

Appeal Decision Notice

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Decision by Richard Dent, a reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-190-2037
- Site address: land at David Dale Avenue, Stewarton, KA3 3AP
- Appeal by Hemingsley Homes Limited against the decision by East Ayrshire Council dated 27 August 2013
- Application for planning permission (reference 13/0077/PP) dated 8 February 2013
- The development proposed: 12 semi-detached houses, access road and sustainable drainage system
- Drawings: see Schedule 1 (see attachment)
- Date of site visit by reporter: 18 November 2013

Date of appeal decision: 29 April 2014

Decision

I allow the appeal and grant planning permission subject to the 20 conditions listed in Schedule 2 (see attachment). Attention is drawn to the three advisory notes following the conditions.

Reasoning

1. On 17 December 2013, I issued a notice of intention (inadvertently titled "Appeal Decision Notice") to allow the appeal and grant planning permission, subject to 20 conditions set out at the end of that notice, following the signing and registering of an obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 between the appellant and the planning authority. The obligation required a financial contribution by the developer at a level requested by the planning authority in respect of (i) the upgrading of a nearby woodland recreation facility and (ii) the provision of infrastructure and community facilities. The appellant confirmed agreement to this contribution.
2. I have now received a copy of a section 75 obligation signed by the parties covering the above matters, together with a copy of a receipt dated 1 April 2014 from the Keeper of the Registers of Scotland that the obligation has been submitted for registration under reference 14AYR03950.
3. Although the obligation has not yet been recorded or registered, a supplementary provision is included whereby the owners undertake not to sell, convey assign or otherwise

dispose of, or grant any further lease or heritable security over the application site or any part thereof before the obligation has been recorded in the General Register of Sasines or registered in the Land Register. The planning authority has agreed that this is sufficient basis for me to issue a decision.

4. I am attaching a copy of my notice of intention which includes Schedule 1, which is a list of the approved drawings, and Schedule 2, which is a list of the 20 conditions applied to this planning permission and the three advisory notes.

Richard Dent
Reporter

Richborough Estates

Directorate for Planning and Environmental Appeals

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- The development proposed: 12 semi-detached houses, access road and sustainable drainage system
- Drawings: see schedule 1
- Date of site visit by reporter: 18 November 2013

Date of appeal decision: 17 December 2013

Decision

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed in schedule 2, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, covering the matters referred to in paragraph 20.

Reasoning

1. The determining issues are whether or not the principle of residential development is acceptable at this location and, if so, whether (i) any significant environmental impacts would arise in terms of built and natural heritage and (ii) whether any significant technical constraints would be encountered. These assessments must be made in the context of the development plan.

2. The site is within the settlement boundary and has no specific land use allocation. Policy RES 33 of the East Ayrshire Local Plan encourages residential development in such locations although certain criteria must be met. These criteria require no adverse impact on the surrounding built and natural environment, no unacceptable transportation and infrastructure implications, compatible density and suitable design. I note the report to the committee accepts the development in terms of transportation, infrastructure, compatibility and design. I share this opinion.

3. In respect of the built environment, Lainshaw House, a category B listed building, is some 175 metres to the west of the site. However, although Lainshaw House would face the development there is an intervening car park, landscaped area and woodland. Again I agree with the committee report and conclude that the proposed development would not have a significant impact on the listed building or its setting. There would be no conflict with the built environment of the wider area where the land use is essentially residential in nature.
4. Insofar as natural heritage is concerned, ecological surveys have been undertaken, including surveys of otter and bats, which the committee report regards as being acceptable. Scottish Natural Heritage (SNH) requires the development to be undertaken strictly in accordance with the bat survey. SNH believes the 2005 otter survey to be out of date and I note a further survey was undertaken in February 2013 finding signs of otter close to the Annick Water.
5. I note the committee report proposes a condition in respect of a badger survey and the council subsequently suggested three further conditions regarding bats.
6. Subject to appropriate conditions I am satisfied that adequate control could be applied in respect of ecological considerations, particularly regarding the various protected species.
7. The site lies within a tree preservation order (TPO) that extends along the south side of David Dale Avenue. It was clear from my site inspection that the woodland within the TPO has experienced a lack of management. Nevertheless, although the appellant has stated that many of the trees are not mature or of particular note, many having self-seeded, the woodland, in total, is an important feature in this part of Stewarton. When consulted, East Ayrshire Woodlands pointed out that the trees contribute significantly to the amenity of the area.
8. A decision to allow development within an area designated under a TPO is not to be taken lightly. Indeed, the refusal of planning permission by the council and the objections received from third parties illustrate the level of concern about the potential loss of trees.
9. Despite the concerns expressed, I recognise the section of the woodland affected by the development would be limited and that much of the site has relatively few trees with part of the area quite open. I note also the concern of the council's Senior Arboricultural Officer about the future of remaining trees within the site and those close to the development area. The committee report recommends conditions in this respect.
10. I consider that the loss of trees to accommodate the proposed development would have little overall impact on the wider TPO, the integrity of which would be retained.
11. Attention has also been drawn to the presence Japanese Knotweed on the site. The council has indicated that removal of this invasive plant could be the subject of a condition. The appellant points out that the presence of Japanese Knotweed is limited but I agree a condition would be appropriate and should be included.

12. On the foregoing basis, I conclude that the development would not have an adverse impact in terms of natural heritage.

13. In respect of possible technical constraints I have noted the concern of third parties regarding, sewerage, construction noise, flooding and traffic generation. The appropriate authorities have assessed these matters and, subject to the imposition of conditions where necessary, I accept the development could be undertaken with a layout incorporating adequate road design, sewerage provision and flood prevention measures. Having noted the response of the Roads and Traffic Service, I do not consider fears about traffic levels are justified. Construction noise could be the subject of a condition.

14. The appellant indicates that access to the Annick Water would be maintained through the site and the council points out that a public path diversion order would be required. This, says the council, would be a separate procedure.

15. I can accept that, once the development is complete, the new access road would replace the existing footpath. This would be satisfactory but, during the period of construction, it would be important to ensure that safe pedestrian passage could be maintained. A condition should therefore be applied to ensure this objective. Should a diversion order be required it would be for the council to put in hand the necessary arrangements.

16. All in all, I conclude that the principle of the development is acceptable. There would be no significant environmental impacts in terms of the built and natural environment. Neither would there be any technical constraints.

17. In terms of the local plan I note particularly the provisions of Policy ENV 18 which states the council will actively seek to preserve and supplement existing broadleaf and native tree species. On the other hand, as indicated above, Policy RES 33 offers encouragement for sympathetic residential development within settlement areas. As I have explained, I accept that the loss of trees within the development site would not compromise the integrity of the wider TPO area. Accordingly, despite the terms of Policy ENV 18, I accept that, overall, the proposal accords with the provisions of the development plan. In turn, this points to the granting of planning permission.

18. Having concluded that the proposal should be approved, it is necessary to assess whether any material considerations would suggest that planning permission should be refused despite the terms of the development plan. In this respect I have noted the objections received, including those of the Stewarton Community Council. Insofar as relevant to planning, I have considered these matters as part of my assessment of the proposal. Other matters raised, including procedural issues, land ownership and the nearby development at Montgomerie Drive, are not of relevance to the assessment of the proposal.

19. No material considerations lead me to set aside my conclusion that planning permission is justified and I am therefore minded to allow the appeal. Various conditions would be appropriate and I have noted the conditions contained in the committee report and the additional conditions subsequently suggested by the council. The conditions I have imposed relate generally to those conditions subject to some adjustment and simplification.

I have also added conditions in respect of the footpath through the site and, if required, the eradication of Japanese Knotweed.

20. Local plan Policy RES 29 requires a financial contribution to be paid by developers where the construction of four or more houses is proposed. In this case the council has indicated the level of contribution required in respect of (i) the upgrading of a nearby woodland recreation facility and (ii) the provision of infrastructure and community facilities. The appellant has confirmed agreement to this contribution.

21. I believe that a planning agreement should be concluded in order to secure the agreed level of contribution. I will accordingly defer determination of this appeal for a period of three months to enable the relevant planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or such other legal instrument as may be agreed by the parties to be completed and registered or recorded, as the case may be. If, by the end of the three-month period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

Richard Dent

Reporter

SCHEDULE 1

Drawings

- Existing Location Plan And Proposed Site Plan 1303-PL01, rev. B
- General Arrangement Plans, House Type A 1303-PL02, rev. A
- House Type A Sections & Elevations 1216-PL03, rev. A
- House Type B General Arrangement & Roof Plans 1216-PL04
- House Type B Sections & Elevations 1216-PL05, rev. A

SCHEDULE 2

Conditions

1. Prior to the commencement of works on site, a site investigation and risk assessment shall be carried out and a report shall be submitted in writing to, and be approved by the planning authority in writing. For the avoidance of doubt, the investigation and assessment shall be conducted in line with BS 10175, 2001 code of practice for “The investigation of potentially contaminated sites”, and Contaminated Land Report 11, “Model Procedures for the Management of Land Contamination”.

Reason: to ensure potential risks arising from previous site uses have been fully assessed.

2. All remedial works shall be undertaken in accordance with the report approved under condition 1. Prior to the commencement of any further works for the development of the site, a verification report detailing all remedial actions carried out at the site, shall be submitted to, and approved in writing by the planning authority.

Reason: to provide verification that remediation has been carried out in accordance with the remediation plan and to the satisfaction of the planning authority thereby allowing the development of the site to proceed.

3. Prior to the commencement of works on site, including any remedial works, details of a landscaping scheme, including phasing and maintenance arrangements, shall be submitted to and approved in writing by the planning authority. The landscaping scheme shall include provision for compensatory planting and shall be implemented in accordance with the approved details. Trees removed without the consent of the planning authority or seriously damaged at any time after the commencement of development shall be replaced by trees of a similar size and species as shall be agreed in writing by the planning authority.

Reason: in the interests of visual amenity and to ensure that suitable landscaping is provided, particularly as some trees and vegetation will be removed from the site.

4. Prior to the commencement of works on site, including any remedial works, details shall be submitted to indicate how safe and unimpeded passage will be provided for pedestrians walking between David Dale Avenue and the footpath along the north bank of the Annick Water once the existing footpath through the site is no longer available. Those details must be approved in writing by the planning authority and implemented at all times until it is possible to use the footpaths to be provided along the site access road.

Reason: to ensure the provision of safe and continuous pedestrian passage from David Dale Avenue to the footpath along the Annick Water.

5. Prior to the commencement of works on site, including any remedial works, a suitably qualified ecologist shall undertake a badger survey. The survey shall include land extending to 250 metres either side of the development site (to the east and west) and shall be submitted to and approved in writing by planning authority prior to any works commencing on site. If evidence of badgers is found then a Species Protection Plan shall be prepared which includes details of proposed mitigation measures. If a Species Protection Plan is required then it shall be submitted to and approved in writing by the planning authority before any works are undertaken on site. All works on site shall be undertaken on site in accordance with the approved details of the Species Protection Plan

Reason: in terms of the legal requirements of the Wildlife and Countryside Act 1981.

6. Prior to the commencement of works on site, including any remedial works, detailed method statements in respect of the treatment of bats and otter shall be submitted for the written approval of the planning authority. The method statement for bats shall reflect the conclusions and recommendations contained in the survey undertaken in 2011. The terms of the approved method statements must be strictly applied at all times during the period of development.

Reason: to ensure appropriate consideration is given to European Protected Species.

7. Prior to the commencement of works on site, including any remedial works, an

assessment of the presence of Japanese Knotweed on the site shall be undertaken and a method statement prepared for the eradication of any Japanese Knotweed identified. The method statement shall be submitted for the written approval of the planning authority and any eradication required undertaken in accordance with the approved method statement.

Reason: to ensure the eradication of this invasive species from the site, if required, thereby contributing to the creation of an acceptable residential environment.

8. All ground or vegetation clearance works, including any tree felling or Japanese Knotweed eradication, shall take place outwith the main bird-breeding season (that is, not during April, May, June and July). Should this requirement not be possible, an ornithologist shall be engaged to survey the ground and trees immediately prior to such works to advise on any bird nesting activity and any actions required to protect the birds. In this event, work shall not commence until the planning authority has provided written approval of the actions required and such measures implemented.

Reason: in terms of the legal requirements of the Wildlife and Countryside Act 1981.

9. Prior to the commencement of any works on site, the applicant shall arrange for a safe location for any compound or plant storage that may be required in liaison with the council's Outdoor Amenities and Planning and Economic Development Division. This location shall remain constant throughout the development period unless authorised in writing by the planning authority.

Reason: in the interests of the protected trees on site throughout the development period.

10. Prior to works commencing on site, including any remedial works, a plan showing the precise positions of the house plots as a consequence of any micro-siting required to protect tree root plates, shall be submitted and agreed in writing by the planning authority. These details shall be submitted in conjunction with the landscaping scheme required under condition 3. All works shall be undertaken in accordance with the approved detailed site plan.

Reason: to ensure the protection of the retained trees on site.

11. Tree protection measures in accordance with the practices in BS 5837: 2012, for the protection of trees during development, shall be submitted to and approved in writing by the planning authority. The approved tree protection measures approved shall be strictly observed for the duration of the development of the site.

Reason: in the interests of the protected trees on site.

12. Access shall be maintained to the new swale (shown in drawing 1301-PL01) for maintenance purposes where it is not adjacent to the carriageway.

Reason: in the interest of servicing the site adequately.

13. Prior to development works commencing on site, visibility splays of 2.5 metres by 35 metres shall be provided at the junction of the site access road with Montgomerie Drive and no walls, fencing, buildings over 1 metre in height shall be allowed within the splays. Should this requirement involve the removal of trees within the area of the TPO, the further prior written approval of the planning authority shall be obtained. The visibility splays required under this condition shall thereafter be maintained in perpetuity.

Reason: in the interests of safe vehicular access and egress and to ensure the planning

authority is provided with the opportunity to consider any further impact on the TPO.

14. All new private driveways shall be provided with a hard surface for the first 2 metres.
Reason: in order to prevent the deposition of loose material onto the public footpath and road.

15. The raised table (shown in drawing 1301-PL01) shall be constructed to include the junction opposite the site.

Reason: in the interests of safe vehicular movements.

16. All proposed bin stores shall not impede the sight lines the individual driveways.

Reason: in the interests of safe vehicular access and egress.

17. Unless specifically authorised in writing by the planning authority, hours of operation for site development shall be restricted to 7am to 7pm, Monday to Friday, and 8am to 1pm on a Saturday, with no work on a Sunday.

Reason: in the interests of maintaining residential amenity in the area.

18. Noise from the works during construction shall at no time cause the underlying background noise level LA90(1hour) to rise by more than 3dB(A) at the nearest noise-sensitive location.

Reason: in the interests of maintaining residential amenity in the area.

19. All waste arising from the development works shall be disposed of to the satisfaction of the Waste Management Authority and by means other than burning.

Reason: in the interests of maintaining residential amenity in the area.

20. All drainage shall be completed to the satisfaction of the Scottish Environment Protection Agency or, if appropriate, Scottish Water.

Reason: in the interest of servicing the site adequately.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)