



Appeal Decision

Site visit made on 24 January 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2019

Appeal Ref: APP/R4408/W/18/3213202

Land at Sandygate Lane, Stairfoot, Barnsley S71 5AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Blackstone Developments against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2018/0029, dated 8 January 2018, was refused by notice dated 6 April 2018.
 - The application sought planning permission for variation of condition 13 of outline planning permission 2016/0288 - landscape strategy for a link through the site from Sandygate Lane to the TPT, buffer to north and west of site to provide secure boundary to TPT relating to proposed residential development without complying with a condition attached to planning permission Ref 2017/0206, dated 3 January 2018.
 - The condition in dispute is No 5 which states that: The development hereby permitted shall not begin until a scheme, including a timetable for implementation and long term maintenance agreements, has been submitted to and approved in writing by the Local Planning Authority for the provision of or enhancement to offsite public open space in accordance with Core Strategy policy CSP35. The provision or enhancement of the off-site open space shall as a minimum mitigate for the loss of the sites existing Green Space function or potential and shall be provided prior to completion of the development in accordance with the approved scheme.
 - The reason given for the condition is: In the interests of residential and visual amenity to ensure adequate provision of public open space in accordance with Core Strategy Policy CSP 29.
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Decision

1. The appeal is allowed and planning permission is granted for residential development at Land at Sandygate Lane, Stairfoot, Barnsley S71 5AW in accordance with the application Ref 2018/0029 dated 8 January 2018 without complying with Condition No.5 set out in planning permission Ref 2017/0206 dated 3 January 2018 granted by Barnsley Metropolitan Borough Council, but otherwise subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. Since the Council made its decision on the planning application which is subject to this appeal, on 6 April 2018 the Barnsley Metropolitan Borough Council Local Plan (LP) was adopted in January 2019. Consequently, the policies contained within the Barnsley Metropolitan Borough Council Core Strategy 2011 have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. The Council

have confirmed in correspondence¹ received that they now rely upon Policy GS1 of the LP. The appellant has had an opportunity at the final comments stage to provide their views on the relevance of this new policy. This appeal has therefore been determined in relation to the policies contained within the LP.

3. The Government published the revised National Planning Policy Framework (the Framework) on 19 February 2019, which forms a material consideration in the determination of the appeal. The principle changes to the Framework relate to the Housing Delivery Test. Matters relating to housing delivery are not at issue in this appeal. I do not consider, therefore, that it is necessary to seek additional comments from the parties in respect of the revised Framework or that there would be injustice caused to any party by my taking the revised Framework into account in determining the appeal.
4. The description of the development in the banner heading above is taken from the application 2017/0206. However, in my decision, I have taken the description of the development from the original application² since this more accurately describes the proposal.
5. The appellant has submitted a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act (TCPA) 1990. The final executed version of this document was submitted on 6 March 2019. This document replicates the terms set out in an earlier agreement dated 3 January 2018 associated with the previous planning application³. This UU does not affect the main issues of this appeal, but in coming to my decision I have had regard to it.
6. This appeal relates to a condition attached to a granted outline planning application, with all matters reserved. I have determined the appeal on this basis.

Background and Main Issue

7. Outline planning permission was originally granted for residential development on 29 June 2016, subject to a number of conditions. This permission was then varied through the approval of a previous application³ to vary Condition 13 of the original permission. Both applications included Condition 5 which required that, prior to commencement, a scheme for the provision of or enhancement to offsite public open space and sets out detailed requirements for such a scheme. The appellant contends that the condition is unlawful, and that the imposition of such a requirement on the site is contrary to national planning policy.
8. It therefore follows that the main issue raised by this appeal is whether Condition 5 is reasonable and necessary for the provision of or enhancement to offsite public open space in relation to the approved scheme.

Reasons

9. The appeal site is located between Sandygate Lane and the Trans Pennine Trail (TPT). There is dispute between the parties regarding the status of the site, and I acknowledge the recent designation of the site from employment to green space in the LP, which is a material consideration. Although, not all of

¹ Local Plan addendum received by email dated 22 January 2019 from Barnsley Metropolitan Borough Council.

² 2016/0288

³ 2017/0206

the images have been dated, the photographic evidence provided by the Council clearly shows that the site once had more vegetation present. However, it was apparent from my visit that significant clearance works have commenced on site.

10. Policy GS1 of the LP requires the improvement of existing green space to meet standards in the Council's Green Space Strategy. It confirms, amongst other things, that proposals which result in the loss of green space, or land that was used as green space, will not normally be allowed unless an appropriate replacement green space of equivalent or improved quality, quantity and accessibility is provided which would outweigh the loss.
11. It is confirmed by the parties that the intention of Condition 5 is to secure alternative green space or improve existing off-site green space. The latter scenario would require a financial contribution of £25,000, as confirmed by the Council in their Statement and in correspondence⁴ with the appellant. The figure originally required by the Council was £42,000 but was reduced on the grounds of viability. Therefore, prior to commencement of development the condition before me would require the completion of a planning obligation to secure either the offsite replacement green space or a financial contribution.
12. In this regard paragraph 55 of the Framework advises that planning conditions should be kept to a minimum and only be imposed where, amongst other matters, they are necessary and reasonable. More guidance is given in the Planning Practice Guidance (PPG). The PPG states that Section 70(1) of the Act enables the local planning authority to impose 'such conditions as they think fit'. This power must be interpreted in the light of material factors such as the Framework, the PPG, and relevant case law.
13. The PPG outlines that in exceptional circumstances, a negatively worded condition requiring a planning obligation to be entered into before development can take place may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
14. The PPG states that the use of a negatively worded condition to secure a planning obligation is unlikely to be appropriate in the majority of cases. It goes on to say that the heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the planning condition test of necessity is met and in the interests of transparency.
15. The parties disagree on whether the proposal would result in a loss of green space. However, based on the evidence before me, I am not convinced that the proposal is strategically important development and that the issues preventing the submission of a planning obligation are complex. Furthermore, the heads of terms or principal terms as required by the PPG have not been provided as part of the appeal documentation. On this basis, no secure legal mechanism is before me to ensure that a suitable replacement site or an alternative financial contribution is provided in the context of LP Policy GS1.
16. With regards to the financial contribution there is no confirmation on what it would be spent on, or any details on how the requested figures have been individually calculated. Without any projects identified or justification regarding

⁴ An email dated 28 June 2018 from the Head of Planning and Building Control

the amount of financial contributions sought, I cannot be certain that the contributions would be fairly and reasonably related in scale and kind, or directly related to the development and necessary to make the development acceptable. Therefore, the tests in Regulation 122 of the CIL have not been met and the lack of such an obligation carries no weight against the proposal.

17. The PPG sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. The PPG is clear that the 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. In short, I am not persuaded that Condition 5 meets the requirements of this guidance and, as such, is inappropriate in terms.
18. LP Policy GS1 is consistent with national planning policy and removing the disputed condition would result in a conflict with the adopted development plan. However, I consider that an absence of a suitable mechanism to secure an alternative site for green space or financial contribution to improve existing green space on an extant permission to form material consideration of such significant weight that, in this instance, it justifies a decision being made other than in accordance with the development plan. In this particular case, it is clear that the disputed condition conflicts with the advice in the PPG.

Other Matters

19. A number of benefits would be associated with the proposal. The proposal would contribute towards housing supply in a sustainable location and a number of economic benefits would arise through increased spend in the area and support to the construction industry. These noted benefits combined attract some weight in favour of the proposal.

Conditions

20. The Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have not had confirmation from either party about the status of the other conditions imposed on the latest outline planning permission. I have re-imposed all those that I consider remain relevant. In the event that some have in fact been discharged is a matter which could be addressed by the parties.
21. I have amended Condition 1 in order to correctly reflect the date on approval in relation to the latest permission in the interests of certainty, and Condition 2 is re-imposed for the submission of a reserved matters application.
22. Condition 3 is re-imposed for land levels in the interests of visual amenity and Condition 4 is included in the interest of protecting existing trees. Pre-commencement Condition 5 is still required for details of foul and surface water drainage, and pre-commencement Condition 6 is still required for mitigation measures to air quality. Pre-commencement Condition 7 is still required regarding ground contamination to ensure acceptable living conditions for future occupiers.
23. Condition 8 and pre-commencement Condition 9 and Condition 10 are re-imposed in the interests of highway safety. Pre-commencement Condition 11 for the submission of a Construction Method Statement is still required in the interest of highway safety, residential and visual amenities in the area.

Conditions 12 and 13 for a landscaping strategy and management plan are still required for submission on a future reserved matters application in the interests of the character and appearance of the surrounding area.

24. The Council have suggested additional conditions in its submission relating to a noise impact assessment; ecological enhancements; high speed broadband and affordable housing. However, no compelling justification has been provided for their inclusion on this proposed scheme. An additional drainage condition has also been suggested, but I find that this replicates the existing drainage condition already present. Therefore, in the absence of any detailed information to support these suggested additional conditions, I find that they should not be included.

Conclusion

25. For the above reasons I conclude that the disputed condition fails the tests for conditions in that it is not precise, enforceable, necessary or reasonable in all other respects, and I will grant a new planning permission without the disputed condition.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of three years from 3 January 2018.
2. The development hereby permitted shall not be commenced unless and until approval of the following reserved matters has been obtained in writing from the Local Planning Authority: (a) the layout of the proposed development. (b) scale of building(s) (c) the design and external appearance of the proposed development. (d) means of access (e) landscaping.
3. Detailed plans shall accompany the reserved matters submission indicating existing ground levels, finished floor levels of all dwellings and associated structures, road levels and any proposed alterations to ground levels. Thereafter the development shall proceed in accordance with the approved details.
4. Detailed plans shall accompany the reserved matters submission relating to existing trees both within and adjacent to the site which should inform the layout of the development. These documents shall be prepared in accordance with BS5837: 2012 (Trees in relation to design, demolition and construction Recommendations) and shall include the following: Root Protection Area plan; Tree constraints plan; Tree protection plan; Arboricultural impact assessment; Arboricultural method statement; Details of no-dig construction proposals for car park areas and drives including cross-sections and plans showing relevant area. No development or other operations shall take place except in complete accordance with the approved methodologies.
5. No development shall take place until: (a) Full foul and surface water drainage details, including a scheme to reduce surface water run off by at least 30% and

- a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority; (b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways; (c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways; Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development.
6. No development shall take place until, details of the proposals to mitigate the air quality impact of the development as set out within section 4.2.8 of the submitted planning statement, for the installation of electric vehicle charging points to all new housing developed on site, and associated infrastructure, shall be submitted to and approved in writing by the Local Planning Authority. The specifications shall be in accordance with the BMBC Air Quality and Emissions Good Practice Guidance. The development shall thereafter be undertaken in accordance with the approved details.
 7. No development shall take place until a report, endorsed by a competent engineer experienced in ground contamination and remediation, has been submitted to and agreed in writing with the Local Planning Authority. The report shall, amongst other matters, include the following: 1. A survey of the extent, scale and nature of contamination. 2. An assessment of the potential risks to human health, property, adjoining land, groundwaters and surface waters, ecological systems and archaeological sites and ancient monuments. 3. An appraisal of remedial options, and proposal of the preferred option(s). 4. A remediation statement summarising the works to be undertaken (if required). The above shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11. The development shall thereafter be undertaken in full accordance with the submitted report. For further information, see BMBC's Supplementary Planning Guidance 28, "Developing Contaminated Land".
 8. All on site vehicular parking/manoeuvring facilities shall be surfaced in a solid bound material (ie not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.
 9. No development shall take place until, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. On completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developer's expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.
 10. Vehicular and pedestrian gradients within the site shall not exceed 1:12.
 11. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for: The

parking of vehicles of site operatives and visitors - Means of access for construction traffic - Loading and unloading of plant and materials - Storage of plant and materials used in constructing the development - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate - Wheel washing facilities - Measures to control the emission of dust and dirt during construction - Measures to control noise levels during construction.

12. A landscape strategy shall accompany the reserved matters submission. It shall identify boundary vegetation buffer to the north and west of the site and the location of a vegetation buffer strip on the southern end of the site adjacent to the Trans Pennine trail.
13. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any part thereof, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out in accordance with the approved plan.