The Planning Inspectorate

Appeal Decision

Site visit made on 24 April 2019

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2019

Appeal Ref: APP/R4408/W/19/3221727
Land north of Keresforth Road, Dodworth, Barnsley S75 3NU

- 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 a condition subject to which a previous planning permission was granted.
- The appeal is made by Southview Developments Ltd against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2018/1486, dated 29 November 2018, was refused by notice dated 23 January 2019.
- The application sought outline planning permission for approximately 5 dwellings and associated infrastructure (all matters reserved apart from means of access) without complying with a condition attached to planning permission Ref 2018/0665, dated 23 November 2018.
- The condition in dispute is No 13 which states that: Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority of arrangements which secure the following highway improvement works:
  a) Relocating the 30mph speed limit signs to the east of the site.
  b) A gateway feature including signage and road markings on the westbound carriageway where the speed limit changes.
  c) Any other necessary signing and lining.
  The works shall be completed in accordance with the approved details prior to occupation of any of the dwellings.
- The reason given for the condition is: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.

Decision

1. The appeal is allowed and outline planning permission is granted for approximately five dwellings and associated infrastructure (all matters reserved apart from means of access) at Land north of Keresforth Road, Dodworth, Barnsley S75 3NU in accordance with the application Ref 2018/1486, dated 29 November 2018, without compliance with condition 13 previously imposed on planning permission Ref 2018/0665, dated 23 November 2018, but subject to conditions set out in the schedule attached, including a revised condition 13.

Application for Costs

2. An application for costs was made by Southview Developments Ltd against Barnsley Metropolitan Borough Council; and by Barnsley Metropolitan Borough

Council against Southview Developments Ltd. These are the subject of separate decisions.

Main Issue

3. The main issue is the effect of removing condition 13 on highway safety.

Reasons

4. The approved housing development would have an access just beyond the existing 30mph speed limit associated with Dodworth village. The Council's concern is that without the 30mph speed limit sign being moved to the east and a gateway feature provided, the access to the site would have inadequate sightlines to the east for a 40mph speed limit classified road (the B6099) and would result in an undue risk of accidents.

5. The National Planning Policy Framework (the Framework) is clear that conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. The appellant's view is that the condition is unnecessary as visibility splays are already required by condition 4 and these exceed the requirements of Manual for Streets (MfS).

6. It is therefore necessary to consider whether without the requirements of the condition, the development would be unacceptable; and whether the condition would make it acceptable and meet the other requirements of the Framework.

Highway safety

7. The plans show five family sized homes. The settlement lies to the west of the site and in the vicinity, it consists of housing along the north side of the road only. The development would therefore result in a small, in-depth area of housing beyond the extent of the built-up area of the settlement. The nearest property to the west has an access onto Keresforth Road. This lies within the 30mph speed restriction area. The access to the proposed houses would lie within the 40mph zone.

8. Traffic from the east has a long descent before crossing the motorway overpass and reaching the appeal site. The bends before and after the bridge have relatively sweeping curves. The alignment of the road, together with the largely open surrounds and the wide carriageway, do not naturally reduce vehicle speeds. Those turning left, opposite the site into Gilroyd Lane, do however have to slow significantly and this assists in slowing the vehicles that are following and travelling straight on. I found that when standing at the proposed access, considerable differences in speeds were perceptible between those vehicles that were restricted by turning vehicles and those that had a clear route forward towards the village and past the site.

9. The Council have provided a document entitled Symology 2009 – 2019 that sets out the dates and a limited amount of detail with regard to road traffic accidents that occurred on both Keresforth Road and Keresforth Hill Road. These are long roads that extend significant distances to the west and east respectively. No evidence has been provided by either party to indicate whether these incidents were within the vicinity of the site. In these

circumstances, it is not clear that this junction, or this specific section of road, has any history of unsafe operation.

10. The appellant has provided details of the sight lines for vehicles leaving the proposed access. It is accepted that 79.6m could be achieved to the east after the tree is crown lifted. There is dispute between the parties as to whether the standards for sight lines within MfS, which would require a 56m visibility splay, or those within the Design Manual for Roads and Bridges (DMRB), which would require 90m, should be relied on.

11. MfS suggests that DMRB is not an appropriate design standard for most streets, particularly those in lightly-trafficked residential and mixed-use areas. It also advises that many of its key principles may be applicable to other types of streets, for example high streets and lightly trafficked lanes in rural areas. However, in its definition of a street, it advises that most critically, streets should have a sense of place, which is mainly realised through local distinctiveness and sensitivity in design.

12. The immediate character of the area is defined by the wide Keresforth Hill Road that crosses the motorway, including the crash barriers that run alongside it. As the nearest houses to the site are well screened from view, only the 30mph speed limit sign gives any warning of there being a built-up area close by. The road and junction do not have public realm functions beyond the movement of traffic. Whilst the area has a rural character in some respects, the road at this point does not have the characteristics of a country lane and shares similarities with rural roads with an unrestricted speed limit. It does not therefore fall unequivocally within the MfS definition of a street.

13. MfS advises that for streets where the 85th percentile speed is above 60kph the DMRB figures may be more appropriate. The appellant carried out a speed survey which indicated that the 85th percentile speed was 61.63kph which corresponds to a wet weather speed of 57.63kph. A second survey was submitted as part of the final comments to this appeal and shows slightly lower 85th percentile speeds. The Council consider that a different type of speed test should have been carried out covering a longer period.

14. The appellant refers to the advice in TD22/81–*Vehicle Speed Measurement on All Purpose Roads.* This states that 'it cannot be emphasised too strongly that a small total sample from a radar speedmeter is perhaps much more useful than a large sample obtained with little thought, provided the survey is carefully planned, executed and analysed by the methods described in this Advice Note. With vehicle detectors/timers, given measurement in free flow periods, the sample problem does not arise to the same extent as it can be very large'.

15. The speed survey measurements were carried out in what can be described as a free flow period and the times of the two surveys differ marginally and were carried out on different days of the week. However, TD22/81 advises that measurement sites should not be near junctions (unless readings are being taken in connection with improvements to the junction) or bus stops; and situations where vehicles are likely to be accelerating or braking should be avoided. This site is opposite a junction and has bus stops close-by. Vehicles appeared to be braking or accelerating in response to the junction and the speed restriction signs.

16. I have only been provided with the speed survey results. A detailed methodology of what speeds were taken and from where, has not been provided. The appellant's statement suggests that it relates to the access point. I have assumed therefore that vehicles heading west but turning into Gilroyd Lane were not included. However, there is no suggestion that the cars that were hindered by those vehicles were discounted. Similarly, the use of the bus stops may have restricted the free flow of vehicles and resulted in lower speed results at those specific times. In the absence of a detailed methodology, I cannot assume that the survey was carefully planned to take these matters into account and I am therefore not satisfied that the figures represent vehicles in free flow. Given the very limited samples, which introduce greater margins of error in any event, the removal of the vehicles that were hindered from the calculations, may significantly increase the 85th percentile figure.

17. I am not certain that the results of the two speed surveys provide any confidence that these snap shots of vehicle speeds are representative with regard to other times, days or months of the year or that they reflect vehicles in free flow. Although I acknowledge the argument for accepting the MfS stopping distances, I am not satisfied that a true representative value for vehicles in free flow would support this approach. Given these reservations and given the particular characteristics of this road, I consider that the requirements of DMRB offer greater certainty with regard to ensuring that the new access would not contribute unacceptably to highway safety concerns.

18. I accept that the access would fall only a limited amount short of the requirements of DMRB with regard to the visibility splay to the east. However, signage associated with the junction, a streetlight column and the crash barriers alongside the bridge over the motorway, all fall within the views from the access, within this visibility splay. Whilst not preventing views of oncoming vehicles, these features do undermine its full effectiveness. In the absence of convincing evidence with regard to traffic speeds in free flow, I consider that without moving the 30mph sign, the visibility from the access would fall short of the necessary requirements and may add to highway safety concerns. The proposal would therefore be contrary to policy T4 of the Local Plan 2019 (which has replaced Core Strategy policy CSP 26), as it expects developments to be designed and built to provide all transport users with safe access and movement.

19. Moving the 30mph sign to the east and the creation of a gateway feature, whilst not guaranteeing that vehicles would slow down, would at least alert drivers to the increased potential for conflict. The changes required by condition 13 are supported by policy T4 which advises that where development would create or add to problems of safety, developers will be expected to take mitigating action to make sure necessary improvements go ahead.

Other matters

20. It has been suggested that the requirements of the condition would delay the development by 18 months and would therefore be at odds with the objectives of achieving new homes and meeting the Council's housing land supply requirements. I am not satisfied that it is necessary that the details of the works be agreed before development commences. The intended improvements

would be achieved, providing that the works are completed before the houses are occupied.

21. As the timing of the submission of details can be amended so that they can be approved and the works carried out concurrently with the development of the site overall, I am not persuaded that the condition would impose any significant delay to the building of the properties. With this change to the condition, I am satisfied that it would satisfy the test of reasonableness.

22. I find the description of the works with regard to relocating of the 30mph speed limit signs to the east of the site; and the provision of a gateway feature including signage and road markings on the westbound carriageway, where the speed limit changes, to be suitably precise. The third requirement of the condition for 'any other necessary signing and lining', is not clear as to its scope or detail. This element is not precise and would fall short of the requirements of the Framework. If the third requirement of the condition is omitted, I am satisfied that it would achieve its objectives and be both precise and enforceable.

23. As the works are required as a consequence of the development, I am satisfied that they are relevant to planning and the development to be permitted.

Conclusions

24. Overall, in the absence of convincing evidence with regard to vehicle speeds in free flow, the introduction of the access to these new houses, beyond the 30mph restricted speed zone, with a limited visibility splay to the east, would be likely to result in an unacceptable increase in harm in relation to highway safety. The relocation of the 30mph sign and the creation of a gateway feature would reduce highway safety concerns and would gain support from the development plan. I therefore find that the condition is necessary in the interests of highway safety.

25. The condition, if modified as described, would meet the requirements of the Framework. I therefore conclude in favour of the principle of retaining the two main requirements of condition 13. As the condition overall does not meet all of the requirements of the Framework and needs to be modified, I have allowed the appeal and granted a new planning permission with condition 13 amended to reflect my concerns.

26. As my decision results in a new permission, I have retained most of the original conditions as they are not in dispute and are necessary. I have omitted the condition requiring the agreement of drainage details as these requirements are better controlled by other regulations. I have amended the time limit to reflect the date of the original decision and have added a condition specifying the details of the plans, in relation to the approved access, in the interests of certainty and to accord with the requirements of Planning Practice Guidance.

Peter Eggleton

INSPECTOR

Schedule of Conditions

1) Application for approval of the matters reserved in Condition No. 2 shall be made to the Local Planning Authority not later than the 23 November 2021. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved and the development shall be carried out as approved.

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 buildings;
(c) the design and external appearance of the proposed development;
(d) landscaping.

3) The development hereby permitted shall be carried out in accordance with the following approved plan: SK01 Revision C, but only in respect of those matters not reserved for later approval.

4) Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials, shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no times on Sundays or Bank Holidays.

5) Sightlines, having the dimensions of 2.4m x 90m to the west and 2.4m x 79.6m to the east, shall be safeguarded at the access to the site such that there is no obstruction to visibility at a height exceeding 1.05m above the nearside channel level of the adjacent highway.

6) The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. 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.

7) All redundant vehicular accesses shall be reinstated as kerb and footway prior to the development being brought into use.

8) No development or other operations being undertaken on site shall take place until the following documents and details in accordance with British Standard 5837:2012 *Trees in relation to design, demolition and construction – Recommendations,* have been submitted to and approved in writing by the Local Planning Authority:
(a) Tree protective barrier details;
(b) Tree protection plan;
(c) Arboricultural impact assessment;
(d) Arboricultural method statement.
The works shall be carried out strictly in accordance with the details and recommendations within these approved documents.

9) The development hereby approved shall be carried out in accordance with the mitigation measures set out in the Air Quality Assessment (Ref: 2100r1). The mitigation measures shall be implemented prior to the occupation of the dwellings and retained as such thereafter.

10) The development shall be carried out in accordance with the recommendations detailed in section 5 of the Ecological Appraisal Revision B (Ref: SF2794). The recommendations shall be completed prior to the occupation of the dwellings and retained as such thereafter.

11) The development shall be carried out in accordance with mitigation measures/recommendations set out in the Noise Impact Assessment by ENS Ltd (Ref: NIA/7901/18/7804v1.0) and the email from Richard Pennell dated 26/06/2018. The mitigation measures/recommendations shall be carried out prior to the occupation of the dwellings and retained as such thereafter.

12) Prior to the commencement of development a site investigation must be undertaken to fully investigate potential mining legacy risks. The investigation should be carried out in compliance with CIRIA publication 32 *'Construction Over Abandoned Mine Workings*'. A report detailing the findings of the investigation and any recommended mitigation shall be submitted for approval in writing by the Local Planning Authority. The development thereafter shall be carried out in accordance with the approved details.

13) Details shall be submitted to and approved in writing by the Local Planning Authority of arrangements which secure the following highway improvement works:
(a) Relocating the 30mph speed limit signs to the east of the site;
(b) A gateway feature including signage and road markings on the westbound carriageway where the speed limit changes.
The works shall be completed in accordance with the approved details prior to first occupation of any of the dwellings.