

**Planning Committee:** 05 November 2019

**Item Number:** 5

**Application No:** [W 18 / 2123](#)

**Town/Parish Council:** Kenilworth

**Registration Date:** 10/12/18

**Case Officer:**

Ragu Sittambalam

**Expiry Date:** 04/02/19

01926 456016 ragu.sittambalam@warwickdc.gov.uk

**200 Warwick Road, Kenilworth, CV8 1HU**

Outline planning application (all matters reserved) for up to 5 dwellings and associated works. FOR Mr S Tebby

-----

This application is being presented to Committee due to an objection from the Town Council having been received.

The application was previously deferred by Planning Committee in October to clarify matters pertaining to Heritage and Transport. Further information has been provided in relation to these matters under the relevant headings below.

**RECOMMENDATION**

That the planning application is GRANTED subject to conditions.

**DETAILS OF THE DEVELOPMENT**

The application seeks outline planning permission with all matters reserved for;

- Development of up to five dwellings
- Access being taken from the existing point onto Warwick Road

The site is subject to the following environmental constraints;

- Within Kenilworth Conservation Area

**THE SITE AND ITS LOCATION**

The application site lies to the rear of no. 200 (Smithy) and no. 198 (Malt Shovel Inn), Warwick Road (A452), a main route running through the Town of Kenilworth with the site set to its southern end.

The site has a garage court, and a corner of the service yard of the Newlands home on the west, a bungalow to the south, and houses to the east, which front onto Warwick Road.

**PLANNING HISTORY**

W/05/0684 - Erection of 22 flats with garaging and parking  
**REFUSED 14/07/05**

W/86/0913 - Erection of three terraced cottages

## **REFUSED 05/11/86**

### **RELEVANT POLICIES**

- National Planning Policy Framework
- The Current Local Plan
- DS5 - Presumption in Favour of Sustainable Development (Warwick District Local Plan 2011-2029)
- H1 - Directing New Housing (Warwick District Local Plan 2011-2029)
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029)
- BE3 - Amenity (Warwick District Local Plan 2011-2029)
- TR1 - Access and Choice (Warwick District Local Plan - 2011-2029)
- TR3 - Parking (Warwick District Local Plan - 2011-2029)
- HE1 - Protection of Statutory Heritage Assets (Warwick District Local Plan 2011-2029)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029)
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets (Warwick District Local Plan 2011-2029)
- Neighbourhood Plan
- Kenilworth Neighbourhood Plan
- Guidance Documents
- Residential Design Guide (Supplementary Planning Document- May 2018)
- The 45 Degree Guideline (Supplementary Planning Guidance)
- Parking Standards (Supplementary Planning Document)
- Distance Separation (Supplementary Planning Guidance)

### **SUMMARY OF REPRESENTATIONS**

#### **Kenilworth Town Council (1st consultation) -**

Members COMMENTED that they have no objection in principle to developing this area of land. However, in the absence of any draft proposals, they were unable to make any decision as to the appropriateness of this application in such a sensitive area.

The following specific concerns were raised:

- Sited on a prime entry point to the Town, any development should comply with Policy KP3 of the Neighbourhood Plan (Warwick Road Special Policy Area)
- The effect of any access onto the St Johns Gyratory, particularly in view of possible future changes. Members would be interested in the comments of the Highways Authority.
- Being partly within a Conservation Area, the effect on nearby listed buildings.
- The potential for flooding, in an area of known historical ponds and drainage issues.
- Whether sufficient useable room is available for five dwellings, without shoehorning.
- The effect on nearby buildings, particularly the Newlands.
- Previous planning problems on this site, including a refusal, dating back to 1986.

#### **Kenilworth Town Council (2nd consultation) -**

Members OBJECTED to this proposal. Vehicular access to the site was not considered safe, being a dangerous entrance in an area subject to frequent and increasing congestion. Members felt this matter should be further considered by the Highways Authority, based on an increased number of proposed dwellings. In addition, no pedestrian access was indicated, presenting additional potential issues on this difficult access.

**WCC Ecology** - No Objection; Condition advised

**WDC Environmental Health** - No Objection; Conditions advised

**WCC Highways** - No Objection; Conditions advised

**WCC Landscape** - No Objection; Condition advised

**Warwickshire Fire and Rescue** - No Objection

**Warwick District Conservation Advisory Forum (CAF)** - Concerns over insufficient information being provided.

## **PUBLIC CONSULTATION**

Two representations of support and one comment have been received raising the following issues:

- Further details required to assess proposal
- Concerns over potential overlooking

## **ASSESSMENT**

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF operates under a presumption in favour of sustainable development. It states that development proposals, which accord with the development plan, should be approved without delay.

The adopted Development Plan where the site is located comprises of the Warwick District Local Plan (WDLP) and the Kenilworth Neighbourhood Plan (KNP).

The main considerations in the assessment of this outline application are;

- Principle of Development
- Visual Impact
- Conservation Area
- Amenity
- Contaminated Land
- Ecology
- Transport
- Conditions

## Principle of Development

*The NPPF seeks to promote sustainable development with paragraph 8 providing the starting point against which the sustainability of a development proposal should be assessed. This identifies three dimensions to sustainable development - an economic element, a social element and an environmental element which are interdependent and need to be pursued in mutually supportive ways.*

*H1 of the WDLP sets out where housing is permitted within the district, including within urban areas.*

*KP15 of the KNP encourages development proposals to adopt higher standards of building design and energy performance.*

The site is located within the urban area of Kenilworth in a location where a strong service base is readily accessible. Having regard to H1, the site is considered to be an appropriate location for new housing.

The principle of development is therefore considered acceptable, in accordance with H1 of the WDLP and the NPPF.

## Visual Impact

The application has been submitted with all matters reserved, so details relating to appearance, layout, scale and landscaping would be dealt with at the reserved matters stage. An indicative layout and elevations has been submitted as part of the application.

*Section 12 of the National Planning Policy Framework (NPPF) places significant weight on ensuring good design which is a key aspect of sustainable development and should positively contribute towards making places better for people. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving character, the quality of an area and the way it functions.*

*BE1 of the WDLP reinforces the importance of good design stipulated by the NPPF subject to detailed criteria to ensure that new development is permitted where it will positively contribute to the character and quality of its environment through good layout and design.*

*KP13 of the KNP ensures that development proposals should achieve a standard of design that is appropriate for the local area with a series of design principles in support of this, including matters to address visual appearance.*

Full details of the appearance of the properties would be managed through the future reserved matters application. The Conservation Officer had requested further details relating to the facing materials and design rationale in a future application which would be expected in a future submission.

Based on the layout and indicative elevations it is considered that the development could be accommodated without adverse visual impact. The application is therefore in accordance with BE1 of the WDLP, KP13 of the KNP and the NPPF.

## Conservation Area

The site access is partially located within the Kenilworth Conservation Area and has been subject to consultation with the Conservation Officer with comments received from Warwick District Conservation Advisory Forum (CAF).

*Sections 71 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require the local planning authority to have special regard to the need to 'preserve or enhance' the character, appearance and setting of conservation areas.*

*HE1 of the WDLP sets out that where harm to the significance of designated heritage assets arises from development proposals, this harm will be weighed against the public benefits of the proposal.*

*HE2 of the WDLP supports the retention of unlisted buildings that make a positive contribution to the character and appearance of a Conservation Area.*

*KP13A of the KNP provides policy based on St John's as a character area providing criteria that development proposals should demonstrate regard for.*

Notwithstanding the general comments from the Conservation Officer, there are no objections raised to the proposal with no level of harm cited. CAF have raised concern over the level of detail, but this is not consistent with the advice of the Conservation Officer. It should be noted that the developed area of the housing would not be within the Conservation Area nor would it be readily visible so as to affect views into or out of it.

On balance and given that the delivery of a future scheme would be subject to an acceptable reserved matters application, it is considered that a commensurate level of information has been submitted with appropriate assurance from the relevant statutory consultee.

The impact on the Conservation Area is therefore considered acceptable in accordance with HE1/HE2 of the WDLP and the NPPF.

## Amenity

The proposed site is within an area that is surrounded by existing properties and concern has been raised through public representation over the potential for overlooking from the development. The application has been submitted with an indicative layout setting out the separation distances afforded by the proposal.

*Paragraph 127 of the NPPF states that planning decisions should in (f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

*BE3 of the WDLP sets out that development will not be permitted that has an unacceptable adverse impact on the amenity of nearby uses and residents and/or does not provide acceptable standards of amenity for future users and occupiers of the development.*

*KP13 of the KNP ensures that development proposals should achieve a standard of design that is appropriate for the local area with a series of design principles in support of this, including matters to address amenity impacts.*

*The Residential Design Guide (RDG) serves as a Supplementary Planning Document providing criteria to address residential amenity.*

The indicative layout demonstrates that adequate separation distances between properties could be suitably achieved in accordance with the RDG. There is concern over the proximity of dwellings to the southern boundary however it is stated that this property would be a 1-bedroom unit which reasonably could be delivered through a building with a lower than two storey height. Such matters would be tackled in greater detail at the reserved matters stage.

In addition, there are not considered to be significant noise emitting activities within proximity of the site that would warrant further information. In consultation with the EHO, no substantive concerns have been raised with regards to noise.

On this basis, the impact on amenity is considered acceptable in accordance with BE3 of the WDLP, KP13 of the KNP and the NPPF.

#### Contaminated Land

The site has previously been subject to development which has potential for contaminated land. The application has been reviewed by the District's Environmental Health Officer (EHO).

*Paragraph 178 of the NPPF states that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.*

*Paragraph 179 of the NPPF states that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.*

The EHO has raised no objection to the proposal subject to conditions to provide information relating to contaminated land from the outset of development and in the possible event of contaminated land being discovered.

It is considered that issues around contaminated land have been suitably addressed in accordance with KP13 of the KNP and BE3 of the WDLP.

#### Ecology

The application involves site clearance to allow for the development of the proposal which has been subject to consultation with the County Ecologist (CE).

*Paragraph 170 of the NPPF sets out that planning decisions should contribute to and enhance the local environment by minimising impacts on and providing net gains for biodiversity.*

*NE3 of the WDLP states that development proposals will be expected to protect, enhance and/or restore habitat biodiversity and where this is not possible, mitigation or compensatory measures should be identified accordingly.*

The CE has raised no objection noting the small loss to biodiversity to be compensated to ensure a net gain through the provision of bat and bird boxes.

The ecological impact of the proposal is therefore considered acceptable, in accordance with NE3 of the WDLP and the NPPF.

### Transport

Transport matters are considered in consultation with Warwickshire County Council's Highways Development Management team (HDM). Access would be dealt with through a future reserved matters application however the principle of the access point put forward is subject to consideration in this application. Concerns raised by Kenilworth Town Council relating to this issue has been addressed in this section.

*Paragraph 109 of the NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

*Policy TR1 of the Warwick District Local Plan requires all developments to provide safe, suitable and attractive access routes for all users that are not detrimental to highway safety.*

*Policy TR3 requires all development proposals to make adequate provision for parking for all users of a site in accordance with the relevant parking standards.*

HDM have raised no objection to the proposal on grounds relating to increased traffic impact or to the layout and potential implications regarding internal layout. Conditions have been recommended in respect of the delivery of the internal highway network however this would be dealt with robustly at the Reserved Matters stage and once physical works progress on site.

Concern was raised by Committee over the quantum of development that HDM had originally based their response on. HDM have confirmed that their comments relate to five dwellings. They consider that this amount of dwellings would not incur significant vehicle movements. In addition it has been confirmed that the access width of 5m would be sufficient as a shared surface for pedestrians and vehicles for new development which has recently been a matter for planning appeal elsewhere on Warwick Road whereby an inspector accepted a highway width lower than this.

The indicative layout sets out that the development would comprise of one and two-bedroom properties. Based on the size constraints of the site, the number of

spaces put forward would be satisfactory to meet the car parking standards as set out within the Parking Standards SPD.

Subject to future consideration, the impact on highway safety is considered acceptable in accordance with TR1/TR3 of the WDLP, Parking Standards SPD and the NPPF.

### Conditions

*Paragraph 55 of the NPPF sets out the governing principles for planning conditions emphasising that conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.*

Prior to preparation of this report, the applicant has confirmed agreement of the conditions set out in the recommendation. Pre-commencement conditions have been imposed as part of this permission.

### **SUMMARY/CONCLUSION**

The main planning considerations in determining this application have been set out and considered above stating accordance with relevant Local Plan Policy. The application has also been considered against the relevant sections within the National Planning Policy Framework (NPPF) and there is not considered to be any conflict between the local policies and the NPPF on the matters of relevance in this case.

The application has addressed the main considerations and would accord with relevant policy. The proposal is therefore supported.

### **CONDITIONS**

- 1 Details of the;
  - a) Means of access to the building(s) and site,
  - b) Appearance of the building(s),
  - c) Landscaping of the site,
  - d) Layout of the site and its relationship with adjoining development, and
  - e) The scale of building(s)

(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 in full accordance with these reserved matters as approved.

**REASON:** To comply with Article 4(1) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended).



- 2 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. **REASON:** To comply with Section 92 of the Town and Country Planning Act 1990 (as amended).
- 3 The development to which this permission relates shall begin within three years of the date of this permission or within two years of the final approval of the reserved matters, whichever is the later.  
**REASON:** To comply with Section 92 of the Town and Country Planning Act 1990 (as amended).
- 4 Prior to commencement of the development hereby approved, details of bat and bird boxes to be erected on buildings on the site to include;
  - a) Details of box type;
  - b) Location of boxes; and
  - c) Program of delivery.

Shall be submitted to and approved in writing by the District Planning Authority. Thereafter, the boxes shall be installed and maintained in perpetuity.

**REASON :** In accordance with Policy NE3 of the Warwick District Local Plan 2011-2029.

- 5 Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the District Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:
  - 1) A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site.
  - 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - 3) The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and

identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

5) A verification report containing the data identified in (4).

Any changes to these components require the express consent of the District Planning Authority. The scheme shall be implemented strictly as approved.

**REASON** : To safeguard health, safety and the environment in accordance with Policies BE3 and NE5 of the Warwick District Local Plan 2011-2029.

- 6 The development hereby permitted (including any works of demolition) shall not commence unless and until a construction method statement has been submitted to and approved in writing by the local planning authority and the development shall only proceed in strict accordance with the approved details. The statement shall provide for: the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development; the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate; wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway; measures to control the emission of dust and dirt during construction; and a scheme for recycling / disposing of waste resulting from demolition and construction works. **REASON**: In the interests of highway safety and the amenities of the occupiers of nearby properties, the free flow of traffic and the visual amenities of the locality in accordance with Policies BE3, TR1 and NE5 of the Warwick District Local Plan 2011-2029.
- 7 Notwithstanding details contained within the application, the development hereby approved shall not be occupied until;
- a) The access for vehicles to the site has been widened to 5 metres in width for a minimum distance of 7.5 metres, as measured from the near edge of the public highway carriageway;
  - b) The access to the site for vehicles shall not be used in connection with the development until it has been surfaced with a bound material for a minimum distance of 7.5 metres as measured from the near edge of the public highway carriageway;
  - c) The access to the site shall not be reconstructed/widened in such a manner as to reduce the effective capacity of any drain or ditch within the limits of the public highway;
  - d) A turning area has been provided within the site so as to enable the largest vehicle likely to enter the site to leave and re-enter the public highway in a forward gear; and

e) Gates/barriers/doors erected at the entrance to the site for vehicles shall not be hung so as to open to within 6 metres of the near edge of the public highway carriageway

**REASON:** In the interests of highway safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.

- 8 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, all of which shall be submitted to and approved in writing by the local planning authority. The remediation shall be carried out in accordance with the approved details. Following completion of measures identified in the approved remediation scheme a verification report must be prepared and submitted to and approved in writing by the local planning authority. **REASON:** To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled water, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policies BE3 and NE5 of the Warwick District Local Plan 2011-2029.
- 9 The development hereby permitted shall not be occupied until a scheme which satisfies the requirements set out in the Council's adopted Air Quality and Planning Supplementary Planning Document (January 2019) has been submitted to and approved in writing by the Local Planning Authority and implemented in full accordance with the approved details. The approved scheme shall be retained and maintained as such at all times thereafter. **REASON:** To ensure mitigation against air quality impacts associated with the proposed development in accordance with Policy NE5 of the Warwick District Local Plan.
- 10 Any landscaping (other than the planting of trees and shrubs) including boundary treatment, paving and footpaths referred to in condition one shall be completed in all respects within the first planting season following the first occupation of the development hereby permitted, save that the tree(s) and shrub(s) shall be planted within six months of that first use. Any tree(s) or shrub(s) removed, dying, or becoming in the opinion of the local planning authority seriously damaged, defective or diseased within five years from the substantial completion of the scheme shall be replaced within the next planting season by tree(s) or shrub(s) of the same size and species to those originally required to be planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 - Transplanting Root-balled Trees and BS4428 - Code of Practice for General Landscape Operations. **REASON:** To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in

accordance with Policies BE1, BE3 and NE4 of the Warwick District Local Plan 2011-2029.

- 11 The development hereby permitted shall not be occupied unless and until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority and the approved scheme has been implemented in full in strict accordance with the approved details. **REASON:** In the interest of the fire safety and protection of public safety and to satisfy Policy BE1 of the Warwick District Local Plan 2011-2029.
  
  - 12 The development hereby permitted shall not be occupied unless and until a scheme showing how a water efficiency standard of 110 litres per person per day based on an assumed occupancy rate of 2.4 people per household (or higher where appropriate) will be achieved has been submitted to and approved in writing by the Local Planning Authority. No dwelling/ unit shall be first occupied until the works within the approved scheme have been completed for that particular dwelling / unit in strict accordance with the approved details and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications. **REASON:** To ensure the creation of well-designed and sustainable buildings and to satisfy the requirements of Policy FW3 of the Warwick District Local Plan 2011-2029
-