
Appeal Decision

Site visit made on 30 November 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/K0235/W/20/3257894

187B Bedford Road, Kempston MK42 8DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Resolution Homes against Bedford Borough Council.
 - The application Ref 20/00316/REM, dated 5 February 2020, sought approval of details pursuant to condition No 2 of a planning permission Ref 18/01709/OUT granted on 31 August 2018.
 - The development granted outline planning permission is demolition of existing Liberal Club (D2) for residential development of 0.2 hectares of land to form up to five dwellings with all matters reserved except access.
 - The details for which approval is sought are: Appearance, landscaping, layout and scale.
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Decision

1. The appeal is allowed and approval, related to the reserved matters of appearance, landscaping, layout and scale, is granted pursuant to outline planning permission Ref 18/01709/OUT, for the demolition of existing Liberal Club (D2) for residential development of 0.2 hectares of land to form up to five dwellings at 187B Bedford Road, Kempston MK42 8DG, in accordance with the terms of the application Ref 20/00316/REM, dated 5 February 2020, subject to the conditions set out at the end of this decision.

Preliminary Matter

2. The Council has indicated that it would have refused the application that is now the subject of this appeal had it been in a position to do so. Its main concerns relate to the effect of the proposal upon the character and appearance of the area, upon the living conditions of existing and future residential occupiers and due to waste collection arrangements. I have formulated the main issues accordingly.

Main Issues

3. The main issues are:
 - The effect upon the character and appearance of the area;
 - Whether or not acceptable living conditions for future residential occupiers **would be created, having particular regard to the makeup of the site's external areas;**

- The effect upon the living conditions of neighbouring residential occupiers to the north of the site, having particular regard to outlook and privacy; and
- Whether or not acceptable waste collection arrangements have been suitably demonstrated.

Reasons

Character and appearance

4. The appeal site occupies a discreet location, in the sense that its main part is set away from Bedford Road and reached via a private access of not insignificant length. Its boundaries and adjoining land are often well vegetated, which contributes to the site having an enclosed setting. Indeed, it does not have a clear visual relationship with parkland located to the south. Notwithstanding the **site's discreet** location and well-planted surroundings, a modern residential estate abuts its northern boundary. This neighbouring housing can typically be observed to be formally laid out and compactly spaced.
5. It is important to note that the principle of constructing five dwellings upon the site has already been established and that the detailed layout and dwelling footprints now before me are broadly representative of indicative details submitted at outline stage. The site is relatively constrained in area such that the opportunity to provide wide separation and long private garden areas is not readily offered.
6. I acknowledge that elements of the proposal would not fully comply with the relevant building separation and garden depth measurements suggested at Criterion N3 of the **Council's** Residential Extensions, New Dwelling and Small Infill Developments Supplementary Design Guidance (January 2000) (RENDSID). Nevertheless, as indicated in RENDSID, each proposal will be judged against its guidance based on the individual circumstances to hand.
7. The proposal, when considered in the context of the compact nature of residential development in place to the north of the site, would not appear discordant or be unduly dense. Indeed, meaningfully sized soft-landscaped areas would be incorporated to several plot frontages. Such features would have a positive influence upon how the scheme would be read and experienced and would assist in guarding against the development appearing cramped or over-intensive. The proposal would be suitably respectful of its verdant surroundings and each dwelling would be appropriately designed.
8. For the above reasons, the proposal would not cause harm to the character and appearance of the area. The proposal accords with Policies 28S, 29 and 30 of the Bedford Borough Local Plan 2030 (adopted January 2020) (the Local Plan) in so far as these policies expect development to contribute to good place-making **and contribute positively to the area's character and identity**.

Living conditions of future residential occupiers

9. As indicated at Criterion N3 of RENDSID, individual rear garden depths should be at least 13 metres on average in new development areas. Each of the rear garden areas proposed would be of a shallower depth than 13 metres. Nevertheless, the detailed scheme that is before me is led, to a certain extent,

by the **site's** somewhat constrained composition. Indeed, garden depths of 13 metres would be challenging to implement.

10. In the case of the two largest dwellings proposed (Plots 4 and 5), rear garden areas of generous breadth and overall size would be achieved and I see merit **in the appellant's notion that** garden sizes would be commensurate to the properties they would serve. It is also apparent that future occupiers of the scheme would have convenient access to parkland situated to the south, which promotes a flexible approach being taken in this respect.
11. I have already found that an unduly cramped form of development would be avoided and that landscaped front garden spaces would have a positive influence. I am also unpersuaded that the presence of trees upon and adjacent to the site would lead to the provision of private rear spaces of a poor standard. For the avoidance of doubt, I have factored into my considerations the proximity of existing residential properties situated to the north.
12. For the above reasons, acceptable living conditions for future residential **occupiers would be created having particular regard to the makeup of the site's** external areas. The proposal complies with Policies 28S, 29 and 30 of the Local Plan in so far as these policies require that particular attention is given to the relationship of the development with the context in which it is placed, including overdevelopment, and to the quality of the development including the provision of private space where appropriate.

Living conditions of neighbouring residential occupiers

13. Criterion N5 of RENDSID guides that a minimum privacy distance of 18 metres is required between directly overlooking primary windows and that, where a primary window of a habitable room directly overlooks another property or garden, a privacy distance of 9 metres from the relevant boundary is required.
14. As regards the intended relationship between proposed Plot 4 and No 25 Lichfield Close (No 25) to the north, it is first important to note that the first floor level **of Plot 4's rear** elevation would contain only one opening to serve a habitable room, in this case a bedroom, and that this window (the bedroom window) would be located towards the rear **elevation's western end. It is thus** the case that outlook from the bedroom window would be directed towards the rear of a garage structure rather than towards any primary window serving No 25.
15. Whilst the bedroom window could offer oblique views of **No 25's rear** elevation and private garden space, it would do so from a position setback a reasonable distance (although less than 9 metres) from the shared boundary line. I also noted, upon inspection, the presence of an established treeline to this boundary. Whilst planting cannot necessarily be relied upon to provide a permanent or solid buffer to views, in this case it provides additional assurances that the scheme before me would not result in any undue loss of privacy for the occupiers of No 25.
16. In terms of the relationship between proposed Plot 5 and No 23 Lichfield Close (No 23), it must be noted that No 23 is orientated with its front elevation facing east. Its side elevation thus faces the appeal site and there would be no direct relationship between habitable room windows at upper floor level. It is the case that Plot 5 would be setback a not insignificant distance from the shared

boundary and I am content that the **privacy of No 23's occupiers would be** satisfactorily protected.

17. It is set out at Criterion N7 of RENDSID that it will need to be made sure that proposals will not have an overbearing effect on another property because of its scale, massing and proximity, and that each individual situation varies and will be looked at upon its own merits. Having inspected the site and considered the various arguments put to me, I am content that the proposal would avoid an overbearing effect upon properties situated beyond **the site's northern** boundary and would thus not have an undue adverse effect upon the levels of outlook enjoyed by adjoining residential occupiers.
18. For the above reasons, the proposal would not cause harm to the living conditions of neighbouring residential occupiers to the north having particular regard to outlook and privacy. The proposal accords with Policy 32 of the Local Plan in so far as it requires particular attention to be given to factors which might give rise to disturbance to neighbours and the surrounding community, including overlooking.

Waste collection arrangements

19. As set out at Appendix C of the Climate Change and Pollution Supplementary **Planning Document (December 2008) (the SPD)**, **the Council's contractors will** not enter a private road for the purposes of waste collection unless a prior legal agreement has been entered into which indemnifies the Council against structural or other damage (which is not the case here).
20. The SPD also states that any individual or communal bin store should be sited not more than 25 metres from a safe collection point. The access road that serves the appeal site is private and of a length that comfortably exceeds 25 metres. Its length does not promote future residential occupiers being able to conveniently transport wheeled bins (or any other receptacle for the storage of waste or recyclables) back and forth on foot.
21. The appellant has rightly pointed out that full details of access were provided and permitted at outline planning stage. It would appear that no issues in a waste collection context were identified by the Council when **the site's** access arrangements were before them for determination. To my mind, whilst layout is a reserved matter, the objections now being raised should have been sounded at outline stage. **Indeed, the appeal site's long** private access effectively rules out (in the absence of an appropriate legal agreement) the potential for Council waste collections to take place in accordance with the provisions of the SPD. This would have been apparent at outline stage.
22. Nevertheless, in the interests of proper planning, it would not be appropriate for me to ignore this issue. Indeed, if I were to do so and allow the appeal, circumstances would likely avail whereby future occupiers of the scheme would not be served by workable or acceptable waste collection arrangements, which would be to the detriment of their living conditions and the general amenities of the area.
23. The appellant has confirmed a willingness to secure private waste collection arrangements as an alternative to Council collections and has suggested that a planning condition could be imposed to this effect. The Council instead suggest that a private waste agreement would need to be secured via a legal

agreement. The Planning Practice Guidance sets out that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I see no clear reason why a condition, if worded to apply in perpetuity, would not be fit-for-purpose here. Indeed, a relatively small development with a single identified collection point is under consideration. A relatively straightforward agreement would be anticipated.

24. Thus, subject to an appropriately worded planning condition being imposed as discussed above, I find that acceptable waste collection arrangements have been suitably demonstrated. The proposal accords with Policies 29 and 31 of the Local Plan in so far as these policies require all new development to integrate functional needs such as refuse/recycling storage and collection points.

Other Matters

25. The Grade II listed Kempston Grange (and curtilage listed outbuildings) is positioned close to the site. Its significance is drawn, in-part, from its relevance to the historic evolution of the area and its open parkland setting. The proposal, which already has outline permission, would replace an existing on-site building of modern form and notable bulk. In this context, the proposal that is before me would not cause harm to the designated **asset's heritage** significance through development coming forward within its setting.

Conditions

26. The Council has suggested a number of conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the National Planning Policy Framework (February 2019) (the Framework) and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes and have omitted others. I have also added conditions with respect to the provision of obscured/non-openable window openings and arrangements for private waste collection.
27. In the interests of certainty, a condition setting out the approved plans is required. A timescale for implementation is already set out on the outline planning permission to which this detailed scheme relates, such that a condition to this effect is not necessary.
28. In the interests of protecting the character and appearance of the area, a condition is required to secure a scheme of hard and soft landscaping. I have omitted reference to details of existing trees and hedges to be retained and to implementation requirements, as such provisions are already conditioned on the outline permission. As are requirements for tree works to be undertaken in accordance with agreed protection methods and the relevant British Standard.
29. I am satisfied that a Biodiversity Enhancement Scheme would have a direct relationship to the reserved matter of landscaping and is thus reasonable to secure here. I have adjusted the trigger-point to be reflective of the landscaping condition (development above slab level), noting that full details of the existing trees and hedgerows to be retained are secured via the outline permission before any development takes place.
30. In the interests of highway safety and ensuring suitable levels of on-site parking are maintained, a condition is reasonable and necessary that sets out that parking and turning areas (as approved) are indeed retained for such

purposes. Provisions for fire tenders to turn on-site have already been secured via a condition attached to the outline permission.

31. To encourage sustainable/low-energy forms of transportation, conditions are reasonable and necessary to secure schemes for cycle parking and electric vehicle charging points. In the interests of minimising water use and supporting fibre optic broadband technology respectively, conditions are reasonable to secure the achievement of a high water-efficiency rating and the installation of open access fibre optic infrastructure.
32. In the interests of protecting the living conditions of existing and future residential occupiers, a condition is reasonable and necessary to secure the installation of obscure-glazed/non-opening windows to bathroom/WC/en-suite areas where otherwise unduly sensitive overlooking opportunities could avail. For the same reason, and also in the interests of protecting the character and appearance of the area, a condition is reasonable and necessary that withdraws the future use of permitted development rights with respect to extensions and roof additions.
33. It is neither reasonable nor necessary to impose a condition that requires the submission of an Energy Statement. This is because a similar condition, that seemingly refers to the appropriate target for carbon emissions on development sites of less than 10 dwellings, is attached to the outline permission.

Conclusion

34. For the reasons given above, the appeal is allowed subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 100-330/010; 100-330/002C; RSE_3133_TPP V1; 100-330/011; 100-330/012; 100-330/004B; 100-330/005B; 100-330/006B; 100-330/007B.
- 2) No development above slab level shall take place until a Biodiversity Enhancement Scheme (to include details of protection and management of habitats and species and incorporating opportunities for the enhancement of existing and the creation of new habitats on site) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented in accordance with the approved details.
- 3) No development above slab level shall take place until a scheme for cycle parking (with access thereto) in accordance with Bedford Borough Council's Parking Standards for Sustainable Communities: Design and Good Practice 2014 has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and made available for use before the development is occupied and the cycle parking shall not thereafter be used for any other purpose.

- 4) No development above slab level shall take place until a scheme of landscape works has been submitted to and approved in writing by the Local Planning Authority, which shall include details of the following: new planting proposals giving location, species, number, density and planting size; the relationship of new planting to buildings, roads, footpaths, drains and location of all underground and over ground services; areas of grass turfing or seeding and other surface materials; depth of topsoil to be provided where necessary and the measures to be taken to maintain the new planting for the required period; details of all hard works and, paving materials; details of the long-term management and maintenance proposals for the new planting.
- 5) No dwelling hereby permitted shall be occupied until a scheme of electric vehicle charging points has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out and retained in accordance with the approved scheme.
- 6) No dwelling hereby permitted shall be occupied until a scheme securing private arrangements for the collection of waste and recyclables from the site has been submitted to and approved in writing by the Local Planning Authority. Collections shall at all times thereafter be carried out in full accordance with the approved scheme for the lifetime of the development.
- 7) All parking and turning areas depicted upon approved plan Ref 100-330/002C shall be implemented and made available for use before the development is occupied and the parking and turning areas shall not thereafter be used for any other purpose.
- 8) Each dwelling hereby permitted shall achieve and maintain the higher water efficiency standard in the Building Regulations as set out in Approved Document G: Sanitation, hot water safety and water efficiency, 2015 edition, DCLG October 2015 (or similar replacement standard).
- 9) Each dwelling hereby permitted shall be served with an appropriate open access fibre optic infrastructure to enable high speed and reliable broadband connection unless evidence, to demonstrate that providing the required infrastructure is not feasible or economically viable, is submitted to and approved in writing by the Local Planning Authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no extensions or additions to the roof (Classes A - B of Part 1, Schedule 2 of the Order) shall be erected within the curtilages of the dwellinghouses without the specific grant of planning permission by the Local Planning Authority.
- 11) With respect to Plots 3, 4 and 5 (as depicted upon approved plan Ref 100-330/002C) north-facing window openings, where depicted to serve a bathroom/a WC/en-suites upon approved plans Ref 100-330/005B, 100-330/006B and 100-330/007B, shall not be glazed at any time other than with obscure glass and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened.