

2022/0438

Mr Peter Needham

Removal of condition 8 (relating to the surfacing of the first 20m of the access track) of planning application 2012/0697 (construction of earth sheltered dwelling)

The Burrows, Nine Acre Lane, Hunshelf, Sheffield, S36 2AS

Background

2012/0697 - Construction of earth sheltered dwelling – Approved with conditions including condition 8 which states:-

The first 20m of the access track from Hunshelf Hall Lane shall be hard surfaced and drained in an approved manner prior to the development being brought into use, to prevent mud/debris from being deposited on the public highway to the detriment of road safety.

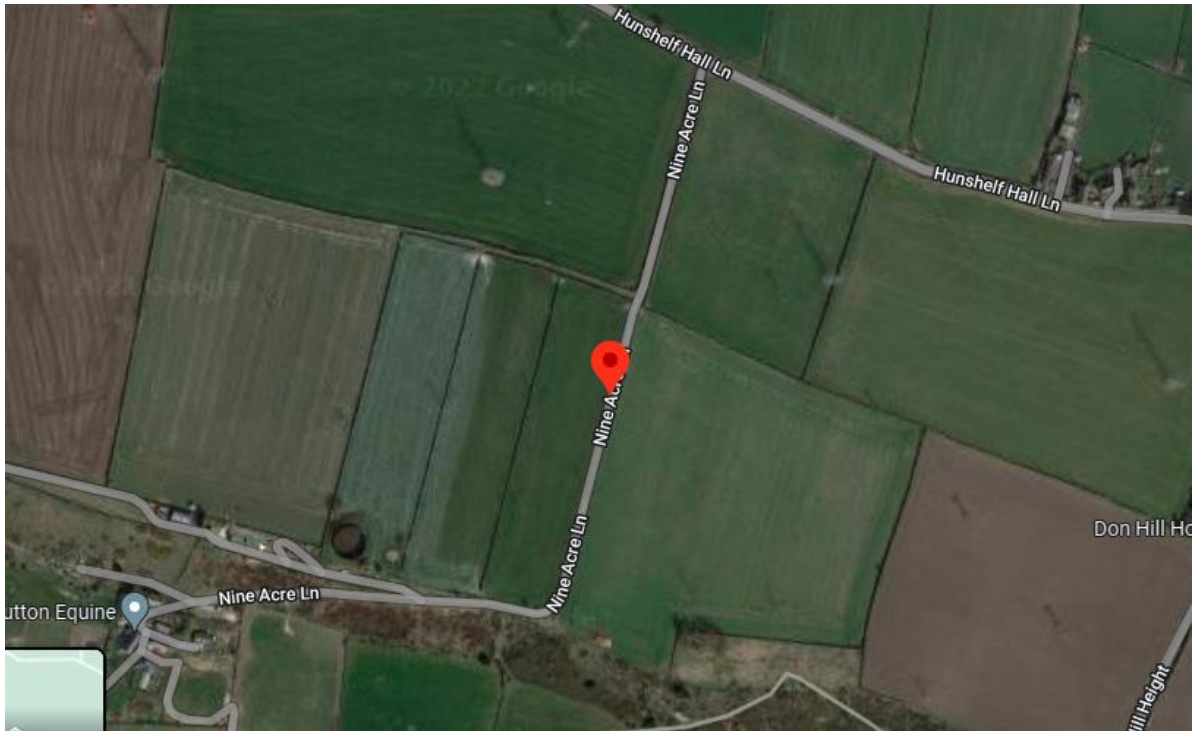
Reason: In the interests of highway safety.

Description

The Burrows is a detached earth sheltered dwelling set on Nine Acre Lane, Hunshelf. The access track from Nine Acre Lane to The Burrows is approximately 580m in length and joins to Hunshelf Hall Lane to the north. The property has been completed and occupied for some time, however the hard surfacing works to the first 20m of the access as required by condition 8 of permission 2012/0697 have not taken place as the applicant does not own the track and has been unable to gain permission from the owners of the track in order to carry out the works.

The access track is typical of other private rural accesses and is not hard surfaced, as can be seen on the photographs below.





Proposed Development

The applicant has applied for the Removal of condition 8 (relating to the surfacing of the first 20m of the access track) of planning application 2012/0697 (construction of earth sheltered dwelling).

The applicant has supplied the following justification for the removal of the condition:- 'The land this condition applies to is not in our ownership or control. That being the case we do believe the condition would fail on enforceability grounds and would therefore be ultra vires. We have approached the owners with a view to achieving this condition however they are not accommodating.'

Policy Context

Planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise and the National Planning Policy Framework 2021 (NPPF) does not change the statutory status of the development plan as the starting point for decision making. The Local Plan was adopted by the Council in January 2019 along with a series of Supplementary Planning Documents.

The site is set within the Green Belt as shown on the Local Plan Maps, therefore the following policies are of relevance:-

GB1 protects green belt from inappropriate development in accordance with national planning policy.

SD1 'Presumption in Favour of Sustainable Development'.

GD1 'General Development' provides a starting point for making decisions on all proposals for development setting out various criteria against which applications will be assessed.

T4 'New Development and Transport Safety'

D1 'High Quality Design and Place Making'

SPD's

- Design of Housing Development
- Parking

Other

South Yorkshire Residential Design Guide
Circular 11/95: Use of conditions in planning permission

NPPF

The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

Consultations

Hunshelf Parish Council – No observations

Legal – It is unlikely that the condition could be enforced so it is recommended that it is removed

Highways – Objects to the removal of the condition if it is enforceable

Representations

A site notice was posted at the entrance to the site and no comments have been received.

Assessment

The applicant has applied for the Removal of condition 8 (relating to the surfacing of the first 20m of the access track) of planning application 2012/0697 (construction of earth sheltered dwelling). The applicant has supplied the following justification for the removal of the condition:- 'The land this condition applies to is not in our ownership or control. That being the case we do believe the condition would fail on enforceability grounds and would therefore be ultra vires. We have approached the owners with a view to achieving this condition however they are not accommodating.'

The Highways Officer has been consulted and states that 'I am aware that the access track was not included within the red line boundary of the 2012/0697 approval and note that the applicant/agent contends that the land is not within their control and efforts to approach the owners have been unsuccessful. From a Highways Development Control perspective I would object to the removal of this condition if it is considered to be in any way enforceable.'

Whilst it would be preferable to retain this condition, as hard surfacing would undoubtedly improve this portion of the access adjacent to Hunshelf Hall Lane, the track has been used for a long period of time by the owners of The Burrows and therefore the breach of condition has been taking place for some time. In terms of the track being outside of the red-line boundary and if the condition is legally enforceable, the Legal Officer has stated that there is a power to attach conditions applying to land outside the application site where there is a 'reasonable' prospect of the owner of the development site being able to comply with the condition, however Circular 11/95: Use of conditions in planning permission states:-

'Powers for conditions on land outside application site and temporary permissions Section 72(l)(a) amplifies the general power in section 70(1)(a) in two ways. It makes clear that the local planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. (The courts have held that the question whether land is under control of an applicant is a matter to be determined according to the facts of the particular case, and is not dependent on the existence of a freehold or leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition). The section also makes clear that the local planning authority may grant planning permission for a specified period only.'

Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed in paragraph 28 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.'

In this case the applicant has a right of access over the land, however they do not own the access track and have no right to do works to the track without the owner's permission, therefore there is not a reasonable prospect of the works being able to take place without the owner's permission. The applicant has sought to agree the works with the owner however they have been unable to do so. For this reason, the condition is not enforceable and therefore the removal of this condition is recommended.

Recommendation

Approve