
Appeal Decision

Site visit made on 18 March 2018

by A Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2018

Appeal Ref: APP/R4408/W/17/3191617

Land at Wentworth Street, Birdwell, Barnsley, South Yorkshire, S70 5UN

- 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 John Dunn against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2017/1054, dated 25 April 2017, was refused by notice dated 30 October 2017.
- The application sought planning permission for development of 13 dwellings without complying with conditions attached to planning permission Ref 2016/0169, dated 15 June 2016.
- The conditions in dispute are Nos 1 and 12. Condition 1 states that "The development hereby approved shall be carried out strictly in accordance with the plans (Nos 15-067-01-E, 15-067-02-A, 15-067-04-A & 15-067-05-A) and specifications as approved unless required by any other conditions in this permission".
- The reason given for condition 1 is: In the interests of the visual amenities of the locality and in accordance with LDP Core Strategy Policy CSP 29, Design.
- Condition 12 states: "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.
- The reason given for condition 12 is: "To ensure proper drainage of the area in accordance with Core Strategy Policy CSP40, Pollution Control and Protection".

Decision

1. The appeal is allowed and planning permission is granted for development of 12 dwellings at Land at Wentworth Street, Birdwell, Barnsley, South Yorkshire, S70 5UN in accordance with application Ref 2017/1054, dated 25 April 2017 without compliance with conditions 1 and 12 previously imposed on permission Ref 2016/0169, dated 15 June 2016 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:

- 1) The development hereby approved shall be carried out strictly in accordance with the plans (Nos 15-067-01-I, 15-067-02-A, 15-067-03-C, & 15-067-06) and specifications as approved unless required by any other conditions in this permission.
- 2) Within 3 months of the date of this permission full foul and surface water drainage details including a scheme which limits the discharge to the public sewer to no more than 18 l/s, and a programme of works for implementation, shall be submitted to the Local Planning Authority for approval. 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.

Procedural Matters

2. Permission was originally granted in 2005 for 16 dwellings. The parties agree that this was not subject to a drainage condition and is extant. The appeal relates to a modification of the layout approved under application ref 2016/0169 which involves an alteration of house types on plots 12 and 13, and a replacement of plots 10 and 11 with a single bungalow, thereby reducing the overall number of dwellings to 12. For this reason I have altered the description of development to reflect this.
3. I am advised that an identical application was approved under application ref 2017/0569 allowing the proposed variations in layout and house type and subject to the following condition:

"The amount of curtilage surface water to be discharged to the public 225mm diameter surface water sewer shall not exceed a restricted rate of 18 (eighteen) litres/second."

The reason given for the condition was:

"To ensure proper drainage of the area in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection".

The purpose of this appeal is therefore in effect to seek the removal of drainage restrictions on the development.

Main Issue

4. Accordingly, taking into account the existing permission for the scheme, the main issue for the appeal is whether the proposal would provide an appropriate drainage strategy for the site.

Reasons

5. The application which is the subject of this appeal was refused on the basis of a single reason for refusal which stated: "In the opinion of the Local Planning Authority the removal of condition 12 of application 2016/0169 (reduce surface water run off by 30%) and the omission of reduced surface water flow rates would result in an unrestricted surface water flow from the development site into the public sewer network. This would increase the risk of flooding, contrary to CSP3 Sustainable Drainage Systems, CSP4 Flood Risk and CSP 40 Pollution Control and Protection."

6. The appellant has stated that as the original 2005 permission, which I understand is extant, did not have a drainage condition attached to it, it was unreasonable to impose drainage restrictions on the site through a subsequent permission. Between the grant of consent in 2005 and the variation of the scheme in 2016 there have been significant changes in local and national policy, in the form of the introduction of the *National Planning Policy Framework* (the Framework) and the adoption of the *Barnsley Core Strategy* (Core Strategy). Both seek to respond to climate change by reducing surface water run-off from new development in order to reduce the risk of flooding.
7. Although the Core Strategy pre-dates the Framework, in seeking to reduce the risk of flooding it is consistent with the core principles and paragraph 99 of the Framework which seek to take account of climate change in the long term including the risk of flooding. The condition in dispute seeks to reduce surface water run-off from the site by 30%. Insofar as it seeks to respond to the effects of climate change in order to reduce flood risk elsewhere, I see nothing unreasonable or irrelevant in this aim, and consider the need to mitigate the effects of new development to be entirely necessary.
8. Taking into account local and national policy I therefore consider that a drainage condition is reasonable for the development, even if such a condition was not originally imposed in 2005. In this regard, I note the comments from Yorkshire Water. They have advised that they have no objection to the removal of condition 12 provided that the discharge to the public sewer was limited to no more than 18 l/s. The Council Officer's report also appears to accept this rate of discharge from the site. Whilst I recognise that a greater reduction in peak flows would have benefits to the wider area in terms of reducing flood risk, on the basis of the advice of Yorkshire Water I am satisfied that a discharge at this level would not increase the risk of flooding, and so would not conflict with the thrust of policies CSP3 and CSP 4 of the *Barnsley Core Strategy*. Neither would the proposal lead to an increased risk of pollution which is the aim of policy CSP 40.

Other Matters

9. In coming to a view I have considered whether the 2005 permission represents a valid fallback for the appellant. However, whilst the parties agree that this permission was extant in 2016, it doesn't appear to me that the appellant has any clear intention to build the original scheme. I have no evidence before me that the earlier scheme can now be implemented given that construction on site of the later approval was well advanced at the time of my visit. As such, I give no weight to the fallback in favour of the proposal. I note the material submitted by a local resident in relation to tree protection, but as the original conditions would be imposed on any subsequent consent in this regard, this matter does not alter my consideration of this case.

Conclusion

10. Planning Practice Guidance directs that planning conditions can be used in the case of otherwise unacceptable development to make it acceptable. In this case I consider a drainage condition to be necessary, and am satisfied, based on the information put to me, that the limits given by Yorkshire Water are appropriate for the site. As such the use of an appropriately worded planning condition would enable the scheme to meet the requirements of local and national guidance in relation to drainage and the need to respond to climate change.

11. I am aware that allowing the appeal with a drainage condition does not, in effect, alter the current restrictions on site. However, I am obliged to deal with the appeal on the basis on which it was advanced, regardless of whether another planning permission already exists.
12. Accordingly, having regard to all other matters raised, the appeal is allowed. I have therefore granted a new permission for the development, with a condition relating to drainage which reflects the advice of Yorkshire Water which I consider is necessary to ensure the safe and efficient drainage of the site. I have also altered condition 1 to reflect the amended plans as provided to me.

Anne Jordan

INSPECTOR