

**Planning Committee:** 23 May 2017

**Item Number:** 8

**Application No:** W 16 / 1788

**Town/Parish Council:** Kenilworth  
**Case Officer:** Lucy Hammond  
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**Registration Date:** 30/09/16  
**Expiry Date:** 30/12/16

**135 Warwick Road, (including rear builders yard) Kenilworth, CV8 1HY**

Variation of condition 1 on planning permission W15/0620 to allow changes to the design of the houses and apartments, the access road to the private drive, the bin store location and the parking layout. FOR Trengerren Ltd

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

**RECOMMENDATION**

That planning permission be granted, subject to the conditions listed

**DETAILS OF THE DEVELOPMENT**

Permission is sought to vary condition 1 of previously approved planning application ref. W/15/0620. This original decision approved the reserved matters pursuant to the original outline permission (W/11/1618) which approved the construction of 9no. apartments, 3no. dwellings and 3no. garages following demolition of the existing buildings on the site and condition 1 related to the approved plans associated with that decision.

The variations now sought do not alter the nature of the development, which would still be for the erection of 9no. apartments, 3no. dwellings and 3no. garages. Some minor amendments are sought to the design and elevational treatments of the apartments and dwellings together with the bin store location and the parking layout. Changes are also sought to the access arrangements; the fundamental difference now being the retention of No.135 Warwick Road which was previously given permission to be demolished to create a widened access drive into the site. Instead No. 135 would now be reduced sufficiently in width to create the necessary access drive arrangements.

**THE SITE AND ITS LOCATION**

The application site was previously home to a builders' storage yard, located to the east of Warwick Road. The site is situated to the rear of residential properties in Warwick Road, Clarendon Road, Grafton Close and Clarkes Avenue. The site affects part of No.135 Warwick Road, which, as set out above, is to be reduced in width but retained overall.

The builders' yard is surrounded by residential properties consisting of primarily two storey dwellings with three storey flats on Grafton Close. There are bungalows to the south-east of the site on Clarke's Avenue.

Within the builders' yard there are existing buildings (now vacant) consisting of a block of warehouse buildings on the south boundary of the site with the remaining area having previously been used for outdoor storage.

### **PLANNING HISTORY**

**W/15/0620** - Submission of all reserved matters pursuant to the original outline (W/11/1618) for 9no. apartments, 3no. dwellings and 3no. garages - Approved 16.09.2015

**W/11/1618** - Outline application for the erection of 9no. apartments, 3no. dwellings and 3no. garages - Approved 04.07.2012

### **RELEVANT POLICIES**

- National Planning Policy Framework
- The Current Local Plan
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP6 - Access (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)
- The Emerging Local Plan
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- BE3 - Amenity (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- TR1 - Access and Choice (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- TR4 - Parking (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- Guidance Documents
- Vehicle Parking Standards (Supplementary Planning Document)
- Residential Design Guide (Supplementary Planning Guidance - April 2008)

### **SUMMARY OF REPRESENTATIONS**

**Kenilworth Town Council:** Objection with concerns relating to access and highway/pedestrian safety.

**Highway Authority:** No objection subject to conditions

#### **Public response:**

A total of 16 letters of objection have been received although these are from 8 individual residents. Grounds for objection relate to:-

- access and highway safety

- concern over the intensification of the use of the access and width of drive to enable vehicles to pass one another
- concern about pedestrian safety near the access
- concern about sufficient parking
- increased noise to neighbouring properties during construction

Other non-material considerations were also raised.

## **ASSESSMENT**

The main issues relevant to the consideration of this application are as follows:

- access and highway safety
- parking
- impact on character of area
- impact on neighbouring amenity

### **The Principle of the Development**

This application is made under section 73 of the Town and Country Planning Act 1990 that relates to the determination of applications to develop land without compliance with conditions subject to which a previous planning permission was granted, subject to the revised/new conditions meeting the requirements of 'Use of Planning Conditions' (ID: 21a Updated 06.03.2014) of the PPG.

In deciding an application under Section 73, the Local Planning Authority must only consider the disputed condition that is the subject of the application – it is not a complete re-consideration of the application (PPG Paragraph 031 Reference ID: 21a-031-20140306). In this case the applicant is seeking a variation to the wording of a condition through the use of a Section 73 application (PPG Paragraph 13 Reference ID: 17a-013-20140306).

On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

This application relates specifically to the variation of Condition 1 of planning permission W/14/0620, which relates to the approved plans in accordance with which the development should be approved. The condition states;

*"The development hereby permitted shall be carried strictly in accordance with the details shown on the site location plan and approved drawings 23560-0; 2356-17; 2356-03 Rev A; 2356-08 Rev B; 2356-09 Rev A; 2356-04, and*

*specification contained therein, submitted on 13th May 2015; approved drawings 2356-02 Rev B; 2356-07 Rev C; 2356-19 Rev A and 2356-20, and specification contained therein, submitted on 3rd August 2015; approved drawing 2356-01.1 Rev K and specification contained therein, submitted on the 11th August 2015 and approved drawings 2356-10 Rev C and 2356-LA01 Rev A and specification contained therein, submitted on the 7th September 2015. **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011."*

The suggested wording for the condition, as varied, is:

*"The development hereby permitted shall be carried strictly in accordance with the details shown on the site location plan and approved drawings T373-002 Rev A and T373-004 and specification contained therein, submitted on 30 September 2016 and T373-001 Rev C and T373-003 Rev B and specification contained therein, submitted on 15 March 2017. **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011."*

The previously approved permission is extant and there is no requirement to re-assess the principle of development through a Section 73 application. It is therefore intended to address the key issues of highway safety and parking, visual impacts and impact on neighbouring amenity together with any other relevant matters in this report.

### **Access and highway safety**

The key issue with these revised proposals relates to the access arrangements into the site. Previously, the approved scheme involved the complete demolition of No.135 Warwick Road and this would have facilitated a 5m wide access drive into the site off Warwick Road. The proposals, as revised in this S.73 application, now include the retention of No.135 and in order to satisfy the requirements of the County Highways Authority, it is proposed to demolish a part of No.135, i.e. its porch and approximately a metre off the width adjacent to the access drive and this would enable a width of 5.5m at the entrance for the required distance as per the Highways Authority's specifications. The drive would then narrow to 4.5m in width, further into the site, but it is proposed as a private road which is not to be adopted and this width, this far back into the site, is acceptable in the opinion of the Highways Authority.

The access arrangements for this development have been the main source of concern among local residents and the Town Council and it is noted that the Highways Authority originally raised objection to the submitted plans. However, a meeting was held on site between the applicant, an officer from the County Highways Authority and an officer from the Local Planning Authority and in response to further advice from the Highways Authority regarding the minimum requirements for access widths and lengths, the applicant submitted revised plans and additional information to demonstrate the necessary vehicle tracking and turning, particularly in relation to the junction of the access to the Warwick Road. On receipt of this additional/revised information, the Highways Authority provided updated comments, which stated that "*since the applicant wishes the*

*internal road layout to remain in private ownership, the Highways Authority must only consider the part of the access that connects directly with the public highway. The scheme as shown therefore complies with the minimum width requirement of 5m."*

No objection is raised to the revised proposals by the Highways Authority and two conditions are recommended in the event permission is forthcoming. These relate to the provision of the access as illustrated in the revised plans and the provision of suitable parking and turning space within the site; both of these conditions would need to be adhered to prior to the first occupation of any part of the development.

The objections received from the Town Council and neighbouring residents have been noted and the concerns contained therein regarding highway safety are acknowledged. However, since discussions have been ongoing between the applicant and the Highways Authority, and additional information has been submitted to address their initial concerns, the technical objection from the Highways Authority has now been removed. Therefore, the proposals are considered to comply with policy DP6 of the Local Plan.

### **Parking**

A total of 23 car parking spaces are proposed within the development. Based on the number of bedrooms each unit proposes, the adopted vehicle parking standards require a total of 24 spaces. The 23 proposed do not include the two additional spaces that the double-width car port would provide. Including these would mean there is a total of 25 spaces for the development, which, on balance, is considered to be acceptable. In making this assessment, regard has been had to the fact that the approved scheme, for the same number and type of units, provided only 20 spaces, together with a triple-width car port. The scheme, as revised now proposes two additional spaces and it is not considered there would be any detriment to highway safety through insufficient parking provision.

### **Impact on character of area**

The most notable change to the approved scheme relates to the three dwellings. These were previously proposed as a row of three terraces whereas now, the proposal is to create a pair of semi-detached properties and a detached unit on the end which has a single storey extension on the side. Each of the units has been re-designed to incorporate a single storey rear extension, thus increasing the amount of useable ground floor living space, whilst retaining as much of the original appearance on the front elevations as the approved scheme. The overall elevational treatment of the front of the dwellings would be the same as before; incorporating a sense of symmetry between the porch canopies, dormer windows and fenestration in general, which overall, is simple in form and detailing. It is not considered the addition of the side extension to Plot 10 or the rear extensions to all three units would result in any material visual harm to the overall development or the wider character of the area.

With regard to the apartment blocks, it is mostly fenestration alterations which are sought through this application. For Block B (Plots 5-9) the main change

would be on the rear elevation, where it is proposed to remove all the dormers, replace them with roof-lights and add two additional casements on the first floor of the reduced height section. This has the overall effect of simplifying the rear elevation which is considered a benefit. The other elevations would remain broadly the same as approved, with the addition of one new ground floor window on the side elevation, again, improving the symmetry and overall appearance of the building.

Block A (Plots 1-4) contains no proposed changes and would continue to look the same as previously approved.

Overall, it is considered, given the location of the development site and its limited public views, that the proposed design changes would not result in any adverse harm to the overall character and appearance of the development, nor would there be any harm to the wider character of the surrounding area. The development is therefore considered to comply with policy DP1 of the Local Plan.

### **Impact on neighbouring amenity**

The overall positions of the buildings within the site are broadly the same as approved so it is not considered there would be any additional or greater harm to the amenity of neighbouring properties by reason of overbearing or overshadowing than has already been permitted. In terms of overlooking, the insertion of some new windows has been noted, however, it is not considered these would facilitate any increased levels of overlooking than the permitted scheme, especially since the additional windows in the rear of Block B would be obscured almost entirely by the presence of the boundary wall which stands at a height of 3m. In terms of impact on existing residential properties in the surrounding locality, it is not considered that the development, as proposed through this variation would lead to any additional or harmful impacts by reason of overbearing, overshadowing or overlooking and the proposals are therefore considered acceptable in this regard. The development therefore complies with policy DP2 of the Local Plan.

### **Other Matters**

There are no other material changes in policy since the original decision that would lead me to reach a different conclusion on any of the key issues in the report attached to W/15/0620.

Issuing any permission under Section 73 of the Act is tantamount to issuing a new permission for the entire development. As a consequence, any decision notice must replicate all previous conditions which are still relevant. Given the reserved matters nature of the previous submission, there was only one pre-commencement condition attached to the original permission, relating to the submission of material samples, which has not already been discharged and it is therefore appropriate that this condition is carried forward to any forthcoming permission. Other conditions required compliance with submitted details and prohibited the subsequent development of the buildings under permitted development by taking away permitted development rights. It is considered appropriate to carry forward all such conditions to any new permission issued under this revised reference number.

It is not considered there are any other new material considerations since the original permission which are relevant to this decision.

### **SUMMARY/CONCLUSION**

The original planning permission was granted under an outline application reference W/11/1618 and the reserved matters pursuant to this outline were subsequently approved under application reference W/15/0620. The policies and material considerations that are relevant to the reserved matters decision are set out in its associated officer report.

The variation of condition 1 to allow some revisions to the design of some of the proposed buildings, together with revisions to the parking layout, bin store location and the access arrangements would not result in any detriment to highway safety, the visual amenity of the site and surroundings or the amenity of residential properties surrounding the site. Furthermore, there are no material changes in planning policy that would lead officers to a different conclusion to that which was reached previously through the assessment and determination of the previous application. It is therefore considered that the development remains in accordance with the relevant provisions of the Development Plan.

- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawings T373-002 Rev A and T373-004, and specification contained therein, submitted on 30 September 2016 and T373-001 Rev C and T373-003 Rev B, and specification contained therein, submitted on 15 March 2017. **REASON** : For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 2 The development hereby permitted shall be carried out strictly in accordance with the details of materials as approved on 30 November 2016 in pursuance of condition 2 of W/15/0620. **REASON:** To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the locality in accordance with Policy DP1 of the Warwick District Local Plan 1996-2011.
- 3 The development hereby permitted shall not be occupied unless and until an access for vehicles has been provided to the site in accordance with the details shown on submitted plan number T373-001 Rev C. **REASON:** In the interests of vehicular and pedestrian safety in accordance with Policy DP6 of the Warwick District Local Plan 1996-2011.
- 4 The development hereby permitted shall not be occupied unless and until space has been provided within the site for the parking and turning

of vehicles in accordance with submitted plan number T373-001 Rev C.  
**REASON:** In the interests of vehicular and pedestrian safety in accordance with Policy DP6 of the Warwick District Local Plan 1996-2011.

- 5 The development hereby permitted within Blocks A & B shall not be occupied unless and until the bin storage area has been laid out and provided in accordance with submitted drawing T373-001 Rev C. Thereafter the bin store shall remain available for use at all times unless otherwise agreed in writing by the local planning authority.  
**REASON:** In the interests of the amenities of the future occupants of the residential accommodation in accordance with Policy DP1 of the Warwick District Local Plan 1996-2011.
- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no roof extension or addition shall be erected or constructed to, any of the dwellings hereby approved within Block C as identified on the proposed site plan. **REASON:** That due to the restricted nature of the application site and its relationship with adjoining properties it is considered important to ensure that no additional development is carried out without the permission of the local planning authority in accordance with Policies DP1 & DP2 of the Warwick District Local Plan 1996-2011.
- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) the window(s) to be formed at first floor level in the north-west & south-east facing elevations of Block C and in the east facing elevation of Block B hereby permitted shall only be glazed or re-glazed with obscure glass and any opening part of any window shall be at least 1.7m above the floor of any room in which the window is installed. **REASON:** In the interests of the amenities of the occupiers of nearby properties in accordance with Policies DP1 & DP2 of the Warwick District Local Plan 1996-2011.
- 8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) no windows or openings, including dormer windows (apart from any shown on the approved drawings) shall be formed to any of the dwellings hereby approved and if any additional windows are subsequently approved they shall only be glazed or re-glazed in accordance with such approved details and any opening part of any window shall be at least 1.7m above the floor of any room in which the window is installed. **REASON:** In the interests of the amenities of the occupiers of nearby properties in



accordance with Policies DP1 & DP2 of the Warwick District Local Plan 1996-2011.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) no windows or openings (apart from any shown on the approved drawings) shall be formed at first or second floor level in the south facing elevation of Blocks A & B or at first floor level in the north-west and south-east facing elevations of Block C hereby approved and if any additional windows are subsequently approved they shall only be glazed or re-glazed in accordance with such approved details and any opening part of any window shall be at least 1.7m above the floor of any room in which the window is installed. **REASON:** To ensure the amenities of adjoining properties are not detrimentally affected through overlooking or loss of privacy in accordance with Policy DP2 of the Warwick District Local Plan 1996-2011.

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