

**Application No:** [W / 18 / 2199](#)

**Town/Parish Council:** Kenilworth

**Case Officer:** Lucy Hammond

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**Registration Date:** 16/11/18

**Expiry Date:** 15/02/19

**135 Warwick Road, Kenilworth, CV8 1HY**

Variation of conditions 1 and 3 of planning permission W/18/1048 to allow amendments to be made to the vehicle and pedestrian access arrangements together with the addition of 2.1m high close board fencing along the southern side of the access drive. FOR Trengarren Limited

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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, varied accordingly as per the nature of this application and re-worded accordingly where appropriate, in light of the current site circumstances and relevant considerations.

**DETAILS OF THE DEVELOPMENT**

Permission is sought to vary conditions 1 and 3 of previously approved planning application ref. W/18/1048, which in itself is an approved variation to the originally approved reserved matters pursuant to the original outline permission (W/11/1618 for the construction of 9no. apartments, 3no. dwellings and 3no. garages following demolition of the existing buildings on the site). The changes approved by the most recent variation, related to the design of the car port, the re-location of the bin store and the construction of a new single garage in the south east corner.

This latest variation submission does not alter the original scale and nature of the development (for 9no. apartments and 3no. dwellings). However, following the recent approvals for modifications to the parking, bin store and minor design changes to some of the buildings themselves, permission is now sought to make some modifications to the proposed access into the site for both vehicles and pedestrians.

The changes essentially involve the slight reduction in width of the access drive, which in turn still necessitates the partial demolition of No.135 but not to quite the same extent as the original approval indicated on the site layout plan. The pedestrian footway is also proposed in a different configuration i.e. wider on the northern side of the access drive before it crosses over to the opposite side further back into the site.

Additionally, the layout plan shows a proposed 2.1m close board fence partially along the southern side of the access drive where it adjoins the side/rear boundary of No.135.

No other changes are proposed as part of this application and for the avoidance of doubt, the previously approved changes to the parking arrangements, location of the bin store and individual design changes to some of the buildings within the development all remain unaffected and as per previous approvals.

### **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 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, the original vacant buildings have been demolished, the site was cleared and the development, as approved, is now substantially complete and partially occupied.

### **PLANNING HISTORY**

**W/18/1048** - Variation of condition no. 1 (approved plans) of planning permission W/17/1094 to allow changes to the design of the car port, re-location of the bin store and construction of a new single garage in the south east corner - Approved 27.07.2018

**W/18/0351** - Variation of condition no. 1 (approved plans) of planning permission W/17/1094 to allow changes to the design of the car port, re-location of the bin store and construction of a new single garage in the south east corner - Refused 25.05.2018

**W/17/1094** - Variation of condition 1 of planning permission W15/0620 to allow changes to the design of the houses and apartments, the bin store location, garages and the parking layout - Approved 13.09.2017

**W/16/1788** - 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 - Refused 26.05.2017 and subsequently dismissed at appeal.

**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

- TR1 - Access and Choice (Warwick District Local Plan - 2011-2029)
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029)
- BE3 - Amenity (Warwick District Local Plan 2011-2029)

### Neighbourhood Plan

- Kenilworth Neighbourhood Plan

## **SUMMARY OF REPRESENTATIONS**

**Kenilworth Town Council:** Objection for the following reasons:

- the original approval considered safety grounds and is the one that should be implemented
- existing conditions on the permission should be met prior to any further occupation

**WCC Highways:** No objection subject to condition

**Public response:** 14 letters of objection received (from 9 individuals) raising the following points:

- the access road is too narrow for two vehicles to pass one another safely
- this could lead to queuing back to the main road which is busy at the best of times
- the access is unsafe for pedestrians as well as vehicles
- there is insufficient width for any unloading of heavy goods for residents of flats at the back of No.135 which in turn could cause an obstruction
- this would be unsafe for pedestrians using the bus stop on Warwick Road which is close to the site access
- the proposed footway is inadequate
- there is ambiguity and confusion over what the approved access arrangements are through the number of submissions that have been made
- the site continues to be occupied despite there being breaches of some of the planning conditions
- the access statement submitted contains flawed information re trip numbers and other technical data
- if approved, there will be an increased likelihood of road traffic accidents at the junction
- there is no evidence to justify there is sufficient parking provision
- there is concern regarding the position of the bin store

Officer note - with regard to the last two points raised above, it is noted that the parking and bin store arrangements do not form part of this application. Both have been agreed and approved as part of an earlier permission and are not for further consideration at this time.

## **ASSESSMENT**

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

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

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

This is an application to vary conditions attached to the previous permission for the redevelopment of the site. Condition 1, which stipulates the approved drawings in accordance with which the development should be constructed, is to be varied to reflect the revised layout drawing which illustrates the changes now sought. Condition 3 requires the submission of a further drawing showing the extent of demolition of No.135 required to facilitate the access as required by the Highway Authority.

In deciding such an application the Local Planning Authority must only consider the specific amendments being sought, i.e. the proposed amendments to the access arrangements and the provisions for both vehicles and pedestrians. The principle of development cannot be re-considered as this remains acceptable as per the original approved permission.

The previously approved permission is extant and since there is no requirement to re-assess the principle of development it is therefore intended to address the primary key issue of highway and pedestrian safety as well as the visual impacts and impact on neighbouring amenity arising from the proposed fence and any other relevant matters in this report.

### **Access and highway safety including pedestrian safety**

In the interests of clarity and by way of background, given the reasonably extensive planning history at this site, the last approval for the redevelopment of this site retained the access arrangements as originally approved and which were originally agreed by the Highway Authority as being acceptable in highway and pedestrian safety terms. This required the partial demolition of No.135 Warwick Road to facilitate the widening of the access into the site, which in turn would enable two vehicles to pass one another safely.

At the time of writing this report, No.135 remains in situ, however amended access arrangements, that still involve the partial demolition of No.135 are now proposed.

The Highway Authority have been consulted on this proposal on more than one occasion during the course of this current application. Initially they raised objection to the application but since then the applicant's highways engineer has liaised directly with the County Highways Authority and revised plans have been produced accordingly that respond to the concerns expressed about vehicle and pedestrian safety.

The earlier response of the Highway Authority was one of objection due to concerns with the proposed amendments to the vehicular access which would not enable two vehicles to pass each other within the vehicular access, as well as the fact the footway would not comply with standards set out in DfT's Inclusive Mobility.

Further to the initial response from the Highways Authority a supporting document entitled 'Access Appraisal' and undertaken by Hub Transport Planning Ltd has been submitted. The Access Appraisal highlights the number of vehicle, pedestrian and cycle trips the permitted dwellings could generate during the peak periods (08:00-09:00 and 17:00-18:00). The vehicle, pedestrian and cycle trips likely to be generated are relatively low.

Section 4.0 (Site Access) of the report together with the appended drawings which have since been formally submitted separately as plans forming part of the planning application submission, indicate that the proposed access road would measure 4.2m wide at its narrowest point, with a 1.5m wide footway provided on the northern side of the access road, and a 0.2m wide overhang margin along the southern side of the access road. Figure 7.1 of Manual for Streets (MfS) illustrates that two vehicles can pass each other along an access road with a carriageway width of 4.1m, where the access road is relatively straight and lightly trafficked. The Highway Authority therefore considers the revised access road measurements to be acceptable. The Highway Authority also considers the proposed 1.5m wide footway to be in accordance with DfT's Inclusive Mobility, and should accommodate a wheelchair user and an ambulant person side-by-side.

Swept path analysis drawings have also been provided within the Access Appraisal, which demonstrate that two large cars can pass each other along the access road. A refuse vehicle can also be accommodated along the access road.

In addition to the above considerations of the Highway Authority, it is also important to acknowledge the differentiation between the vehicle access directly off the main road and the further extent beyond i.e. the private access drive that enters the site. The latest drawing indicates that an access width of 4.9m wide will be provided, beyond the 7.5m distance from the main highway that is required where the access must be at least 5m wide. In summary therefore, the access must measure 5m in width for the first 7.5m as measured from the near edge of the carriageway which is the case here. Thereafter, the access may be reduced in width.

The Highway Authority has therefore undertaken a thorough and robust assessment of the development proposals and in view of this they have confirmed there is no longer any objection to the development as proposed, subject to a condition requiring the access to be laid out in accordance with the agreed drawings.

Parking remains unaffected and unchanged by this latest variation proposed.

Overall, in view of the ongoing dialogue between the Highway Authority and the applicant's highway engineer who has undertaken additional supporting documents and revised plans to resolve the concerns initially expressed in the Highway Authority's first response, the development is considered to remain acceptable in highway safety terms, not just for vehicles but for pedestrian safety also. The development therefore accords with Policy TR1 of the Local Plan.

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

The only visual change proposed that is different to the last approved scheme is the addition of a 2.1m high close board fence along the southern side of the access drive i.e. where it adjoins the boundary of No.135. This is within the site and therefore offers no public contribution to the street scene or other public vantage points. It is also acknowledged that a fence could be erected up to 2m in height without the need for planning permission. The fence that is proposed as part of this submission is 100mm higher and, on balance, it is not considered this would lead to any visual harm.

Given the location of the development site and its limited public views, the proposed addition of the fence along a private access road where it adjoins a private rear garden 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 overall design and layout of the development is still considered acceptable and accordingly it is considered to comply with policy BE1 of the Local Plan.

### **Impact on neighbouring amenity**

The addition of a fence which, if just 100mm lower in height could be erected without planning permission, is not considered harmful in terms of its resulting impact on the amenity of neighbouring properties. Comments from neighbouring residents about its position appearing to impact on access to other private properties are noted, however, this is not a planning matter and would be a civil matter between the affected parties in the future.

Overall, the development is still considered acceptable in accordance with policy BE3 of the Local Plan.

### **Other Matters**

There are no other material changes in policy since the original decision that would lead officers to reach a different conclusion on any of the key issues in the report attached to W/15/0620 and the subsequent S.73 applications; refs. W/17/1094 and W/18/1048.

Regard has also been had to the recently made Kenilworth Neighbourhood Development Plan against which the application has been assessed. However, given the specific nature of the proposed variation in this instance there are no policies within the NDP of direct and specific relevance to the proposal being considered.

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. There are no outstanding pre-commencement conditions still awaiting formal discharge and it is appropriate to carry forward all other conditions from the previous decision where appropriate.

As set out above in the access and highway safety section, it is necessary to impose an additional condition to any forthcoming permission as per the recommendation of the Highways Authority. Since the site is already occupied it is pertinent to require this condition to be complied with within a specified period of time from the determination of the application. If permission is forthcoming for this latest variation it is therefore proposed to require the access to be laid out in accordance with the latest agreed drawings within a period of three months from the date of permission.

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, with two variations approved under W/17/1094 and W/18/1048. The policies and material considerations that are relevant to the reserved matters decision are set out in the associated officer reports.

The variation of conditions 1 and 3 to allow some revisions to the access arrangements for both vehicles and pedestrians would not result in any further detriment to highway and pedestrian safety such as to justify a refusal of permission. The rest of the development, as approved, remains unaffected by this proposal and the addition of the fence along the southern side of the access drive is considered to be acceptable both in visual and neighbour amenity terms.

The recommended condition by the Highways Authority that requires the access to be laid out strictly in accordance with the latest agreed and approved drawing should be imposed with a timescale within which the applicant is expected to deliver the safe access.

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 applications. It is therefore considered that the development remains in accordance with the relevant provisions of the Development Plan and permission should be approved accordingly.

## CONDITIONS

- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the following approved drawings:-

T373-002 Rev A and T373-004, and specification contained therein, submitted on 7 June 2017;

T373-003 Rev E and T373-110 Rev B and specification contained therein, submitted on 25 May 2018;

T373-250 Rev.D and 002 Rev.A 'Proposed Access Road (Improved Scheme)' and specification contained therein, submitted on 31 January 2019; and

T373-251 and specification contained therein, submitted on 4 February 2019.

**REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.

- 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 visual amenities of the area are protected, and to satisfy the requirements of Policy BE1 of the Warwick District Local Plan 2011-2029.
- 3 Within three months of the date of this permission, the access arrangements for vehicular and pedestrian access to the site shall be delivered strictly in accordance with approved drawings T373-250 Rev.D and 002 Rev.A 'Proposed Access Road (Improved Scheme)'. The improvement works to the access shall thereafter be retained in this manner in perpetuity. **REASON:** In the interests of vehicle and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.
- 4 Within three months of the date of this permission, the appropriate space shall be provided within the site for the parking and turning of vehicles in accordance with submitted plan number T373-250 Rev D. **REASON:** In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.
- 5 Within three months of the date of this permission, the bin storage area shall be laid out and provided in accordance with submitted drawing T373-250 Rev D. 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 BE1 of the Warwick District Local Plan 2011-2029.

- 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 BE1 & BE3 of the Warwick District Local Plan 2011-2029.
- 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 BE1 & BE3 of the Warwick District Local Plan 2011-2029.
- 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 BE1 & BE3 of the Warwick District Local Plan 2011-2029.
- 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 BE3 of the Warwick District Local Plan 2011-2029.

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