



## Appeal Decision

Site visit made on 24 August 2015

by **Jonathan Hockley BA(Hons) DipTP MRTPI**

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

Decision date: 15/09/2015

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**Appeal Ref: APP/W1850/W/15/3017909**

**Land adjacent Vine Tree Close, Withington, Herefordshire HR1 3QW**

- 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 Paul Smith against the decision of Herefordshire Council.
  - The application Ref 150067, dated 8 January 2015, was refused by notice dated 16 March 2015.
  - The development proposed is the erection of up to 31 dwellings. Construction of new vehicular access and associated works. Demolition of No 5 Vine Tree Close.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 31 dwellings. Construction of new vehicular access and associated works. Demolition of No 5 Vine Tree Close at Land adjacent Vine Tree Close, Withington, Herefordshire HR1 3QW in accordance with the terms of the application, Ref 150067, dated 8 January 2015, subject to the conditions set out at the end of my decision.

### Preliminary Matters

2. The application was submitted in outline, with only access to be determined at this stage. Therefore I have treated the site plan and landscape plan as illustrative only. I have dealt with the appeal on this basis.
3. The Council refused the application for three reasons, the third of which referred to a lack of an obligation to secure affordable housing and various contributions. This has been addressed via a completed Section 106 planning obligation which has been submitted, dated 23 July 2015.

### Main Issues

4. The main issues in this case are as follows:
  - The effect of the proposal on the living conditions of the occupiers of Nos 4 & 6 Vine Tree Close, with particular reference to noise and disturbance.
  - The effect of the proposal on the character and appearance of the surrounding area, including the settings of the Church of St Peter, a grade II\* listed building and Withington Conservation Area.

### Reasons

5. There is no dispute amongst the parties that the Council cannot demonstrate a five-year supply of deliverable housing sites. In such cases the National Planning Policy Framework (the Framework) states that relevant policies for the

supply of housing should not be considered up to date, and that housing applications should be considered in the context of the presumption in favour of sustainable development. Although the appeal site lies outside the settlement boundary for the village, Policy H4 of the Herefordshire Unitary Development Plan, March 2007 (the UDP) sets settlement boundaries and is relevant to the supply of housing. Paragraph 14 of the Framework states that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted.

### *Living Conditions*

6. The proposal would involve demolishing No 5 Vine Tree Close and constructing an access road between Nos 4 and 6 Vine Tree Close. A previous appeal<sup>1</sup> was dismissed in part due to the disturbance caused by the comings and goings of vehicular and pedestrian traffic to the rear parts and the gardens of Nos 4 and 6. The Inspector noted that this meant that "existing levels of peace and quiet in the rear parts of Nos 4 and 6, and their gardens, would, in my view be all but obliterated". However, this scheme was for a maximum of 45 dwellings, with the current proposal being for a maximum of 31 houses. As such, the proposal is roughly for a third less houses than the dismissed scheme, and vehicular and pedestrian traffic would be reduced correspondingly.
7. The proposal would add substantially to the number of dwellings that are served off Vine Tree Close. However, the Council's Transportation Manager notes that Vine Tree Close itself is of an adequate standard to serve up to 100 dwellings, which the proposal and the existing development would not exceed. The width of the access to the site would allow a 4.8m wide road with 2m pavements on either side. The access is aligned so as to pull away slightly from the rear of No 6 to leave a small area for landscaping between the northern footpath and the rear garden boundary of No 6. Some limited space would also be available for landscaping between the southern edge of the access and the rear garden of No 4.
8. The appellant estimates that the proposed houses would lead to between 186 and 248 traffic movements a day, with a vehicle approximately every 2 minutes on the road during rush hours, and less frequently during other periods of the day. Traffic moving into and out of the proposed access road would be travelling fairly slowly with commensurate fairly low noise levels. The appeal site is located in a reasonably sustainable location, and walking would be possible to the school, church, shop and village hall, helping to cut down on many possible day to day journeys that may otherwise need to be undertaken by private vehicle.
9. The Council note that the minimum distance between the back edge of footpaths to the flank elevations of Nos 4 & 6 would be 1.5m and 2m respectively. However I note that the flank elevation of No 4 is a garage in this location, and that conditions could be imposed to ensure that existing landscaping on the boundaries of the properties was increased and acoustic fences installed. Whilst I appreciate that the proposal would clearly constitute a change in the living conditions to the occupiers of No 4 and No 6, I do not consider, given the levels of traffic predicted of the reduced numbers of houses

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<sup>1</sup> APP/W1850/A/14/2228744, 23/04/15

now proposed, the distances between the road and the rear gardens of the neighbouring properties and the improvements in landscaping and screening that could be conditioned, that the proposal would have a significant adverse effect on the living conditions of the occupiers of Nos 4 & 6. I also note in this respect that neither the Council's Transportation Manager nor the Environmental Health Manager raise any objections to the proposed development.

10. The occupants of No 6 raise concerns over the effect of the proposal on their privacy. However, conditions regarding landscaping could ensure that the existing hedgerow is supplemented and that their rear garden area is adequately screened from passing pedestrians on the proposed footpath. The bathroom window on the southern flank of this property is a small one and is obscure glazed. I do not consider that the proposal would result in an adverse effect on privacy for the residents of this property.
11. During my site visit I visited No 15 Vine Tree Close. This property sits at the north west end of the Close, and borders the appeal site. However, whilst significant development close to this boundary would have the potential to overshadow this property, the indicative site plan shows an area of structural landscaping at this section of the site. Detailed design and layout would be considered at reserved matters stage, but provided that the layout bore some resemblance to the indicative plan submitted then the proposal would not have an adverse effect on the living conditions of the occupiers of this property. The planting of trees could also be carefully considered under a landscaping scheme to ensure that no tall species were planted close to this boundary.
12. I therefore conclude that, with suitable conditions imposed, the proposal would not have a significant adverse effect on the living conditions of the occupiers of Nos 4 & 6 Vine Tree Close, with particular reference to noise and disturbance. The proposal would comply with policies DR2 and H13 of the UDP, which together state that residential proposals should provide for acceptable levels of residential amenity and not prejudice the amenity of nearby and adjoining properties. The proposal would also comply with the Framework which states that planning should always seek a good standard of amenity for existing occupants of land and buildings.

#### *Character and appearance*

13. Although the appeal site is fairly undulating and rises above much of the village, it is well screened from most angles. Views are fleeting and the site would be most visible from the rear gardens of the fairly modern properties on Farndon Rise on the south side of the site and from the rear gardens of the houses on the west side of Vine Tree Close. Views from further afield are largely screened by these existing properties, and a thick band of trees to the west of the site. A public footpath on Veldo Lane, runs along the northern boundary of the site. However, for much of its length this path is set below the level of the site and is screened from views of it by a banked area.
14. Although in outline, the indicative site plan proposes that some, although not all, of the plots shown at the highest level of the site would be in the form of bungalows. The use of the bungalows on the north east side of the site would tie in to existing similar development at the northern end of Vine Tree Close and would help the proposal assimilate into the surrounding landscape and village form.

15. Withington Conservation Area (WCA) lies around 120m to the east of the appeal site, according to the Council's figures. At the heart of the WCA lies the attractive parish church. However, the distance between the appeal site and the WCA and church, and the screening by the reasonably modern Vine Tree Close itself would ensure that the proposal would not harm the views of the Church or the settings of these heritage assets. I do not consider therefore that the proposal would conflict with Policy LA3 of the UDP, which states that development outside rural settlements will only be permitted where it would not have an adverse effect upon the landscape setting of the settlement concerned, and that important visual approaches into settlements, views of key buildings and green corridors will be particularly protected.
16. A Landscape and Visual Impact Assessment submitted by the appellant describes the site, in common with the rest of the village, as lying within the 'Principal Settled Farmlands' landscape character area as described in the Council's Landscape Character Assessment supplementary planning guidance. One of the Framework's core planning principles is that the intrinsic character and beauty of the countryside should be recognised. Whilst landscaping and detailed design could help mitigate adverse effects, I agree with the previous Inspector that development of housing on such a site would to a certain extent cause harm to landscape character, and be contrary to Policy LA2 of the UDP which states that proposals for new development that would adversely affect the character of the landscape will not be permitted.
17. I therefore conclude that, whilst the proposal would not have an adverse effect on the settings of the parish church and the WCA, the proposal, by virtue of development on a field typical of the 'Principal Settled Farmlands' landscape character area would have an adverse effect on the character and appearance of the surrounding area.

#### *Other Matters*

18. The Parish Council raises concerns that, if allowed, a further application for 45 dwellings would once again be submitted. However, each case must be dealt with on its own merits. The previous appeal decision established that 45 dwellings on the site applied for would not be suitable and it would be reasonable to condition any approval to restrict it to 31 dwellings.
19. The examination in public into the Draft Local Plan – Core Strategy took place in February 2015. However, this plan is still at a relatively early stage and this limits the weight I can give to this draft strategy. Withington is a designated neighbourhood area and I understand that a neighbourhood plan is in production. References are made to an alternative site to in a separate part of the village that the Parish Council consider could be developed. I appreciate the concerns of local residents in this respect. However, both parties agree that there is a significant shortfall of housing land supply within the County, and each case must be dealt with on its own merits. The early stage of the Neighbourhood Plan, which has not yet been consulted upon, also limits the weight I can also give to this matter.
20. Concerns are raised over the visual impact of the development upon the residents of Farndon Rise. I appreciate that the proposal will clearly alter the views from the rear of these properties, as it will from the rear of those homes on the west side of Vine Tree Close. The indicative site plan has been amended to show greater distances between some proposed units and the rear gardens

- of the houses on Farndon Rise, showing how detailed design in terms of layout and landscaping could mitigate the effect of these views to a certain degree, and I do not consider that the proposal would significantly adversely affect the living conditions of the residents of these properties through overbearing or impacts upon outlook.
21. Several local residents and the Parish Council have strong concerns over the drainage of the site, particularly given its elevated nature. However, such details can be reasonably conditioned and I note that the Council's Land Drainage officer has no objections to the proposal, subject to such conditions.
  22. The appeal site is described by the Council as constituting Grade 2 agricultural land. Saved policy E15 of the Local Plan states that development resulting in the loss of such land should only be permitted where there is a lack of development opportunities within existing urban boundaries. Whilst on the face of it the proposal would conflict with this policy, it seems reasonable to me to tie the requirements of part 1 of this policy to a certain degree in with the issues of the lack of housing land supply for the Council, limiting the weight I can give to this matter.
  23. The proposal seeks to create a footpath link to the west through to the village hall, and one north to link up with Veldo Lane which would provide a quicker route to the school and church. Whilst I note the Parish Council's reservations over the link to the west in particular, the proposal in this respect would accord with Policy T6 of the UDP which seeks to acknowledge and improve existing walking routes.
  24. Strong concerns are raised over the effect of additional traffic upon the safety of children who often use Vine Tree Close to access the nearby school. However, given the number of traffic movements likely to be created by the proposal and the fact that the Council's Transportation Manager does not share such concerns, I do not consider that this would have a severe impact and that the proposal, with suitable detailed design and conditions could ensure safe and suitable access to the site.
  25. An ecological assessment notes that the site does not lie within a designated or protected area and found no protected species were recorded on site, although signs that badgers used the edge of the site were evident. Recommendations are made to ensure that the foraging and commuting routes of bats, and badger habitat on site boundaries is maintained. Such recommendations could be usefully conditioned.
  26. Some residents raise concerns over parking issues. The provision of adequate parking to serve the proposed development would be considered under detailed design at the reserved matters stage, and I noted on my site visit that existing properties on Vine Tree Close appeared to have adequate drives available for their own parking.

#### *Conditions and obligation*

27. An obligation submitted under Section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal. The obligation provides for 35% of the proposed 31 dwellings to be affordable homes, and contributions towards open space areas, recycling and transport facilities, in particular aimed at improving the pedestrian connectivity of the site to key surrounding points.

Concerns are raised by the Parish Council over the long term maintenance of open space; however, I note in this respect that the obligation proposes a management company be set up to provide this service.

28. I consider that the measures in the obligation are necessary, related directly to the development and are fairly related in scale and kind. As such they accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework, as well as the provisions of Policy DR5 of the UDP. In particular due to the affordable housing contribution I give the obligation significant weight in favour of the development.
29. I have imposed standard conditions relating to time limits for implementation in the interests of proper planning and for the avoidance of doubt. In the interests of the character and appearance of the area I have also limited development on the site to 31 units and two storeys in height. Given that access is approved as part of the consent, I have also imposed conditions relating to this matter. Furthermore, I have imposed a condition requiring a noise abatement scheme, incorporating the acoustic fence proposal from the appellant along the access drive in the interests of the living conditions of the occupiers of Nos 4 & 6.
30. Conditions are imposed concerning wheel cleaning and site parking, in the interests of the living conditions of nearby residents and highway safety. In the interests of the environment I have also imposed a condition relating to details of foul and surface water drainage, although I have combined the Council's 3 proposed conditions into 1 for the sake of conciseness.
31. The Council suggest various conditions relating to tree protection, landscaping schemes and cycle parking. I have imposed conditions relating to tree protection during development works in the interests of the environment, but consider that details regarding site landscaping plans and cycle parking would be more suited to the reserved matters stage.

### **Conclusion**

32. I have concluded that the proposal would have an adverse effect on the character and appearance of the surrounding area, contrary to UDP Policy LA2, and note the limited conflict with Policy E15. On the other hand however, I have found no conflict with Policies LA3, DR2 or H13. With regard to paragraph 14 of the Framework, the proposal would bring 31 houses to an area which both parties agree has a significant deficit in housing supply. Moreover, 35% of the homes would be affordable, a significant benefit.
33. I have carefully considered the substantial levels of objection to this scheme and appreciate the views of many local residents. However, whilst the proposal would cause some harm to the character of the surrounding area, the site, particularly for an elevated one, is well screened from many surrounding views and landscaping could be conditioned to further mitigate such effects. What harm remains I do not consider would significantly and demonstrably outweigh the economic and social benefits of the scheme that I have outlined.
34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jon Hockley*

INSPECTOR

**Schedule of 14 conditions**

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
- 3) 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 begins and the development shall be carried out as approved.
- 4) The development hereby permitted shall include no more than 31 dwellings and no dwellings shall be more than two storeys high.
- 5) No development shall take place until the construction of the vehicular access as shown on drawing 763-03 has been carried out in accordance with a specification to be submitted to and approved in writing by the local planning authority, at a gradient not steeper than 1 in 12.
- 6) No development shall take place until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and completed prior to the occupation of the development hereby permitted.
- 7) No dwelling shall be occupied until the road works necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the local planning authority.
- 8) All road works shall be completed within 2 years, or other period agreed in writing by the local planning authority, from the commencement of works on the site. This will entail the making good of surfacing, grassing and landscaping in accordance with a specification submitted to and approved in writing by the local planning authority (nothing in this condition shall conflict with any phasing scheme, in which respect it will be interpreted as applying to the particular phase being implemented).
- 9) No development shall take place until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the local planning authority, and which shall be operated and maintained during construction of the development hereby approved.
- 10) No development shall take place until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved by the local planning authority and such provision shall be retained and kept available during the construction of the development.

- 11) The recommendations set out in the Ecology reports (Wilder Ecology, April 2014 and July 2014) shall be carried out in relation to species mitigation and habitat enhancement. Prior to the commencement of the development, a full working method statement with a habitat enhancement plan shall be submitted to, and approved in writing, the local planning authority, and the work shall be implemented as approved.
- 12) No development shall take place until a scheme for the comprehensive and integrated drainage of the site detailing the provisions for foul and surface water and land drainage has been submitted to and approved in writing by the local planning authority in liaison with Dwr Cymru Welsh Water. Foul and surface water must be drained separately from the site, and no surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system. The scheme shall be carried out and implemented in accordance with the approved details.
- 13) No development, including demolition works or installation of site plant or huts or material, shall take place before adequate measures have been taken to prevent damage to those trees/hedgerow that are to be retained. Measures to protect must include:
  - Root protection areas for each hedgerow/tree/group of trees must be defined in accordance with BS3998:2010 Tree Work – recommendations, shown on the site layout plan and approved by the local planning authority.
  - Temporary protective fencing, of a type and form agreed in writing by the local planning authority must be erected around each hedgerow, tree or group of trees. The fencing must be at least 1.25m high and erected to encompass the whole of the root protection areas for each hedgerow/tree/group of trees.
  - No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the root protection areas for any hedgerow/tree/group of trees without the prior written consent of the local planning authority.
  - No burning of any materials shall take place within 10 metres of the furthest extent of any hedgerow or the crown spread of any tree/group of trees to be retained.
  - There shall be no alteration of soil levels within the root protection areas of any hedgerow/tree/group of trees to be retained.
- 14) No development shall take place until a scheme designed to protect the dwellings and their garden areas, front and rear, on either side of the access road (Nos 4 & 6 Vine Tree Close) from noise associated with vehicular traffic associated with the development has been submitted to and approved in writing by the local planning authority. The scheme shall include landscaping measures and details of an acoustic fence, where appropriate. The scheme shall be fully completed in accordance with the approved details prior to the commencement of any development and shall thereafter be maintained in perpetuity.