The Planning Inspectorate

Appeal Decision

Site visit made on 20 December 2018

by D Guiver LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 January 2019

Appeal Ref: APP/R4408/W/18/3212127
Land off Lowfield Road, Bolton upon Dearne S63 8JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Steve Gamble, Gleeson Developments Limited against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2017/0638, dated 2 May 2017, was refused by notice dated 27 June 2018.
- The development proposed is erection of 97 houses with garages and/or parking spaces together with the provision of open space and associated roads and sewers.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has provided an undated but otherwise completed planning obligation by way of a unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (the UU), which would secure financial contributions towards affordable housing, primary education, open space and highway improvements. I will address this issue below.

3. Since the date of the decision the Barnsley Local Plan 2019 (the Local Plan) has been adopted and therefore this appeal is determined in accordance with that Plan. The Council now relies on Policies T4 and D1 of the Local Plan in place of the former Policies CSP26 and CSP29 respectively of the Barnsley Local Development Framework Core Strategy 2011 (the Core Strategy) referred to in the decision notice. The parties have had the opportunity to comment on the effect of the Local Plan on the decision and I have taken all comments into consideration in this decision.

4. Since the date of the Council's decision, the National Planning Policy Framework 2018 (the Framework) has been published and has effect. The parties have had the opportunity to make representations on the effect of the Framework on the application and I have taken all comments into consideration in this decision.

Main Issues

5. The main issues are the effect of the driveway surfacing proposed for the development on:

a) highway safety; and

b) the appearance of the area, with particular regard to the displacement and spillage of loose material.

Reasons

6. The appeal site comprises a large open area of land adjacent to a recently developed housing estate of similar concept. The proposal would provide for 97 new detached and semi-detached dwellings with private rear gardens and either parking spaces or access drives and attached or integral garages to the front and side of the properties. The estate would be arranged along a central road running roughly west to east with two cul de sacs branching off to the north of the road, two on the southern side, and a fifth, split cul de sac at the eastern end of the road.

7. The appeal is largely a resubmission of an earlier scheme that was refused and unsuccessfully appealed[1]. That earlier appeal addressed a number of matters beyond the main issues in this case but these appear to be largely resolved between the parties. The remaining issues centred on the surfacing materials proposed for the parking areas and driveways for garages. In the previous appeal these would have comprised a 1.5 metre bitumen apron and thereafter a '*38mm [depth] of 15-20mm angular crushed aggregate to BS EN 13242 rolled and compacted on cement dust layer (dust evenly to light grey finish) on 250mm Type 1 stone sub-base'.*

8. The Inspector refused that appeal because of the tendency of the aggregate to become displaced and spill from the drives and parking spaces onto the footpath and road surface. The Inspector concluded that the spillage posed an unacceptable risk to the safety of pedestrians from tripping and slipping and to cyclists from skidding. The Inspector also concluded that the spillage coupled with the unfinished and temporary look of the aggregate and the propensity of weeds to grow through the aggregate created an untidy appearance that was detrimental to the character and appearance of the estate as a whole. The Inspector's decision is a material consideration to which I attach significant weight.

Highway Safety

9. Policy T4 of the Local Plan seeks to ensure that developments are designed to provide all transport users within and surrounding the development with safe, secure and convenient access and movement. The Council's New Housing Development Supplementary Planning Document 2012 and Parking Supplementary Planning Document 2012 (the SPDs) require compliance with the South Yorkshire Residential Design Guide (the SYDG), which states that '*private single and shared driveways should be surfaced with bound materials to prevent any stones, gravel or similar items from being deposited on the adoptable area; where used they must be surfaced with a bound graded material'*. The SPDs and by extension the SYDG, are material considerations to which I attach significant weight.

10. The appellant states that by reason of its shape the angular aggregate would lock the top layer to the bottom layer. From my site visit it was apparent that displacement of aggregate is an ongoing problem in the earlier, extant

[1] APP/R4408/W/17/3170851

development with spillage evident in a number of the small cul de sacs and on the main road through the site[2]. There was also evidence that the passing and repassing of vehicles over loose material had worn grooves into the aggregate and exposed the sub-base on a number of driveways. The evidence of spillage does not support the appellant's contention.

11. Following resubmission of the scheme, the appellant provided a revised specification for the private drives to the garages to include a double row of 500 x 600 mm paving flags laid 600mm wide. In principle, the paving flags would extend from the rear side of the pavement to the front elevation of the proposed houses. In addition, all shared drives would be surfaced with bitumen. The specification was further amended as part of the appeal process to include a weed resistant membrane. The Council has had the opportunity to comment on this and no party would suffer any prejudice by my taking the amended plans into account.

12. The appellant provided evidence to show that the wheels of vehicles entering and leaving drives would be carried on the flags thereby preventing contact with the aggregate. However, the analysis does not show the design speeds or the minimum turning radius of vehicles and is therefore of limited assistance. The Council's Highways Officer undertook an analysis using the same start and finish positions as the appellant's plans and assumed a reasonable forward design speed of five km/h, a reverse design speed of 2.5 km/h and a minimum turning radius of ten metres. The Council's analysis showed that vehicle paths differed significantly from those in the appellant's evidence with wheels running on aggregate at some point for most if not all of the suggested manoeuvres. Even if the appellant's drawings show some potential outcomes, I am satisfied that the Council's evidence provides an accurate analysis.

13. The appellant's submission is predicated on the assumption that future occupiers would park cars in a specific manner at all times and in all conditions, which is improbable. I therefore consider it likely that wheels will at least occasionally track across the aggregate notwithstanding the paving flags. The flags would also not account for other objects such as wheelie bins being taken across and dragging the aggregate. It is therefore likely that aggregate would spill from the drives onto the footpath and road surface.

14. Drawing No. 0908-18 appears to show paving flags provided for the garage drives of roughly three quarters of the proposed houses. However, the specification and drawings also state that where no garages are constructed surfaces would remain as crushed aggregate. Drawing No. 0908-18 shows that some parking areas without garages would have no flags laid and where garages are attached rather than integral flags would not in all circumstances extend the full length of the drive. Where there are no flags or a limited length the problem of aggregate spillage seen at the adjacent development would be likely to occur.

15. While no accident data has been provided, I note the observation of the Inspector in the earlier appeal[1] that incidents such as skidding and slipping would be unlikely to be reported to the police so are not captured by accident data. The Inspector then noted that this does not mean it is acceptable to tolerate the potential for such accidents. I have reached a similar conclusion to

[2] Barrow Skye, Smithy Croft, Meadow Croft, Prior Croft and Prior Way

the Inspector. The potential for such accidents would have an unacceptable impact on highway safety.

16. The appellant states that purchasers are given a manual (the Gleeson Manual) requiring the clearing of aggregate from footpaths and roads. I also reach a similar conclusion to the Inspector in the earlier appeal[1] that not all residents would follow the Gleeson Manual to clear aggregate from footpaths and the road. For those who do this would be a weekend task and unlikely to be carried out in winter months during the week when residents might return from work in hours of darkness. It also follows that I consider such an arrangement to be unsatisfactory and that the proposed surfacing arrangements would provide an unsafe environment for pedestrians and cyclists due to an unacceptable risk of tripping or slipping and skidding.

17. Therefore, the proposal would not accord with the requirements of Policy T4 of the Local Plan to provide safe, secure and convenient access and movement or with the advice in the SPDs and the SYDG. The proposal would also not be in accordance with the advice in paragraph 109 of the Framework.

Character and Appearance

18. From my site visit to the adjacent development it was clear that the exterior appearance of buildings, paths and roads reflected a high standard of finishing. By contrast, the use of irregular and relatively large pieces of aggregate for the surface of drives gave an unfinished impression. The Inspector in the appeal relating to the previous iteration of the proposed scheme[1] described this as *'very temporary in appearance'* resulting in the estate looking *'like it had not been finished'*. I reach a similar conclusion.

19. Having found that the displacement and spillage of aggregate is likely to occur, I also conclude that the presence of such material on the footpath and road surfaces would look untidy and would have a detrimental impact on the overall appearance of the proposed development.

20. The addition of a weed resistant membrane should inhibit initial weed growth but wheels tracking across the aggregate would be likely to tear the membrane resulting in weed growth becoming likely. If the significant grooving seen in the adjacent development occurs, as would be likely on those drives with limited or no paving flags, then the membrane is likely to become exposed and torn, or simply worn through. The proposed design of the drives is therefore likely to result in weed growth on the drives notwithstanding the inclusion of the membrane. As with the weed growth evident in the neighbouring estate, such growth would have a detrimental impact on the character and appearance of the area.

21. I note that the Gleeson Manual recommends raking to deal with weeds but this would be likely to disturb the compacting of the aggregate and hasten displacement and spillage.

22. There was evidence that the passing and repassing of vehicles over loose material had shifted the foundation of utility covers on drives in the adjacent estate resulting in some being cracked or broken or no longer level. Examples of this can be seen between 10 and 12 Priory Croft and between 1 and 3 Smithy Croft. The tracking of wheels onto the aggregate is likely to have a

similar effect on the flags eventually creating an uneven and unsightly appearance.

23. Therefore, the proposed development would not accord with Policy D1 of the Local Plan, which seeks to ensure that developments are of high quality design making the best use of high quality materials and include a comprehensive and high quality scheme for hard and soft landscaping.

Unilateral Undertaking

24. Planning obligations should only be sought where they meet the tests in paragraph 56 of the Framework. Policy I1 of the Local Plan provides that developments must be supported by appropriate physical, social, economic and communications infrastructure. Developments must contribute as necessary to meet all on- and off-site infrastructure requirements to enable development to take place satisfactorily. The Policy also provides that where the necessary provision is not made directly by the developer, contributions would be sought through a planning obligation.

25. The Council is likely to be reliant on developers for the provision of affordable housing. The appellant has stated a preference for affordable housing to be provided off-site and the UU provides for the payment of a commuted sum of £250,000. This figure was agreed with the District Valuer as an appropriate sum under the previous local development plan which required a 15 percent contribution towards affordable housing. The overall provision of affordable housing is justified by Policy H8 and is directly related to the development. No other figure beyond the agreed figure has been proposed.

26. While Policy H8 calls for a ten percent contribution, the agreed figure represents a bargain between the Council and the appellant rather than an exact contribution that would be realised from on-site provision. Therefore, I consider the sum to be fairly and reasonably related in scale and kind to the development. To ensure that the need for affordable housing is met I consider that the commuted sum is necessary to make the development acceptable.

27. A small children's play area would be provided on-site but this would not meet the requirements of the Council's Open Space Provision on New Housing Development Supplementary Planning Document 2012 (the Open Space SPD) or compensate for the overall loss of green space. The UU provides for a commuted sum of £162,345.04 to fund improvements to other green infrastructure as an alternative to full on-site provision. The provision of public open space is justified by Policy GS1 of the Local Plan and the Open Space SPD so is directly related to the development and I consider the sum to be fairly and reasonably related in scale and kind. To ensure the amenity of future occupiers of the site, I consider that the provision of a commuted sum in lieu of public open space is necessary to make the development acceptable.

28. The additional housing is likely to create problems for users of Lowfield Road due to increased traffic using the hump-backed bridge crossing the nearby railway line and exacerbating existing congestion for traffic exiting the junction between Station Road and Angel Street. The parties have agreed a contribution of £210,000 towards the cost of installing traffic signals on the bridge. The contribution towards measures to mitigate problems of safety or efficiency of the highway is justified by Policy T4 of the Local Plan so is directly related and is fairly and reasonably related in scale and kind to the

development. To ensure the safety and convenience of future occupiers and other road users the sum is necessary to make the development acceptable.

29. The Council's Education Department has identified a shortfall in existing primary school places. It is reasonable to assume that the proposed development would yield additional requirements for school places for the children of future occupiers and a contribution towards education facilities at the local primary school is therefore directly related to the development. An agreed figure of £147,504 has been included in the UU. I consider the contribution to be fairly and reasonably related in scale and kind to the development. I consider that the contribution is necessary to make the development acceptable to ensure adequate educational provision for future occupiers.

30. There is no evidence before me that the pooling restrictions have been reached in respect of the provision of open space or the improvements to Lowfield Road. However, while I consider that the sums would be necessary to make the development acceptable in planning terms, the UU would not overcome the harm to highway safety and the character and appearance of the area that would arise from use of the appellant's preferred driveway surfacing.

Other Matters

31. The Council has referred in evidence to a number of developments completed or under construction by appellant and to an apparent failure to comply with a condition relating to the surface treatment of drives and parking areas. These other developments are not directly comparable with the proposed scheme and any failure to adhere to conditions is a matter for the Council as an enforcing authority.

32. The proposed sub-base in the revised driveway specification is described as a DOT Type 3 stone sub-base as opposed to the Type 1 sub-base considered in the earlier appeal[1]. A Type 3 sub-base provides for greater permeability, faster drainage and greater holding capacity than a Type 1 sub-base. The appellant states that this element of the driveway design coupled with the proposed aggregate would provide a benefit in terms of sustainable drainage. However, the appellant's flood risk assessment (FRA) states that the site has only moderate to poor infiltration rates and that infiltration drainage would not be a feasible option. The scheme proposes surface water to drain by way of the sewer network and the benefit of the aggregate in assisting with drainage would be negligible. I therefore attach very little weight to the stated infiltration benefits of the proposed aggregate.

33. The appellant states that the aggregate would have a lower carbon footprint than bitumen surfaced drives but does not identify the source or any independent verification of the figures relied upon and I therefore attach little weight to the claim. In any event, while there might be a carbon benefit this would not be sufficient to outweigh the risk to pedestrian and other road-user safety or the harm to the character and appearance of the area.

34. I attach little weight to the Environment Agency and DCLG Guidance on the Permeable Surfacing of Front Gardens 2008 as this refers to the permitted development rights[3] enjoyed by individual homeowners to create hard surfaces

[3] Class F, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015

incidental to the enjoyment of a dwellinghouse. It is not intended for new housing development and does not address development on the scale proposed. Moreover, the guidance was promulgated following the serious flooding that affected the United Kingdom in 2007 and as the FRA notes the appeal site is in Flood Zone 1 and did not suffer from flooding in any of the serious inundations of the 20th and 21st centuries.

35. The appellant also refers to the economic benefits that would arise from the proposed development during and after construction. However, as these would accrue from a similar development elsewhere or from development of the appeal site with a different driveway surface, I give very little weight to this argument.

36. The parties have referred me to a number of appeal decisions for different locations[4] where the appellant's preferred driveway surfacing was considered. While some of these appeals were successful others took specific issue with the surface material. Clearly knowledge of the impact of drives constructed using the appellant's preferred method has evolved and demonstrates the need to determine each appeal on its own merits.

37. The appellant provided evidence from a development in Kirkby-in-Ashfield in support of its argument that the paving flags would prevent the displacement and spillage of aggregate. However, the evidence before me shows that the Kirkby-in-Ashfield development used a concrete edge restraint and the specification used therefore differs from the proposed specification and as such is not directly comparable.

38. The appellant states that each dwelling is sold subject to a number of covenants. Covenants include a requirement to keep the gardens and grounds of the dwelling tidy and in good order and a restrictive covenant not to allow gravel or stone chippings to spill from any drive on to the highway or footpath. The appellant also states that breaches are rigorously enforced with warnings and eventual court action if covenants are repeatedly ignored. However, deterioration in the surface treatment for the parking and garage access creates an immediate risk to highway safety, whereas resolution of persistent problems by recourse to legal action is likely to be comparatively slow to address the problem. Moreover, once aggregate spills it is likely to move more freely on footpaths and road surfaces which might present evidential problems establishing the source of the spillage. I therefore attach little weight to this argument.

39. At the time of issuing the appeal the appellant argued that the Council was unable to demonstrate a five-year supply of deliverable housing sites. Since then the Local Plan has been adopted and the Council is able to demonstrate a five-year housing land supply. It is therefore unnecessary to consider the 'tilted balance' in paragraph 11 of the Framework.

40. Policies T4 and D1 of the Local Plan do not differ from Policies CSP26 and CSP29 respectively of the Core Strategy in any material way that would impact on the proposal. While the Policy did not come into force until January 2019, it is the relevant Policy for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 1990. In any event, had this appeal been

[4] APP/M3455/A/04/1165901; APP/W3005/A/06/2014327; APP/R4408/W/17/3170208; APP/M4510/W/17/3175245; and APP/J4423/W/17/3189933

determined under the former Policies CSP26 and CSP29 I would have reached the same conclusion on the main issues.

Conclusion

41. For the reasons given and taking account of all other material considerations, I conclude that the appeal should be dismissed.

D Guiver

INSPECTOR