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## Appeal Decision

Hearing held on 23 September 2014

Site visit made on 23 September 2014

**by Victoria Lucas-Gosnold LLB MCD MRTPI**

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

**Decision date: 24 October 2014**

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**Appeal Ref: APP/Y3425/A/14/2220297**

**Land at Spode Close, Stone, Staffordshire**

- 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 David Wilson Homes (Central, Mercia and West Midlands) against the decision of Stafford Borough Council.
  - The application Ref 13/19605/FUL, dated 15 November 2013, was refused by notice dated 24 March 2014.
  - The development proposed is residential development including the creation of a new access onto Spode Close, creation of open space, associated landscaping and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Since the Council's determination of the original application, they have adopted 'The Plan for Stafford Borough' (June 2014). The saved policies referred to from the Council's Local Plan (2001) are therefore no longer part of the development plan. For the purposes of this appeal, I must have regard to the up to date policy position. As the appellant and other third parties have been given the opportunity to respond to this change in the policy framework during the appeal process, I am satisfied that their interests have not been prejudiced in this regard. I have determined this appeal accordingly.
3. Both parties have referred to several policies from the 2014 Local Plan and also a number of national guidance and statements including paragraphs from the National Planning Policy Framework (the 'Framework'). I have referred only to those policies which I consider to be relevant to my decision.
4. At the hearing, the appellant submitted a draft Unilateral Undertaking (UU) which sought to make provision for education, a number of sustainable transport measures, including the implantation of a travel plan, on site and off site open space, affordable housing, Suitable Alternative Natural Greenspace (SANG) and sports contributions. As the UU was in draft form, I agreed with the parties at the hearing that a completed UU could be submitted within seven working days from the date of the hearing. A completed UU was duly submitted within this timetable and I have taken account of it in my decision.

5. The draft UU was discussed at the hearing during which the parties were given the opportunity to discuss its content. I was made aware that the Council had made a request prior to the hearing for a financial contribution towards sports provision. I asked the Council to provide evidence as to how the amount requested was arrived at. The Council indicated to me that the evidence upon which they had relied was rather extensive and covered the whole Council area. I therefore agreed with the parties that the Council should be allowed seven working days from the date of the hearing to submit the relevant written evidence in abbreviated form. This information was submitted within the agreed timetable and I have therefore taken account of it in my decision. In the interests of fairness, I also allowed the appellant an additional five working days to comment on the written evidence submitted via a written representation as they had not had the opportunity to discuss this during the course of the hearing.

### **Application for costs**

6. At the hearing, an application for costs was made by David Wilson Homes (Central, Mercia and West Midlands) against Stafford Borough Council. This application will be the subject of a separate Decision.

### **Main Issue**

7. The main issue is the effect of the development proposed on the living conditions of neighbouring residents with particular regard to noise and disturbance.

### **Reasons**

8. The appeal site is currently farmland, comprising two fields on the south-western edge of the market town of Stone. The site is bordered to the north and east by an existing development of modern housing. An area of public open space, a common and car park lie to the west of the site, with agricultural fields to the south west leading up to the M6 motorway. Hedgerows define the boundaries of the site, with the exception of its eastern boundary and a belt of trees which runs along its eastern and northern boundary. Additionally there are a number of individual trees situated along the central part of the site which follow an existing hedgerow. The site area is approximately 4.9 hectares and slopes gently downwards towards the existing residential area. I understand that the appeal site is not allocated for any particular use in the development plan.
9. The appeal proposal would see the construction of 114 dwellings, 40% of which would be intended to be provided as affordable housing. The dwellings proposed would comprise a mix of house types and styles including detached, semi-detached and terraced. A mix of one to four bedroom houses would also be provided. Areas of public open space are proposed including a central area of amenity green space and an area of natural and semi-natural greenspace. Elements of the existing landscape would be retained and enhanced via the proposed planting of new woodland along the perimeter of the appeal site. Proposed pedestrian corridors would be created through the site linking both the existing residential estate next to the site and areas of open space. The development proposed would be served by a single access point off Spode Close.

10. My attention has been drawn to the planning history of the appeal site. Previous planning applications for similar types of development have been refused by the Council. There is also a previous appeal decision<sup>1</sup> which was dismissed. In that appeal the Inspector concluded that the proposal would be harmful to the character and appearance of the area. However, since that decision was issued in 2004 there has been a significant change in the policy framework at both the local and national level. Therefore, whilst I have had regard to that decision, I have determined this appeal on its own merits and in line with the up to date policy position.
11. Spode Close is a cul-de-sac with five dwellings. Vehicles exiting and entering the proposed access for the appeal scheme would do so via this cul-de-sac in the first instance. They would then pass through three 'T' junctions within the estate before reaching the nearest major distributor road, Common Lane. The estate roads are of a suitable width in order to accommodate two-way traffic. There is however a 'pinch point' on Coalport Drive located either side of its junction with Spode Close. The highway narrows to a single cars width at this point and there are bollards either side of the highway which restrict the width of the highway.
12. Given the small number of dwellings located on Spode Close, vehicle movements are currently likely to be largely restricted to the residents who live there and any associated visitors. This is particularly so given that it is a cul-de-sac. There is also a small area of open space at the head of the close and a children's play area which has various pieces of play equipment installed. This links with Wedgewood Close and provides a pedestrian link between the two roads. This play area and Spode Close itself adjoin open fields. In terms of the existing levels of noise, the distant hum of traffic from the M6 motorway can be heard. However, I am in agreement with local residents and the Council that this is very much a constant, low level noise which fades into the background. It is therefore not unduly dominant as a result. The predominant characteristics of Spode Close are therefore a peaceful, quiet environment with very few vehicle movements. This is also true of other estate roads in the area, although as one travels further away from Spode Close towards Common Lane, the environment become less quiet due to the increase in vehicles travelling along those roads in order to access the wider estate.
13. At the hearing, the appellant referred to a vehicle count which was undertaken in May 2014 at Spode Close and was submitted as part of the transport evidence in support of the original application. In the am peak there were two cars, in the pm peak there was one car and over a twelve hour period there was 21 cars in total counted. It is anticipated that as a result of the development proposed, there would be 63 vehicles in the am peak, 76 vehicles in the pm peak and 623 over a twelve hour period in total. Whilst I note there is some dispute as to whether the particular day of the count was during the school holidays, the evidence does show that there are currently a small number of vehicles travelling along Spode Close and that this would see a significant increase as a result of the development proposed.
14. The Council accepts that the proposal would not be harmful in relation to highway safety or the free flow of traffic as a result of traffic associated with the development proposed. I understand that the relevant parking standards

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<sup>1</sup> APP/Y3425/A/03/1135747 Decision date: 2004

would also be satisfied. I also note that the highway authority did not object to the proposal in this regard, subject to conditions. The transport evidence submitted by the appellant also indicates that there would be sufficient capacity on the estate roads to accommodate the development. The technical noise evidence also found that there would be no material change to the level of noise as a result of the development proposed and the Council's environmental health officer did not object to the proposal in this particular regard.

15. The Council does not dispute the science of the technical evidence submitted per se, it is rather the conclusion of that evidence which is at issue. I am in agreement with the Council that the assessment of the living conditions that residents currently experience in the area, and Spode Close, in particular, is necessarily a subjective judgement. As such, a purely scientific appraisal of the effects of the scheme may find it more difficult to assess this particular element.
16. The fact is that the evidence does show that, when compared with the existing situation, there would be a significant increase in the volume of traffic travelling along Spode Close in particular and other estate roads close to the appeal site as a result of the development proposed. There are several highway features including junctions and a 'pinch point' which those vehicles would need to negotiate before exiting the wider housing estate. This would result in several manoeuvres having to be undertaken by the drivers of those vehicles including breaking, accelerating and general engine noise. The nature of that noise would be different to the background hum of traffic from the M6 motorway as it would be experienced by residents at close quarters and would be intermittent throughout the day.
17. Vehicles accessing the development proposed would be likely to be a constant feature throughout the day and into the evening. I understand that the majority of dwellings on the Close have front facing living rooms and front facing main bedrooms situated approximately 5 metres from the highway. Many residents are also retired and therefore more likely to be at home during the day. Residents using their main living areas and bedrooms would therefore be likely to experience the noise associated with vehicles using the proposed access at close quarters. This is particularly so during the summer when they may choose to leave their windows open and therefore would be more likely to be disturbed by the comings and going of future residents accessing the proposed development. This would be materially different to the quiet and peaceful living environment which residents on Spode Close in particular currently enjoy. The appeal proposal would therefore have a significantly harmful on the living conditions which those residents currently enjoy as a result.
18. I also have concerns regarding the effect of the development proposed on the children's play area which I understand is used by children from the wider estate. Whilst I accept that children are capable of dealing with change, the play area currently benefits being located in a relatively traffic free environment. The increase in vehicles as a result of the development proposed would greatly alter this and would increase the number of potential hazards which children wishing to access the play area would have to negotiate. I consider that the use of the access proposed would therefore materially affect the amenity value of that play area as a result.

19. Accordingly, I conclude that the proposal would be harmful to the living conditions of neighbouring residents with particular regard to noise and disturbance. The proposal would therefore conflict with spatial principle 7 (I) of 'The Plan for Stafford Borough' (June 2014) which, among other things, states that development will, in principle, be acceptable because it will not adversely affect the residential amenity of the locality. The proposal would also conflict with one of the core planning principles of the Framework which states that planning should always seek to secure a good standard of amenity for all existing occupants of buildings (paragraph 17).

### **Other Matters**

#### *Emergency Access*

20. I note that there is some dispute as to whether a suitable emergency access for the appeal scheme could be created. An illustrative plan was submitted by the appellant at the appeal which did show that one could be created. However, this would involve building the emergency access on part of the public open space next to the existing play area. At the hearing, it was indicated to me that this area of land is owned by an independent estate management company and not the appellant. As such, it does not appear to be within the control of the appellant. I note that the provision of an emergency access was a requirement of the highway authority to be secured via a condition to ensure that safe and suitable access could be maintained for the proposed development in light of an emergency occurring. Therefore notwithstanding the concerns that the Council and third parties have expressed regarding this access, in light of this uncertainty, I am not convinced that a suitable emergency access would be capable of being implemented, were the appeal to succeed. This is a matter which adds to the harm that I have identified above.

#### *Unilateral Undertaking*

21. A Statement of Common Ground was submitted by the parties and this shows that there are areas of agreement between them. In particular, the Council acknowledges that the appeal site is in a sustainable location and that the principle of the development proposed is acceptable, subject to the relevant development plan policies being satisfied. There is also agreement that the site has no particular planning, ecological or landscape designation. Whilst I appreciate the concerns of local residents and Councillors in relation to the proposal, I must also acknowledge that the appeal scheme would have several benefits, if the appeal were to succeed. In particular, a completed UU was submitted by the appellant which aims to secure a number of measures. I shall consider these in turn.
22. Policy C2 of the Local Plan requires that within Stone, residential developments of 12 dwellings or more must provide 40% affordable housing units on development site. At the hearing, the Council disputed whether or not the appeal scheme would in fact provide the required amount. This is because plans submitted with the appeal showed that 35 affordable units would be provided, whereas 40% of 114 units would require 45 affordable units to be provided. The completed UU submitted is clear that 45 affordable units would be provided as part of the scheme and would therefore comply with policy requirements.

23. There is, however, a provision in the UU which would make it possible for affordable units to be sold as open market dwellings should an affordable housing provider not be found within a three month period. Whilst I acknowledge the appellant's position that such an event would be unlikely, this would mean that were this measure to be engaged, some or all of the affordable housing provided would not be available in perpetuity. This is a weakness in the UU, nevertheless in light of the harm that I have identified above, this has not been a decisive factor in my consideration of this appeal.
24. Additionally, based on the information before me, and taking account of the completed UU, I am satisfied that, were the appeal to succeed, the proposal would make suitable provision for a financial contribution towards education, the implementation of a travel plan, the provision of suitable off site and on site recreational open space and SANG. I note that the Council disputes whether or not it should have to pay its own legal costs involved in transferring ownership of the on-site open space and play area provision. However that has not been a decisive factor in my consideration of this appeal.
25. In terms of the financial contribution sought by the Council towards a Transport Strategy, I was provided with a document entitled 'Stafford Borough Integrated Transport Strategy 2013-2031' (November 2013). Whilst Appendix 2, figure 5 of that document does show a 'Stone Local Transport Package' there is little specific information within that document as to how the figure of £60,000 was arrived at. Similarly, in relation to the financial contribution sought for sports provision, the document submitted by the Council refers to a Sport England 'Sports facility calculator' which has been used to calculate the figure of £38,508. However, there is little specific information to indicate whether there is a particular shortfall of sports provision in the area and how this figure was arrived at. I therefore have some concerns, based on the information before me, as to whether these two particular requirements are necessary, related directly to the development and fairly related in scale and kind.

#### *Housing land supply*

26. Evidence was submitted during the course of the appeal regarding the housing land supply situation in the area<sup>2</sup>. At the Hearing the appellant indicated that they wished to reserve their position regarding the Council's publicly stated levels of housing land supply in relation to possible future appeals. However, they were also clear that it was not a matter which they wished to raise specifically in regard to this appeal. Notwithstanding this, the appellant has drawn my attention to the Inspector's report following the examination of 'The Plan for Stafford Borough'. This does indicate that the housing requirements for the area should not be treated as a maximum figure. Therefore, even if there is no identified shortfall of housing land supply in the area, this would not necessarily preclude development proposals for housing coming forward. Rather, it is a question of assessing the particular harm which may occur as a result of the specific proposal in question. I note the appellant's position and have also had regard to the Framework which does state that housing applications should be considered in the context of the presumption in favour of sustainable development (paragraph 49).

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<sup>2</sup> Including a previous appeal decision regarding this matter – APP/Y325/A/12/2172968 Decision date: December 2012

*Other considerations*

27. There are also a number of neutral matters, where a lack of harm does not weigh in favour of the proposal. These include that the site is greenfield. Although several local residents have expressed concerns in this regard, there is nothing in the Framework which explicitly rules out the development of greenfield sites.
28. I am also satisfied that the proposal would have a neutral effect on the character and appearance of the area. This is because the appeal proposal would be located on the edge of an existing residential development. Documents and plans submitted with the appeal show that the house types proposed would largely reflect the local vernacular. The proposal would therefore relate well to the existing residential area. Landscaping (both retained and that proposed) in addition to the creation of areas of public open space would assist in visually integrating the proposal into the landscape and townscape of the area.
29. I note the concerns expressed by local residents as to the effect of the proposed development on their living conditions with regard to outlook, light and privacy. However, based on the information before me, suitable separation distances could be achieved. Additionally, the enhanced landscaping proposed around the perimeter of the site could effectively screen existing dwellings from the proposed development. The proposal would therefore not be harmful in this regard.
30. The majority of notable features on the site with habitat potential for wildlife, such as the existing hedgerows and mature trees, would be retained as part of the appeal proposal. Additional planting proposed as part of the scheme could enhance the existing habitat potential on the site for wildlife. Based on the information before me, I am therefore satisfied that the proposal would not be harmful to protected wildlife, specifically bats and badgers which may use the site and also any bird species. Conditions could be attached to ensure that retained trees are protected during construction work via maintaining suitable Root Protection Areas, if the appeal were to succeed.
31. The consultation response from Natural England indicates that due to the proximity of the Cannock Chase SAC, there may be some effects as a result of the development proposed. This would be as a result of the potential for the proposal to increase visitor numbers to the SAC. However, based on the information before me, I am satisfied that suitable mitigation measures could be put in place to overcome those concerns.
32. A Flood Risk Assessment was submitted with the application. The site is within Flood Zone 1 and is not therefore considered to be at risk of fluvial flooding. The Assessment found that the development proposed will not be affected by current or future flooding from any source. It also found that the proposal would not increase flood risk elsewhere. I also note that the Environment Agency and the relevant water company responsible did not object to the proposal in relation to this issue, subject to conditions. Therefore, although I appreciate the concerns of local residents and Councillors, I am satisfied that the proposal would not be harmful in this regard.
33. A soil assessment was undertaken and submitted by the appellant with the original application. This indicates that the proposal would result in the

permanent loss of approximately 5 hectares of the best and most versatile agricultural land, classified as subgrade 3a. However, due to the limited size of the land involved and the extent of other agricultural land in the vicinity it concludes that agricultural productivity in the locality would not be significantly affected by the appeal proposal. Additionally, a condition could be put in place, were the appeal to succeed, requiring soils on the site to be safeguarded through best practise handling and stockpiling techniques to ensure they would be suitable for future use. I therefore find no harm in this regard.

### **Conclusion**

34. Drawing matters together, I have acknowledged the benefits associated with the development proposed in my decision. These include the provision of 114 additional dwellings, of which 40% would be affordable units, the provision of recreational open space (both on and off site), a financial contribution towards education provision and the implementation of a transport plan. There are also areas of agreement that exist between the parties, including that the principle of the development proposed would be acceptable and that the appeal site is within a sustainable location. There are also several neutral matters, whereby a lack of harm does not weigh in favour of the proposal.
35. Whilst I have had regard to the benefits of the scheme, I conclude that they do not demonstrably outweigh the harm that I have identified above. This is because this particular appeal proposal would result in a significant increase in vehicle movements that would substantially increase the levels of noise and disturbance significantly above that currently experienced by residents in Spode Close in particular and other surrounding roads, albeit to a lesser extent. This would be significantly harmful to the living conditions of those residents as a result. I have also found that the proposal would not provide a safe and suitable emergency access and this adds to my concerns.
36. For the reasons given above, having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Victoria Lucas-Gosnold*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Hugh Richards	No. 5 Chambers
Jon Rowson	Barratt and David Wilson Homes
Frank Hayes	Wardell Armstrong
Mark Dawson	Wardell Armstrong
Damian Meehan	RPS Group

### FOR THE LOCAL PLANNING AUTHORITY:

John Heminsley	Planning Officer (Part time), Stafford Borough Council
Matthew Ellis	Development Team Leader, Stafford Borough Council

### INTERESTED PERSONS:

Mr J and Mrs J Jenkins	Local resident, Spode Close
Mr S Lovatt	Local resident, Spode Close
Mr Slater	Local resident, Essex Drive

Cllr Michal Williamson	Stafford Borough Council
Cllr Margaret Goodhall	Stafford Borough Council
Cllr Mrs Jill Hood	Stafford Borough Council

## **DOCUMENTS**

### BY THE APPELLANT:

- A map showing a proposed 3.7m Emergency Access Route – described during the hearing as an illustrative example
- A copy of a written costs application
- A draft Unilateral Undertaking

### BY THE COUNCIL:

- A written response to the costs application
- Stafford Borough Integrated Transport Strategy 2013-2031 (November 2013)