



Appeal Decision

Site visit made on 17 July 2014

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 3 September 2014

Appeal Ref: APP/D4635/A/14/2219413

Land to the rear, 45 Rookery Road, Lanesfield, Wolverhampton WV4 6NN

- 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 Mr M Howell against the decision of Wolverhampton City Council.
 - The application ref: 13/00421/OUT, dated 29 April 2013, was refused by notice dated 10 January 2014.
 - The development proposed is residential development of 16 no. semi-detached houses.
-

Decision

1. The appeal is dismissed.

Procedural Matters & Background

2. The application is made in outline but includes the means of access to the site for consideration now. Appearance, layout, landscaping and scale are reserved for future approval. The development description in the banner heading above is the one set out on the original application form and, at Section 17, it is indicated that 16 three-bedroom units are proposed.
3. However, it is emphasised in the appellant's representations that permission is sought simply for 'residential development', with the number of units to be determined at the detailed stage. As that is the basis on which the Council processed and determined the application¹, I am satisfied that no-one's interests would be prejudiced if I were to do the same.
4. *I have therefore determined the appeal on the basis that it relates to an outline application for 'residential development' which includes details of access. I have had regard to the 'proposed outline site layout' plan showing sixteen semi-detached dwellings as being indicative only. I note here also that there are potential constraints, such as ground contamination, former mine workings and an electricity pylon, which may affect the number and layout of dwellings.*
5. The Council's single refusal reason relates to highway safety. However, the officers' report to Planning Committee includes reference to the need for planning obligations in a Section 106 agreement (s106). No such agreement or undertaking has been completed by the appellant, but his appeal representations include a financial viability appraisal for the scheme. The

¹ Describing the proposal on the refusal notice as "Residential development (Outline with 'access considered')"

Council maintains that, in the absence of the requisite planning obligations, the appeal should be dismissed irrespective of the scheme's merits.

Reasons

6. Given the above, the **first main issue** is the effect of the proposal in terms of highway safety. The **second main issue** is whether or not there is a need for planning obligations to make the development acceptable in planning terms.

Highway safety

7. No. 45 Rookery Road is a corner plot with its side (northern) boundary running alongside Bayliss Avenue, which slopes steeply downwards to the junction with Rookery Road. Bayliss Avenue is a short, narrow residential cul-de-sac that does not currently have a turning facility at its upper end. The appeal site has a frontage onto the upper part of the cul-de-sac, which would be extended into the site, at an angle, to provide vehicular access to the proposed housing.
8. The appeal scheme includes proposals to use a strip of the plot at no. 45 to widen the existing carriageway in Bayliss Avenue to 5.5m, with 1.8m wide footways on each side, and to reduce its gradient. The indicative layout shows, and it would be reasonable to require, a turning head at the end of the extended cul-de-sac. Bearing in mind the difficulties which currently arise due to the combination of narrow road width, steep gradient and on-street parking in Bayliss Avenue, such provisions would be beneficial aspects of the proposal.
9. I note the Council's point that the existing gradient of the cul-de-sac, at 12%, is much steeper than the 5% maximum recommended in a Highways Technical Guidance Note². I note also residents' concerns that occupiers of the new houses would park in Rookery Road in snowy or icy conditions. Nonetheless, as I understand it, the highway elements of the scheme have been developed in consultation with the Highway Authority, which raises no objection to the scheme. I find insufficient justification to conclude that the existing gradient of Bayliss Close is a reason to reject the proposal on highway grounds.
10. In reaching this conclusion I have borne in mind that, notwithstanding the indicative site layout, the total number of dwellings could be more or less than sixteen. In particular, it is suggested in the appellant's statement that the development could comprise anywhere between one and twenty units.
11. The number of dwellings is also relevant to the Council's concerns about the intensification of vehicle movements more generally at the junction of Rookery Road and Bayliss Avenue. Although the Council was considering the acceptability or otherwise of residential development in principle, some consideration must have been given to the likely quantum of development in order to conclude that the increase in vehicle movements at the junction would be detrimental to highway safety. However, apart from mentioning a visibility splay, the Council's representations include little substantive information about the way in which the junction currently functions, how this would change as a result of the appeal proposal, and why such changes would compromise highway safety.
12. I saw that Rookery Road is a reasonably busy local distributor road, subject to a 30mph speed limit and rising gently upwards from south to north. The

² Wolverhampton City Council Highways Technical Guidance Note, dated May 2012

appellant cites traffic count data³ which demonstrates an 85th percentile speed of around 30mph. The data also shows the speed of southbound traffic to be slightly higher than that of vehicles going north, and that there are more instances of drivers exceeding the 30mph limit in the southbound direction than in the northbound.

13. Bayliss Avenue joins Rookery Road on the outside of a bend. A further bend to the south, together with evergreen vegetation around the frontage of no. 45, has some impact on visibility for drivers leaving Bayliss Avenue. Vehicles parked on Rookery Road can also affect visibility. Even so, no accidents involving injuries have been recorded in recent years in the vicinity of this junction⁴. Local residents have cited instances of accidents causing damage to properties, including one in May this year but, not least on the basis of this most recent incident, it seems more likely than not that such incidents result from driver error rather than conflicts with vehicles coming or going into Bayliss Avenue.
14. I understand local residents' concerns but, inasmuch as there is any existing problem, it does not appear to be one resulting from the way in which the junction functions. Moreover, the junction would be more obvious to drivers on Rookery Road if Bayliss Avenue was to be widened as proposed. There is also some scope to improve on the existing situation in terms of southward visibility when exiting the cul-de-sac. In these circumstances, and bearing in mind the likely traffic generation from a development of up to twenty dwellings, I find it unlikely that a shortfall of around 6m in the southward visibility splay⁵ from Bayliss Avenue would be significant in terms of highway safety.
15. I have had regard to all other matters raised on this issue. However I find no compelling reasons to conclude that development of the appeal site, resulting in additional traffic movements in Bayliss Avenue and through its junction with Rookery Road, would compromise highway safety. There would therefore be no material conflict with the development plan policies cited in the Council's refusal reason⁶ or with guidance in MfS.

Planning obligations

16. The Council has listed the following as matters to be included in a s106 agreement or undertaking: (a) targeted recruitment and training; (b) highway works to Bayliss Avenue; (c) 25% affordable housing (15+ dwellings); (d) off-site contribution for open space and play (10+ dwellings); (e) 10% renewable energy (10+ dwellings); (f) management company for communal areas. No such agreement or undertaking has been provided.
17. The appellant raises no objection to items (a) and (f) on the basis that these would have no financial bearing on the scheme. Even so, as the Council's representations do not include any explanation, justification or reference to a relevant development plan policy in relation to item (a), I am unable to conclude that it is necessary to make the proposal acceptable in planning terms. This also applies to items (e) and (f), albeit both appear to be matters

³ From a survey undertaken in 2012

⁴ In my experience, accidents where no injuries occur are not normally included in police or Highway Authority accident records

⁵ That is, 2.4m by some 37m (according to the Council), rather than the 2.4m x 43m recommended in national guidance in *Manual for Streets* (MfS)

⁶ In the Wolverhampton Unitary Development Plan 2001-2011 (UDP) (2006) and the Black Country Core Strategy (CS) (2011)

that could equally well be addressed by planning conditions⁷. As item (b) is a contributory factor to my conclusions on the first main issue, it follows that I find the off-site highway works to be necessary to make the development acceptable in planning terms. However, although a separate agreement would be needed with the Highway Authority to undertake works to the public highway, there does not appear to be any reason why a Grampian-style condition could not be used to secure the carrying-out of such works.

18. Thus I find the remaining items, (c) and (d), to be the most significant matters at issue. CS Policy HOU3 requires 25% affordable housing in schemes of fifteen or more dwellings, but includes provisions for the viability of individual schemes to be taken into account. UDP Policy H8 provides the policy justification for a contribution towards open space and play facilities, but given more recent policy guidance in the *National Planning Policy Framework*, it is reasonable to take viability into account in assessing the need for this contribution also. As already noted, the appellant has submitted a financial viability appraisal (FVA): this seeks to demonstrate the appeal scheme would not be viable if provision had to be made for these items in addition to the costs of the off-site highway works
19. It is however difficult to reach firm conclusions on the FVA, largely due to uncertainty over the scale of the proposed development. On the one hand it is possible that fewer than sixteen dwellings would be built. Indeed the appellant refers (in response to the highway safety issue) to the possibility of there being just one dwelling, although that would make little sense financially in relation to the proposed off-site highway works that are proposed. A minimum sum of £100,000 has been included in the FVA for those works, albeit without any explanation of how it was arrived at. In addition, the Coal Authority's consultation response advises that the legacy of coal workings in and around the appeal site is potentially a risk to the development. It recommends intrusive site investigation works to establish the exact situation, which might identify constraints on the amount and/or layout of housing.
20. On the other hand, if it was established through further investigation that there are no insurmountable physical constraints to development, then it is equally possible that more than sixteen units could be provided. As already noted, up to twenty units have been mentioned for a site of this size and nature. The FVA, which is clearly based on sixteen units with three bedrooms, does not address any such alternative scenario.
21. In these circumstances I am not persuaded the FVA is sufficiently comprehensive and robust to demonstrate that obligations providing for affordable housing and a contribution towards off-site play and open space facilities would make the development unviable. Moreover, notwithstanding the appellant's view to the contrary, uncertainty over the final number of dwellings should not in itself preclude commitment to a s106 agreement or undertaking. Obligations relating to the provision of affordable housing, for example, are often provided in association with outline applications, before the final number of units is known. It would also be feasible to include clauses to cover the possibility of the final number of units falling below relevant thresholds.

⁷ On the basis that provision for future management/maintenance is most often required for communal landscaped amenity and open space areas

22. Having regard to the development plan policies mentioned above, and also the role of both affordable housing and play and open space facilities in creating sustainable, inclusive and mixed communities, I find the obligations sought by the Council in these respects necessary to make the development acceptable in planning terms. Without such obligations the proposal would not accord with development plan policies that are broadly consistent with the *Framework*. Nor are these are matters that could be addressed by condition⁸.

Other matters and conclusions

23. I note that a subsequent outline application for residential development on the appeal site was refused on two grounds: highway safety, and loss of a distinctive, undeveloped open space which contributes positively to the area's character. The latter issue is not addressed by either main party in this appeal, albeit concerns have been expressed by some local residents about impacts on wildlife using the site. I have borne that in mind, together with all other matters raised by local residents and their petition of objection.

24. I have also borne in mind that the proposal would accord with the Framework's objective of boosting the supply of housing, in an accessible and sustainable location. It is notable however that its benefits in this respect would not be as great without appropriate provision, in particular, for affordable housing. The proposed alterations to Bayliss Avenue would also be beneficial. Overall however, and notwithstanding my conclusions on the first main issue, I find the submitted FVA insufficiently compelling to justify permitting the development without any provision for affordable housing and for contributions towards off-site play and open space facilities. I find this to be the determining matter in this case and conclude therefore that the appeal must fail.

Jane Miles

INSPECTOR

⁸ The Council officers' report did not recommend requiring a s106 agreement by condition and, although the possibility of doing so is mentioned in the recent national Planning Policy Guidance, it is apparent that this is only likely to be appropriate in exceptional circumstances (which do not apply here)