The Planning Inspectorate

Appeal Decision

Site visit made on 1 August 2017

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th November 2017

Appeal Ref: APP/R4408/W/17/3170205
Land at Ellwood, Off Wilson Grove, Lundwood, Barnsley, S71 5JF

- 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 Mr Peter Smith of Gleeson Homes against the decision of Barnsley Metropolitan Borough Council.
- The application Ref: 2016/0630, dated 18 May 2016, was refused by notice dated 24 August 2016.
- The application sought planning permission for the erection of 97 no. dwellings with garages including parking spaces together with the provision of associated roads, sewers and infrastructure without complying with a condition attached to planning permission Ref: 2015/0436, dated 30 June 2015.
- The condition in dispute is No. 6 which states that: The parking/manoeuvring facilities (including private drives), 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.
- 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 dismissed.

Application for costs

2. Applications for costs were made by both parties. These applications are the subject of a separate Decision.

Procedural matter

3. When I visited the site, the development was at an advanced stage and a number of properties were completed and occupied, and I observed that that the driveways have been constructed using the specification for which the application sought permission.

Main Issues

4. The main issues in this appeal are:

   - Whether the condition is necessary in the interests of highway safety; and

- The effect that removing the condition would have on the character and appearance of the area.

Reasons

Highway safety

5. Policy CSP 26 of the Barnsley Core Strategy 2011 (Core Strategy) expects that new development will be designed and built to provide safe, secure and convenient access for all road users. Further elaboration is provided in the Council's Supplementary Planning Documents on Parking and Designing New Housing Development 2012 which need to be read alongside the Core Strategy. These documents do not, in themselves, set out a specification for residential driveways, but make reference to the requirements of the South Yorkshire Residential Design Guide 2011 (SYRDG). This latter document states that private and shared driveways should be surfaced with bound materials to prevent any stones, gravel or similar items being deposited on the adoptable area of the highway.

6. The appellant suggests that the SYRDG should only be given limited weight as it does not appear to have been subject to widespread public consultation. Nevertheless, it is specifically referenced in the adopted Barnsley Parking Supplementary Planning Document 2012 (SPD), the status of which is not questioned, and as such can be given significant weight.

7. The Council's principal concern is that the proposed specification for the driveways will result in loose surfacing material migrating onto the highway and result in a loss of traction for users of the highway including vehicles, cycles, motor bikes, scooters, wheelchair users, elderly people and people with pushchairs.

8. At the time of my site visit, the development was at an advanced stage. A number of dwellings were complete and occupied on the site. These had been provided with driveways using the specification proposed by the appellant in this appeal and which does not comply with the requirements of the SYRDG to incorporate a bound surface. The streetworks throughout the site were at various stages of completion and final wearing courses had yet to be applied to some of the carriageways and footpaths. There was very little evidence of aggregate pieces having migrated from the driveways onto the footways and carriageway surfaces.

9. Prior to my visit to this site, I had visited a number of other sites that are being developed by the appellant at Blythe Street in Wombwell, Lowfield Road at Bolton on Dearne and Barnburgh Lane in Goldthorpe, which are also under construction. These sites are the subject of similar appeals[1]. In addition, I visited the site at Moorland Avenue in Dodworth, which is referred to in the evidence, where dwellings using this driveway specification have been constructed and been in use for longer than at the appeal site. At these other sites, there was evidence of gravel being tracked onto the footway and carriageway with the greatest incidence of this being at Moorland Avenue. I have also noted the various photographs that were submitted in evidence by both parties. Whilst there was little evidence of aggregate migration at this

[1] Appeal references: APP/R4408/W/17/317210, APP/R4408/W/17/317208 and APP/R4408/W/17/317209

site, from what I observed at other sites where a similar specification has been used, this will ultimately also occur at this site.

10. The appellant states the proposed specification of the driveways comprises of no more than two layers of aggregate and that the upper layer locks into the lower to create a durable surface. Whilst this may be the case when initially laid, I note that the appellant accepts that small amounts of aggregate may be tracked onto the highway. It seems to me that if aggregate can be displaced from the driveway, as accepted by the appellant and was evident from my visits to other sites, this is indicative that the lock between the layers of aggregate is not entirely secure and that if some stones are dislodged it becomes compromised. In my view, this would be exacerbated if the driveway were regularly raked as advised in the Home Owner's Manual produced by the appellant for purchasers of their houses, as this would further disturb any bond between the aggregate pieces. This being the case, aggregate migrating onto the highway and footways is likely to occur and to continue.

11. If loose aggregate were to be present in large quantities on the hard surface of the carriageway, it may lead to loss of traction if a vehicle were travelling at sufficient speed, however, I did not observe any areas where aggregate was spread in abundant quantities over wide enough areas of the carriageway to cause this. In addition, due to the configuration of the highway layout that I saw at the appeal site, it is likely that the stated design speed of 20mph would be achieved. This being the case, in my opinion, the probability of vehicles losing control as a result of encountering a small quantity of loose material on the carriageway surface, or skidding in the event of having to brake sharply, is very low and there is no evidence before me that would indicate otherwise. Similarly, due to the low vehicle speeds, I do not consider it likely that any aggregate pieces that become dislodged from vehicle tyres or are driven over by moving vehicles would become airborne with any significant velocity, and would not constitute a hazard to pedestrians or other motorists.

12. In respect of the effect of loose stones on pedestrians, wheelchair users, persons with mobility difficulties and cyclists, I do not consider that loose aggregate would result in a serious impediment to wheelchair users or to pushchairs. However, from what I saw in the course of my site visits and from the photographic evidence provided by both parties, the most significant accumulations of aggregate pieces are on the footways and edge of the carriageway. If aggregate were present on footways or carriageways in the quantities that I have seen, due to the size of the aggregate pieces, which would move more freely on the hard surface of the footway and carriageway, I consider that it would present a slipping or stumbling hazard to pedestrians, particularly young children, persons with a visual impairment, those who walk with difficultly or use a walking aid. At this site due to the local topography there were a number of level changes resulting on sloping roads and pavements which would exacerbate the potential for the presence of loose material to cause loss of balance. Loose aggregate pieces of this size would also affect the stability of cyclists due to the narrower tyres and wheels of cycles.

13. Although there is no evidence before me in respect of accidents involving pedestrians or cyclists falling as a result of insecure material on the highway surface, I note that the Council states that records are not kept of this type of

accident. This does not show that such accidents do not occur or the potential for them to occur does not exist.

14. Consequently, the proposal would conflict with the requirements of Core Strategy CSP 26 and the Parking SPD in this respect.

15. I therefore conclude that the condition as presently worded is necessary in the interests of highway and pedestrian safety.

Character and appearance

16. Core Strategy policy CSP 29 seeks to ensure a high standard of design for all developments. In this appeal the Council's principal concern as set out in the reason for refusal is with regard to the visual effect of damage to the carriageway surface resulting from the migration of aggregate from the driveways. The final wearing course had not been applied to all of the carriageways at the time of my visit, however, at the other sites I visited I saw no evidence of damage or scarring to the tarmac surface of any carriageways and consequently I would not expect it to occur at this site.

17. This notwithstanding, it is clear from the Council officer's report that there are also concerns in respect of the visual effect resulting from migration of aggregate pieces onto the surface of the carriageway and footway, and from weed growth through the driveway surfaces. Although not occurring at this site when I visited, I observed at other sites I visited the same day and where a similar specification has been used that quantities of aggregate had been transported onto the carriageway and footways and due to its light colour it was very noticeable against the dark macadam of the footways. I also saw at the Moorland Avenue development in Dodworth, that a large quantity of aggregate was present on the carriageway. This created an untidy appearance that was inconsistent with the otherwise well designed and executed development. It also suggests that over time residents become less diligent in sweeping aggregate pieces back onto the driveways and that this situation is likely to occur at the appeal site and to persist.

18. I observed at the Barnburgh Road and the Moorland Avenue developments evidence that some driveways had been patched with aggregate of a different colour, which diminished the overall visual quality of the schemes. I also saw at the Blythe Street site that where aggregate had been used to surface a driveway shared by a number of properties that a potion had worn through to the sub-base. This leads me to conclude that the surface is not durable.

19. At the appeal site there was very little in the way of weed growth through the aggregate material although this may be because of the recent completion of the houses. Both parties have provided photographs that show vegetation growing through the driveways on other sites to varying degrees. When I visited other sites that have been developed by the appellant in the area, particularly Lowfield Road at Bolton on Dearne and Moorland Avenue, I saw that in the established and occupied sections there was some weed growth through the driveways which again detracted from the overall appearance of the development. This suggests that weed growth is an issue with this driveway specification. It is also indicative that the maintenance regime required by the aggregate driveways is overly onerous.

20. The Council have powers under the planning and highways legislation that could be used to address these matters. I also note that the appellant imposes restrictive covenants on the houses requiring that the garden and grounds are kept tidy and in good order, and that gravel or stone chippings from the driveways should not be allowed to spill onto the adopted highway. Nevertheless, I consider that the use of a specification that requires such a regular and high degree of maintenance, and may result in formal action having to be taken either by the Council or by the appellant through enforcing the restrictive covenant to ensure that this occurs, does not constitute good design. Similarly, I do not consider that it represents an innovative design, as suggested by the appellant.

21. I have had regard to the points set out in the appellant's evidence in respect of the scale of the aggregate in relation to other components that make up the street scene. Whilst I accept that the aggregate pieces are small in scale, when they are present on the darker coloured macadam of the footway or on the carriageway surface, the contrasting colour makes the aggregate very noticeable. Similarly, when it is present on the carriageway in large quantities as at the Moorland Avenue site, it is very obvious against the flat, open, carriageway surface.

22. On the evidence before me, and from what I saw when I visited this site and similar sites in the area, the proposed driveway surfaces would result in a diminution of the overall quality of the development.

23. I therefore conclude that the removal of the condition would be harmful to the character and appearance of the area and would conflict with Core Strategy Policy CSP 29.

Other matters

24. It is suggested that the proposed driveway specification contributes towards sustainable drainage. However, I note from the Flood Risk Assessment that this site was considered unsuitable for infiltration drainage due to the low permeability of the underlying soils and solid geology and therefore give no weight to this suggestion. The appellant also suggests that the use of a tarmac surface would increase drainage costs to attenuate run off from these. Given that the ground conditions are unsuitable for infiltration drainage, these costs would need to be borne regardless of the driveway specification, and I give little weight to this point.

25. Whilst I have noted the appellant's commitment to providing market housing at a lower cost, this is not affordable housing as defined in the National Planning Policy Framework and, consequently, I have given this only very limited weight in drawing my conclusions in respect of the main issues.

26. I have also noted the appellant's point that the use of aggregate driveways reduces the cost to the future purchasers and that to utilise a tarmac driveway would typically increase the cost by £1,208 per plot. There is, however, no substantive evidence before me that this increase would either make the scheme unviable or prevent purchasers from accessing finance to buy the properties.

27. The Council suggest that the driveway specification does not meet the National House Building Council (NHBC) standard. Table 2d in the NHBC standard is

referred to and in this table the construction details for each road type are determined by reading down the relevant column. For a gravel road there is no requirement for a bound surface and footnote 7 to the table states that the requirement for the wearing course is a 38mm thickness of 15/20mm unbound aggregate, well rolled and compacted. This is what is specified in the appellant's drawing. Nevertheless the NHBC standard does not override any local requirements.

28. The Council also suggest that the driveway specification does not meet the Requirements of Part M of the Building Regulations. Whilst this may be the case, in the absence of a planning policy with regard to access for disabled persons, this is a matter that is more properly dealt with by the relevant Building Control Authority.

29. None of the above matters, either singly or collectively, lead me to a different conclusion on the main issues.

30. My attention has also been drawn to a number of appeal decisions, including two very recent decisions at sites in Bolton on Dearne[2] and Newcastle upon Tyne[3]. I have had regard to these, however, I note that within them there are differing conclusions in respect of the issues of highway safety and the effect on character and appearance. I do not have the full details of any of these cases and, whilst there are doubtless similarities, I cannot be certain that there are direct parallels.

31. Of the more recent decisions, the Newcastle upon Tyne decision did not directly address the matter of highway safety, and from what I saw when I visited the other sites in the area, I am not as persuaded as my colleague that householders would be diligent in maintaining the driveways. I also note that the site at Bolton on Dearne is directly adjacent to one of the sites that I also visited. Whilst I appreciate that the Inspector in that case was considering the matter of driveways as one of a number of issues, his findings on this point are nonetheless relevant to the case before me.

32. In any event, I have determined this appeal on the basis of the evidence that was before me, and from what I observed when I visited the appeal site and other sites in the area which are being developed by the appellant.

33. Paragraph 206 of the National Planning Policy Framework (the Framework) sets out that planning conditions should only be imposed where they are necessary, relevant to planning and the development proposed, enforceable, precise, and reasonable in all other respects. The matter of necessity has been discussed above and it is not disputed that the condition is relevant to planning and the development proposed or that it would be enforceable.

34. The appellant suggests that the condition is not precise, however, I can see nothing in the wording of the condition, taken on its face, which leaves any doubt as to what is required in order to comply with it. The appellant also contends that the condition is unreasonable as it places a greater cost burden on the developer than at other sites. Whilst I accept that the cost of providing a bound surface to the driveways would be greater than not providing it, there is no substantive evidence that this cost would be excessive or would

[2] Appeal reference: APP/R4408/W/17/3170851
[3] Appeal reference: APP/M4510/W/17/3175245

significantly undermine the appellant's aspirations to provide low cost market housing. As such it is not manifestly unreasonable.

35. As I have previously found that the condition is necessary, it therefore meets the tests set out in the Framework.

Conclusion

36. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR