, the existing dwelling on the appeal site can be glimpsed, although at the time of my site visit, the views were restricted by dense hedgerows alongside the paths and the lane. Furthermore, the site is fairly distant and the dwelling is well screened by vegetation/trees in the garden. The new building would be a relatively large development on the edge of the countryside. However, given the distances involved and the filtering landscaping around the site, the mass of the well articulated apartment block would not be readily apparent and the change in the landscape would be limited. The building would not be so prominent as to have a significant impact on the character and appearance of the surrounding countryside or the approach into Stratford from Banbury Road.

15. The development would, therefore, accord with Policy AS.1 of the CS that seeks to ensure, amongst other things, that development on the approaches to Stratford-Upon-Avon retains and respects the existing landscape setting. Policy CS.5, amongst other things, seeks to maintain the landscape character and quality of the area, and Policy CS.9 requires development to be of a high quality design that, amongst other things, will improve the quality of the public realm, enhance the sense of place and reflect the character and distinctiveness of the locality. I am satisfied that the proposal would not conflict with these Policies.

Living conditions

16. The second reason for refusal relates to the potential overbearing impact of the development on the occupants of No.4 Loxley Heights adjacent to the site. The nearest part of the apartment block would be about 5m from the common boundary. This side elevation would contain two first floor windows each serving a kitchen. In the Statement of Common Ground (SoCG), the parties have suggested a condition to secure the obscure glazing of one of these windows which potentially would overlook the neighbour's rear garden. The side elevation of the rear wing would be considerably further from the boundary and although it would contain windows at first and second floor level, a row of tall evergreen trees to be retained along the boundary would largely prevent overlooking of the amenity space to No.4 Loxley Heights. The appellants have demonstrated that the new development would satisfy the 45° rule measured from the neighbour's windows, albeit the existing boundary trees would intervene.
17. The trees act as a substantial screen that would largely obscure views of the rear wing from the adjacent property. Given the extent of this existing screening, and the distance between the common boundary and the side elevation of the rear wing, I am satisfied that the development would not have an overbearing impact on the living conditions of the neighbours. I have no evidence to suggest that these screening boundary trees would not remain healthy for many years to come or that their lifespan would be jeopardised by the development. One of the core planning principles in the National Planning Policy Framework (the Framework) which requires a good standard of amenity for all existing and future occupants of land and buildings would, therefore, not be compromised.

Other matters

18. As referred to in my preliminary matters above, the appellants submitted to the Inquiry a completed s106 Unilateral Undertaking (UU), relating to a contribution of £395,794.00 towards affordable housing and £2,252.79 towards off-site open space provision. The Council had agreed the contributions and submitted to the Inquiry a Community Infrastructure Levy (CIL) compliance statement and evidence to demonstrate that the open space contribution would not exceed the pooling limit set by Regulation 123 of the CIL Regulations 2010. I have assessed the contributions having regard to the compliance statement and the CIL Regulations and conclude that they are necessary to make the development acceptable in planning terms, and are directly related to the development, to which they fairly and reasonably relate in scale and kind.

Conditions

19. The SoCG included an agreed list of conditions to be imposed in the event that the appeal succeeds. I have considered, and where expedient modified, these conditions in the light of the discussions at the Inquiry and the advice in the Framework and Planning Policy Guidance (PPG). In addition to the standard commencement condition it would be necessary for the development to be undertaken in accordance with the approved plans for the avoidance of doubt. To safeguard the residential amenity of neighbours it would be necessary to control the hours of working and demolition, and to require a construction method statement that would, amongst other things, provide details of temporary buildings and compounds on the site, instead of the separate condition to that effect suggested in the SoCG. As the appeal has been considered only on the basis of apartments for the elderly it would be necessary for a condition to secure that retirement accommodation.
20. A landscaping scheme for the site, measures to protect retained trees and hedges during and after construction, and details of external materials to be used would be required in the interests of the character and appearance of the area. In the interests of highway safety and the amenity of future residents, conditions would secure the proposed car parking and the vehicular access to the site. Schemes for the disposal of surface water and sewage would also be necessary to protect the environment and to minimise the risk of pollution. Details of refuse storage arrangements for the 21 dwellings would be required in the interests of the local environment. It would be necessary for the development to provide water storage facilities in the interests of sustainability. To avoid light pollution and to protect residential amenity, details of external lighting would also need to be secured. A condition will ensure that protected species on the site are not harmed by the development, in the interests of the local biodiversity.

Planning Balance and Conclusions

21. The appeal scheme would provide 21 self contained flats for the elderly. Although the Council can demonstrate a five year supply of housing land, PPG advises that the need to provide housing for older people is critical, and that supporting independent living can help to reduce the costs to health and social services. Providing more options for older people to move could also free up houses that are under occupied. The contribution towards off-site affordable homes would be a further benefit. I attach significant weight to these benefits.
22. The appeal site is in a sustainable location within the defined settlement boundary of the principal town in the District. The scale and mass of the apartment block would be substantial. However, it would not encroach into the open countryside and, according to the appellants, would occupy only 28% of the plot. Given the extent of existing and proposed landscaping, the amount of articulation to the elevations, the varying roof heights and the distances involved from many of the public viewpoints, the landscape and visual impacts would be limited. The high quality of the design would reflect some of the characteristics of the nearby built form and would not detract from the street scene. The impact on the neighbouring property would not be significant for the reasons set out above.
23. I conclude that the benefits of the proposed development would considerably outweigh the limited landscape and visual impacts arising from the proposal.

For the reasons given, the appeal is allowed, subject to the conditions set out in the attached schedule.

Anthony Lyman

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANTS:

John Barrett of Counsel

He called

Ian Keen
Janet Gardiner
Kenneth Brown
Dr David Hickie
Lisa Matthewson

Ian Keen Ltd.
IDP Architects
Townscape Solutions Ltd.
IDP Landscape Ltd
The Planning Bureau Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

David Manley QC

He called

Bettina Kirkham
Hayden Todd

Kirkham Landscape Planning Ltd.
Aitchison Raffety, Chartered Town Planning
Consultants

DOCUMENTS

1. Opening Statement on behalf of the Appellants
2. Statement of Common Ground
3. Additional Statement of Common Ground relating to Developer Contributions
4. Completed s106 Planning Obligation by Unilateral Undertaking dated 3 August 2016
5. Council's Statement addressing the tests on obligations arising under Regulation 122 of the CIL Regulations
6. Council's Statement on compliance of planning obligations sought re: 'Pooling' of contributions arising under regulation 123 of the CIL Regulations
7. Closing submissions on behalf of Stratford-on-Avon District Council
8. Closing submissions on behalf of the Appellants.

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: MI_2059_03_AC_001; MI_2059_03_AC_002; MI_2059_03_AC_003 Revision A; MI_2059_03_AC_004; MI_2059_03_AC_005; MI_2059_03_AC_006 Revision A; MI_2059_03_AC_007; MI_2059_03_AC_008; MI_2059_03_AC_009; MI_2059_03_DE_001; MI_2059_03_LA_001 & 002; 8581_02; PP/3032/M&S/Banbury Rd/Fl/A.
- 3) Demolition or construction works shall not take place outside 08.00 hours to 18.00 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 4) The occupation of the units of accommodation hereby permitted shall be restricted, so that at least one of the occupiers of each unit shall be 55 years of age or over.
- 5) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work). If any retained tree is removed, uprooted, destroyed or dies another tree shall be planted at the same place and the tree shall be of such a size and species and shall be planted at such time as may be specified in writing by the local planning authority.
- 6) The development hereby permitted shall be carried out in accordance with the detailed mitigation/enhancement measures for protected species as set out in the Bat Presence/Absence Survey, Bat Mitigation and Biodiversity Plan prepared by Innovation Property and received by the local planning authority on 4 July 2016 and 27 July 2016.
- 7) Notwithstanding the details submitted with the application, no development above foundation level of the building hereby permitted shall take place until details of obscure glazing and opening methods for the first floor kitchen window of unit 10 on the northern elevation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and thereafter retained.
- 8) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include planting plans; written specifications; a schedule of plants noting species, plant sizes and proposed numbers; existing landscape features such as trees, hedges and ponds to be retained and those to be removed; existing and proposed finished levels to include details of grading and earthworks; hard surfacing materials; boundary treatments; car park layout and other vehicular and pedestrian areas.

The soft landscaping approved as part of this condition shall be completed within the first planting season following first occupation of the

development hereby permitted. Any planting that is removed, uprooted, severely damaged, destroyed or dies within five years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season. The hard landscaping shall be completed before the first occupation of the development.

- 9) No part of the development shall be commenced or equipment, machinery or materials brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the local planning authority and has been put in place. The scheme must include details of the location and erection of protective fencing in accordance with British Standard 5837:2012 – Trees in relation to design, demolition and construction – recommendations. Nothing shall be stored or placed within the fenced areas, nor shall the ground levels be altered. The approved scheme 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.
- 10) No part of the development hereby permitted shall be occupied until space has been laid out in accordance with details on the approved drawing MI_2059_03_AC_004, for the parking of 34 cars including 4 disabled person spaces. Thereafter the spaces shall be retained and used for no other purpose.
- 11) No development shall take place until a scheme for the disposal of surface water from the site, including an implementation timetable has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and timetable and thereafter retained.
- 12) No development shall take place until a scheme for the disposal of sewage from the site, including an implementation timetable, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and timetable and thereafter retained.
- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been 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:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the siting of all temporary buildings, compounds, structures and enclosures on the site
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vi) wheel washing facilities
 - vii) measures to control the emission of dust and dirt during construction

- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 14) No development above foundation level of the building hereby permitted shall take place until samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 15) No part of the development shall be occupied until a vehicular access into the site has been provided not less than 5m in width for a distance of 7.5m as measured from the near edge of the public highway carriageway. The access shall not be used until it has been provided with not less than 4.5m kerbed radius turnouts on each side, incorporating pedestrian dropped kerbs.
- 16) Prior to the first occupation of the development hereby permitted, details of the facilities for the storage of refuse, recycling and green waste for the 21 dwellings shall be submitted to and approved in writing by the local planning authority. The facilities shall be provided in accordance with the approved details before the first dwelling is occupied and thereafter retained.
- 17) The development hereby permitted shall not be occupied until it has been provided with two minimum 190 litre capacity water butts connected to downpipes, fitted with child-proof lids, and thereafter retained.
- 18) The development shall not be occupied until all external lighting has been installed in accordance with a scheme submitted to and approved in writing by the local planning authority before development commences. The development shall not be carried out other than in full accordance with the approved details and thereafter retained.