



## Appeal Decision

Site visit made on 22 November 2016

**by Olivia Spencer BA BSc DipArch RIBA**

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

**Decision date: 20<sup>th</sup> January 2017**

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**Appeal Ref: APP/W3710/W/16/3156950**

**147 Tunnel Road, Nuneaton, Warwickshire CV10 9NL**

- 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 AR Cartwright Ltd against the decision of Nuneaton & Bedworth Borough Council.
  - The application Ref 033601, dated 17 August 2015, was refused by notice dated 17 March 2016.
  - The development proposed is up to 14 dwellings and access on land to the rear of Tunnel Road, Galley Common.
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### Decision

1. The appeal is allowed and planning permission is granted for up to 14 dwellings and access on land to the rear of Tunnel Road, Galley Common at 147 Tunnel Road, Nuneaton, Warwickshire CV10 9NL in accordance with the terms of the application Ref 033601, dated 17 August 2015, subject to the conditions in the attached schedule.

### Preliminary matter

2. The application that led to this appeal was in outline with all matters except access reserved for later approval.
3. During the course of the application a revised Illustrative Masterplan (drawing no. 09C) was submitted. I have taken this into consideration in determining the appeal.
4. The appellant has submitted a section 106 unilateral undertaking dated 19 December 2016 to make contributions towards highway works in Tunnel Road and the provision of open space, play facilities and pitches, and allotments.

### Main Issues

5. The main issues are firstly, the effect of the proposed development on the historic landscape and secondly, the effect on street parking and highway safety.

### Reasons

#### *Historic landscape*

6. The County Archaeologists advise that the application site and the fields to the immediate west form a series of enclosed strips that almost certainly formed
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- part of a medieval open field system and represent a very early phase of enclosure. I note that this 'piecemeal enclosure' makes up only some 1.22% of the Borough and is thus a very rare historic landscape feature in the area.
7. An application for up to 130 dwellings on land that included the appeal site was dismissed at appeal in 2013<sup>1</sup>. The Inspector in that case concluded that the development would result in an impact on the significance of the non-designated heritage asset that would stop not very far short of destruction.
  8. In this case the revised illustrative masterplan indicates that the proposed 14 dwellings could be accommodated within the southernmost part of the site close to the existing houses along Tunnel Road, and largely separated from the distinctive curved hedgerow boundary to the west. The existing hedgerows would be retained and whilst the drawing indicates 4no. dwellings adjoining the hedgerow at its southern end, these would replace existing buildings and, it is suggested, would be single storey bungalows.
  9. Glimpsed longer distance views of the development would be available, but the housing would be seen in the context of the immediately adjoining housing on Tunnel Road. This would be the case also from the footpaths to the north and north-east, and from where hedgerow vegetation and that along the water course would to a large extent obscure the housing.
  10. Notwithstanding demolition of the existing buildings, the housing and in particular the proposed buildings closest to the western hedge, would be visible from the Centenary Way footpath. However the hedge could be supplemented and enhanced to improve its screening over time. More significantly, the existing hedge would be retained and the enclosed strips would as a result remain clearly evident to walkers using the path. Whilst the urban area of Galley Common would be extended, it would thus have only a very limit effect on the character of land to the north of Tunnel Road and the historic landscape setting of the surrounding fields.
  11. In view of this, and having taken account of some loss of ridge and furrow within the site, I conclude that harm to the significance of the non-designated heritage asset, though present, would be minor. Paragraph 135 of the National Planning Policy Framework (the Framework) advises that in these circumstances a balanced judgement is required. I return to this below.

*Street parking and highway safety*

12. Access to the site is proposed next to 155 Tunnel Road. Traffic speeds on Tunnel Road are at present too high for this access to operate safely and a number of speed reduction measures have thus been agreed with the Council. These include a gateway feature and signage west of the site, 3 lots of speed cushions and a raised table at the access. The works would be necessary to overcome any potential risk to highway safety arising from the development and would at the same time improve safety on Tunnel Road for existing highway users by slowing traffic speeds.
13. The works would result in the loss of some existing on-street parking spaces, and I can understand that those who live near-by and make use of these spaces may be inconvenienced to some degree as a result. However, on street parking bays for use by the existing residents of Tunnel Road are also proposed

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<sup>1</sup> APP/W3710/A/13/2195900

and there is no evidence that provision within the street as a whole would be unreasonably reduced. I conclude that the benefit of improved highway safety overall would therefore significantly outweigh any harm arising from loss of existing parking spaces.

*Other matters*

14. Whilst I understand the concerns of local residents I have seen no evidence to indicate that Tunnel Road has insufficient capacity to accommodate vehicle movements arising from the number of dwellings proposed. I note that flooding has occurred behind the houses on Tunnel Road in the past, however the Illustrative Plan indicates that that the proposed dwellings could be sited on the higher ground to the south of the site with provision made for surface water attenuation including a balancing pond in accordance with principles agreed with the County Council. Further the extent of development across the site would be limited, allowing space for and enhancement of wildlife habitats and hedgerows. Subject to conditions which I address below, none of these matters is sufficient therefore to justify dismissing the appeal.

*S106 planning obligation*

15. Whilst concerns have been raised by local residents that there are insufficient facilities in the area to meet the needs of future residents of the development, contributions have been sought by the relevant authorities only in respect of play and open space and for funding of the highway works.
16. The Officer's report sets out the policy requirement for contributions and there is no doubt that occupiers of the proposed dwellings would give rise to an additional demand for such facilities. The Council has identified projects for which funding is sought.
17. As set out above the highway works are necessary to provide safe access to the site. I conclude the contributions, to open space and highway works, are therefore necessary, directly related to the development proposed, and fairly and reasonably related to it in scale and kind. I have therefore taken the obligation into account in coming to my decision.

*Planning Balance*

18. The appellant's statement draws attention to Policies ENV2 and ENV3 of the Nuneaton and Bedworth Borough Local Plan 2006. Policy ENV2 sets out that in Areas of Restraint development will only be permitted where it would not adversely affect the open character or appearance of the area. Policy ENV3 permits development only if it is for a number of specified purposes. Although limited in extent the appeal proposal would conflict with these policies.
19. However, the Council acknowledges that it is unable to demonstrate a 5 year supply of deliverable housing sites. In these circumstances paragraph 49 of the Framework advises that policies such as these for the supply of housing should not be considered up-to-date. Where this is the case, in accordance with paragraph 14 of the Framework, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
20. That the development would contribute, albeit in a modest way, to meeting the housing shortfall is a significant benefit. I have taken account also of the

improvements to highway safety in Tunnel Road that would result from the proposed works. When taken together these amount to a substantial benefit overall that would not be outweighed by minor harm to the heritage significance of the non-designated heritage asset.

### **Conditions**

21. I have considered the suggested conditions in light of the advice in the Planning Practice Guidance and amended and in some cases omitted conditions for clarity and to avoid repetition.
22. External materials would be considered as part of the appearances reserved matters, foul drainage is a matter for other authorities and reference in conditions to documents which provide an assessment of policy and impacts are not necessary. Whilst I took into account the submitted Illustrative Masterplan, layout is a reserved matter. I have not therefore imposed these suggested conditions. I have referred to application documents which include recommendations for design and implementation within the relevant conditions.
23. Conditions requiring the implementation and retention of landscaping, protection of trees and hedges, and control of site and building levels are necessary to ensure conservation of the landscape character of the area.
24. A condition requiring the provision of fire hydrants is necessary for safety and conditions requiring prior approval of access road details and speed control measures are necessary in the interest of highway safety. Conditions requiring the provision of boundary treatments and implementation will ensure no undue adverse impact on the living conditions of future and existing residents. In order to promote sustainable transport choices in accordance with planning policy welcome packs are required.
25. The submitted flood risk assessment considered strategies for sustainable urban drainage schemes to not just ensure sustainable drainage of the development but also to manage flood risk. I have imposed conditions requiring the provision of such a scheme and its long term retention and management.
26. In the interests of protecting and enhancing the ecology and landscape in and around the site I have imposed conditions requiring approval of ecological and landscape strategies and a management scheme, together with a requirement for approval of an external lighting scheme.
27. The appeal site has been shown to have a high potential for the presence of medieval remains. Conditions requiring investigation and recording of finds prior to commencement of the development are therefore necessary.
28. Approval of details of the layout and construction of roads within the development, surface water drainage, the protection of trees and hedgerows, and approval of the Ecological Construction Management Plan, Landscape Strategy Plan and Construction Management Plan, before commencement of the development is necessary to ensure the development is planned in a proper manner and carried out without harm to the local environment.

## **Conclusion**

29. For the reasons given above and having had regard to all matters raised I conclude on balance that the appeal should be allowed.

*Olivia Spencer*

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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping required by condition 1) shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) The landscaping details required by condition 1) shall include all boundary treatments. These shall include 1.8 metre high fencing adjacent to the site access road. No dwelling shall be occupied until the boundary treatment to that plot has been carried out in accordance with the approved details.
- 6) No dwelling shall be occupied until water supplies and fire hydrants, necessary for firefighting purposes at the site, have been installed in accordance with details submitted to and approved in writing by the local planning authority.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of site surfaces and 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.
- 8) Before the development is first occupied a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and

approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.

- 9) No development shall take place until details of the layout of the roads serving the development (including footways, verges, footpaths and means of accessing individual plots) and the standards to which these are to be constructed have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the roads have been constructed in accordance with the approved details.
- 10) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the the first dwelling is occupied. The scheme to be submitted shall:
  1. Undertaken infiltration testing in accordance with the BRE 365 guidance to clarify whether or not an infiltration type drainage strategy is a viable means of managing the surface water runoff from the site.
  2. Demonstrate that the surface water drainage system(s) are designed in accordance with CIRIA C697, C687 and the National SuDS Standards.
  3. Limit the discharge rate generated by all rainfall events up to and including the 100 year plus 30% (allowance for climate change) critical rain storm to ideally the Greenfield runoff rates for the site. As a minimum, the developed site must not exceed the run-off from the undeveloped site and must not increase the risk of flooding off-site.
  4. Demonstrate the provisions of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SC030219 Rainfall Management for Developments'.
  5. Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- 11) No development shall take place until details of the implementation, adoption, maintenance and management of the sustainable drainage system have been submitted to and approved in writing by the local planning authority. Those details shall include:
  - i) a timetable for its implementation; and,
  - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by

any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 12) No development shall commence until measures for the protection of the existing trees and hedgerows on the site (trees covered by Tree Preservation Order 7/02) in accordance with the recommendations set out in the Arboricultural Impacts Assessment and Arboricultural Method Statement BMD.142.RP.901Rev A and drawings BMD.15.142.DR.901 and BMD.15.142.DR.902 have been submitted to and approved in writing by the local planning authority. No construction work shall be carried out unless the agreed measures to protect the trees and hedgerows have been provided and are retained during the course of construction.
- 13) No development shall take place, including any site clearance, until an Ecological Construction Management Plan (ECMP) that includes the recommendations in the Ecological Assessment Report BMD.142.RP.801 has been submitted to and approved in writing by the local planning authority. The approved ECMP shall be adhered to throughout the construction period. The ECMP shall include details of: any preconstruction checks required; the species safeguards to be employed; appropriate working practices and timings of construction works; site clearance methods; the extent of buffer zones and stand-offs for sensitive ecological features; and what to do if protected species are discovered during construction. The ECMP shall also include details of a suitably qualified Ecological Clerk of Works to oversee implementation of the ECMP and address any contingency measures where appropriate.
- 14) No development shall take place until an Ecological and Landscape Strategy Management Plan (ELSMP) that includes the recommendations in the Ecological Assessment Report BMD.142.RP.801 has been submitted to and approved in writing by the local planning authority. The ELSMP shall set out how the measures and recommendations set out in the Ecological Appraisal, Protected Species Report and Landscape and Visual Impact Assessment and Arboriculture Assessment will be implemented and maintained. The ELSMP shall also include details of: a Green Infrastructure Strategy; Ecological Design Strategy; ecological buffer zones; wildlife enhancements to SUDs; existing and proposed services plan; habitat enhancement for Bats; habitat and biodiversity creation and enhancement across the site; provision of bird and bat bricks; a timetable for the implementation of all of the ecological and landscape mitigation and enhancement measures; and a scheme securing future maintenance and retention. The ELSMP must also demonstrate how, measured across the site as a whole, the measures it contains will achieve a net gain for the biodiversity of the site, rather than simply neutralising the impact of the development. The development shall be carried out and thereafter retained and managed in accordance with the approved ELSMP.
- 15) Access for vehicles to the site from the public highway shall be made in accordance with the approved drawing 14075-17 Rev D. No dwelling shall be occupied until the bellmouth, on street parking bays and speed

management measures shown on that drawing have been constructed in accordance with details that have been submitted to and approved in writing by the local planning authority.

- 16) 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 Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) hours of work
  - iii) loading and unloading of plant and materials;
  - iv) storage of plant and materials used in constructing the development;
  - 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;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 17) No development shall take place until:
- a) a Written Scheme of Investigation (WSI) for a programme of archaeological evaluative work including the recommendations of The Archaeological Desk-Based Assessment M:\HC\Projects\Projects 0601-0700\15.0683c - Tunnel Road II\Reports\ 0683c Tunnel Road DBA v.2 (2015.04.28).docx has been submitted to and approved in writing by the local planning authority.
  - b) the programme of archaeological evaluative work and associated post-excavation analysis, report production and archive deposition detailed within the approved WSI has been undertaken. A report detailing the results of this fieldwork shall be submitted to the local planning authority.
  - c) an Archaeological Mitigation Strategy document (including a Written Scheme of Investigation for any archaeological fieldwork proposed) has been submitted to and approved in writing by the local planning authority. This should detail a strategy to mitigate the archaeological impact of the proposed development and should be informed by the results of the archaeological evaluation.

The development, and any archaeological fieldwork post-excavation analysis, publication of results and archive deposition detailed in the Mitigation Strategy document, shall be undertaken in accordance with the approved Mitigation Strategy document.

- 18) No dwelling shall be occupied until a scheme for the lighting of the residential development and associated access roads, parking areas and open spaces has been submitted to and approved in writing by the local



planning authority. This scheme shall outline how the lighting scheme avoids potential negative effects upon the habitats used by foraging and commuting bats as evidenced by a suitably qualified and experienced ecologist. The development shall be carried out in accordance with the approved details and retained as approved thereafter.

- 19) No dwelling shall be occupied until details of Welcome Packs providing public transport information has been submitted to and approved in writing by the local planning authority. The approved packs shall be provided to each dwelling prior to the first occupation of that dwelling.

Richborough Estates