

Appeal Decision

Site visit made on 4 July 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 23 September 2016

Appeal Ref: APP/G5180/W/16/3147877

land between Main Road A233, Vincent Square, Barwell Crescent and Moxey Close, Biggin Hill TN16 3GD

- 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 Taylor Wimpey South West Thames against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/00508/FULL1, dated 4 February 2015, was refused by notice dated 27 October 2015.
 - The development proposed is the erection of 16 dwellings (4 x 2 bed flats, 3 x 3 bed houses and 9 x 4 bed houses) with access from Moxey Close and Barwell Crescent together with 43 car parking spaces, cycle storage and landscaping, to include the stopping up of an existing access onto the A223.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 16 dwellings (4 x 2 bed flats, 3 x 3 bed houses and 9 x 4 bed houses) with access from Moxey Close and Barwell Crescent together with 43 car parking spaces, cycle storage and landscaping, to include the stopping up of an existing access onto the A223 at land between Main Road A233, Vincent Square, Barwell Crescent and Moxey Close, Biggin Hill TN16 3GD in accordance with the terms of the application, Ref DC/15/00508/FULL1, dated 4 February 2015, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. As originally submitted, the proposal was for the erection of 17 dwellings. However, during the course of the application, the appellant submitted amended plans which reduced the quantum of development to 16 dwellings. The development description set out in the banner heading and decision, above, has been taken from the Council's decision notice and I am satisfied that this is the basis upon which the Council considered the proposal, and therefore so too shall I.
3. A copy of a signed and executed section 106 planning obligation in respect of affordable housing and financial contributions towards a heritage centre, health and education accompany the proposal. I return to this matter below.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of residents of Moxey Close and Barwell Crescent, with particular regard to disturbance arising from traffic accessing the site.
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Reasons

5. The appeal site, which previously formed part of the RAF Biggin Hill Married Quarters, is a roughly triangular shaped site with a substantial, if heavily wooded and screened, road frontage to the A223 Main Road. To the rear, the site shares boundaries with Vincent Square to the west and Moxey Close and Barwell Crescent, to the north, which form part of the Leavesden Estate.
6. Although at present the now cleared, vacant and overgrown site has a road access onto the A223 Main Road, it is proposed that vehicular access to the proposed development would be taken via Barwell Crescent and Moxey Close. The junction of the former with the A223 Main Road is some distance to the north of the appeal site. Via a gated access from the A223 Main Road, Barwell Crescent loops around three sides of an extensive area of open green space within the Leavesden Estate, terminating just short of an existing tree belt that separates the estate from the A223 Main Road corridor.
7. Moxey Close itself is a short, residential cul-de-sac leading off Barwell Crescent serving a total of four detached dwellings. It is a shared surface design, the short road culminating with a raised kerb and a narrow grassed strip of land before a timber fence marking the boundary with the appeal site. A further dwelling, fronting Barwell Crescent, stands at the entrance to Moxey Close but presents a largely blank (the exception being a small first floor window) gable elevation towards Moxey Close.
8. Whilst Moxey Close is a small residential cul-de-sac, Barwell Crescent provides access along its length to various other residential streets. Although the level of traffic passing along Barwell Crescent towards Moxey Close may well tail off towards the latter, it is not quite the quiet and tranquil setting that the Council contend. From my observations during my site visit, the A223 Main Road is a busy road. Notwithstanding the tree belt between the A223 Main Road and the end of Barwell Crescent, traffic noise from it was clearly perceptible. Further, the presence of London Biggin Hill airport on the opposite side of the road is also likely to have a significant influence of the local noise environment.
9. Although the level of traffic movements along Moxey Close would increase from the current baseline¹, I am satisfied that the appellant has demonstrated that the extent of the increase has been shown to be sufficiently low during the peak AM and PM hours to avoid harm to the living conditions of residents on Moxey Close. Outside these peak hours, concern has also been raised regarding the effect of visitor, service and delivery vehicles on the residential environment of Moxey Close. However, such levels are also likely to be correspondingly low.
10. The findings of the appellant's Transport Statement (TA) have not, however, been challenged. Nor have I been presented with any other evidence to substantiate the alleged harm that it is claimed would arise from access to the proposed development being taken via Barwell Crescent and Moxley Close. It is common ground between the main parties that both Moxey Close and Barwell Crescent are technically capable of serving an additional 16 dwellings, and as such I do not consider it unreasonable that access should be taken to the appeal site in the manner proposed. Nor, in the context of the surrounding noise environment, would the limited additional vehicle

¹ Transport Statement – Ardent Consulting Engineers, Project V480, Report Ref. No. V480-02D May 2015

movements associated with the proposal cause harm to the living conditions of residents of Moxey Close or Barwell Crescent in terms of noise disturbance.

11. Thus, I conclude on the main issue that the proposal would not cause harm, by virtue of noise or disturbance, to the living conditions of existing occupiers of Moxey Close or Barwell Crescent and I find no conflict with Policy BE1, and specifically BE1(v), of the Bromley Unitary Development Plan. This policy expects all development proposals to be of a high standard of design and layout and, with particular reference to BE1(v), to respect the amenity of occupiers of neighbouring buildings and ensure that their environments are not harmed by, amongst other things, noise and disturbance

Section 106 Planning Obligation

12. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations) require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
13. There is a signed and completed planning obligation which seeks to ensure that the affordable housing units provided will be in the form of shared ownership housing. The planning obligation also requires the appellant to make financial contributions towards health and education, and drawing on the requirements and clauses of section 106 planning obligations attached to previous permissions², towards facilitating the erection of a Heritage Centre marking the role of RAF Biggin Hill. I note that the Council have confirmed their agreement to the planning obligation and that it has been signed and executed by both parties.
14. I have considered the planning obligation that has been submitted. I find that the measures set out in the obligation in respect of securing the provision of affordable housing would meet the tests set out in paragraph 204 of the Framework and Regulation 122 of the CIL Regulations in terms of it being necessary, directly related to the development and fairly related in scale and kind. I am also satisfied that the provisions in respect of the further contribution towards the heritage centre would meet these tests, drawing on the requirements of previous planning obligations. I can therefore reasonably take these matters into account.
15. With regard to health and education contributions, I have not been presented with any evidence setting out the justification for these matters, and thus it has not been demonstrated that these are necessary to make the development acceptable. I therefore attach no weight to these specific matters in reaching my decision.

Other Matters

16. The appeal site does not feature any listed buildings or structures within its boundary, nor does it lie within a Conservation Area. There are however listed buildings in Vincent Square to the west and within the RAF Biggin Hill quarters on the opposite side of the A223 Main Road to the south. The site adjoins the RAF Biggin Hill Conservation Area along the site's western boundary.

² 04/02322/OUT & 04/02334/OUT

17. I have a statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special regard to the desirability of preserving the building or its setting. Furthermore, paragraph 137 of the National Planning Policy Framework states that proposals that preserve those elements of the setting [of a conservation area] that make a positive contribution to or better reveal the significance of the asset should be treated favourably.
18. The Council have concluded that the proposal would not harm the setting of the listed buildings within Vincent Square, or the setting of the conservation area. I have not been presented with any reason to disagree with those conclusions and, from my observations, the proposal would have a neutral effect on the setting of the listed buildings and the conservation area, thereby preserving the settings of both.
19. I note the Council's submissions in respect of a current application for the appeal site³ that access from the A223 Main Road would be achievable. However, that application has not been determined and I have to consider the current appeal on its merits. I have not been presented with any technical reasons to suggest that access cannot satisfactorily be achieved via Barwell Crescent and Moxey Close, nor to substantiate concerns that such an arrangement would be prejudicial to highway or pedestrian safety. Matters relating to rights of access are private matters to which I accord limited weight. I have concluded in respect of the main issue that to do access the proposed development in the manner set out would not cause harm, by virtue of noise or disturbance, to the living conditions of existing occupier, and these other matters do not lead me to conclude otherwise.
20. Local residents object to the proposal on a wider basis, including in respect of property devaluation, the wider use of the private green on Barwell Crescent, the separation of the development from the Leavesden Estate, the loss of the heritage centre site, loss of privacy, the effect of the proposal on the character and appearance of the Leavesden Estate, security concerns and health concerns over the proximity of the site to a busy main road and airport.
21. However, devaluation is not a material planning consideration to which I can attach any significant weight. With regard to the other concerns, these did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify the dismissal of the appeal. The information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an overriding issue warranting the dismissal of the appeal.

Conditions

22. I have considered the suggested conditions in the light of the Framework and Planning Practice Guidance, and have made minor amendments to them where necessary and in the interests of clarity. In addition to the time limit condition, a condition specifying the approved plans is necessary in order to provide certainty.
23. A condition is necessary in order to ensure an appropriate Construction Management Plan in the interests of highway safety and the living conditions of

³ 16/02685/FULL1 - Ardent Consulting Engineers : Transport Statement Report Ref. No. V485-02, June 2016

neighbouring residents. I have not added a separate condition regarding details of a wheel wash facility, as suggested by the Council, but have instead added elements of the suggested wording of that condition to the condition regarding the Construction Management Plan. Further conditions regarding arrangements for the stopping up of, and reinstatement of land at, the existing access from the A223 Main Road, and details of the links from the site to the local path and cycleway network are necessary in the interests of highway and pedestrian safety and encouraging the use of alternative modes of transport. I have also imposed conditions requiring details of bicycle parking and storage, electric car charging points and the retention of car parking provision for similar reasons.

24. Given the previous use of the appeal site, it is reasonable to attach conditions regarding contaminated land and piling construction methods in the interests of the living conditions of future occupiers of the approved dwellings. For the same reasons, and in the interests of reducing the impact of flooding both to, and from, the proposed development, I attached a condition in respect of surface water drainage details and methods.
25. Further details of soft landscaping works, particularly in respect of that part of the western boundary adjacent to the rear of plot 16, as well as general requirements regarding the implementation and maintenance of landscaped areas are necessary in order to maintain and enhance the character and appearance of the local area. So too are conditions relating to the detail of external materials, general boundary treatments and existing and proposed finished slab levels, for similar reasons.
26. A condition requiring work to be carried out in accordance with identified mitigation measures, relating to biodiversity and ecology, is necessary to ensure the favourable conservation status of wildlife and to avoid adverse ecological impact on the natural environment.
27. I have not imposed the requested condition regarding the removal of permitted development rights. Whilst such a condition would be consistent with the aims and purposes of Green Belt designation, the nature of the area surrounding the appeal site is such that I do not find such a condition to be necessary in this instance.

Conclusion

28. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 13.064.1000 Rev A; 13.064.1001 Rev U; 13.064.1002 Rev J; 13.064.3001 Rev J; 13.064.7001 Rev H; 13.064.7002 Rev G; 13.064.7003 Rev F; 13.064.7004 Rev B; 13.064.7005 Rev F; CSa/2214/102 Rev D; CSa/2214/101 Rev E; 8161/02 Rev B; and V480-D01 Rev B.
- 3) Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation; details of a suitable hardstanding for wash-down facilities for cleaning the wheels of vehicles and measures to respond to any accidental accumulation of mud of the highway caused by such vehicles, but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details and shall be retained as such while the development hereby permitted is being carried out.
- 4) Prior to the occupation of the dwellings hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use and no permitted development, whether permitted by the Town and Country Planning (General Permitted Development Order 2015 (or any Order amending, revoking and re-enacting this Order) or not, shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.
- 5) Details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of development, and the development shall be carried out strictly in accordance with the approved levels.
- 6) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Before any part of the development hereby permitted is first occupied boundary enclosures of a height and type to be approved in writing by the Local Planning Authority shall be erected in such positions along the boundaries of the site(s) as shall be approved and shall be permanently retained thereafter.
- 8) The development permitted by this planning permission shall not commence until a surface water drainage scheme for the site based on sustainable drainage principles, and an assessment of the hydrological

and hydro geological context of the development has been submitted to, and approved by, the Local Planning Authority. The surface water drainage strategy should seek to implement a SUDS hierarchy that achieves reductions in surface water run-off rates to Greenfield rates in line with the Preferred Standard of the Mayor's London Plan. The development shall thereafter be carried out, and subsequently maintained, in complete accordance with the agreed details.

- 9) Prior to the commencement of ground works required as part of the development hereby permitted, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the local planning authority:
 - a) a site investigation scheme, based in the Phase 1 report, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
 - b) the results of the site investigation and detailed risk assessment referred to in (a) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and
 - c) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (b) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.
- 10) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.
- 11) Prior to occupation of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, if appropriate, and for the reporting of this to the local planning authority. Any long-term monitoring and maintenance plan shall be implemented as approved.
- 12) The existing access shall be stopped up at the back edge of the highway before any part of the development hereby permitted is first occupied in

- accordance with details to be submitted to and approved in writing by the Local Planning Authority. The approved details shall be permanently retained as such.
- 13) Details of the new footpath link to Main Road and the re-instatement of the verge and footway shall be submitted to, and be approved in writing by, the local planning authority and these arrangements shall be substantially completed before the development hereby permitted is first occupied.
 - 14) Before any part of the development hereby permitted is first occupied, bicycle parking (including covered storage facilities where appropriate) shall be provided at the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority, and the bicycle parking/storage facilities shall be permanently retained thereafter.
 - 15) Before any part of the development hereby permitted is first occupied electric car charging points shall be provided to a minimum of 20% of car parking spaces with passive provision of electric charging capacity provided to an additional 20% of spaces.
 - 16) Prior to occupation of the development, details of a scheme of 'screening' tree planting and soft landscaping adjacent to the western site boundary at the rear of plot 16 shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in conjunction with the approved landscaping scheme and any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.
 - 17) The landscaping scheme as shown on the approved drawings shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species to those originally planted.
 - 18) Unless otherwise agreed in writing by the Local Planning Authority, the trees hereby approved as part of the landscaping scheme shall be of standard nursery stock size in accordance with British Standard 3936:1980 (Nursery Stock art 1:Specification for Trees and Shrubs), and of native broad-leaved species where appropriate.
 - 19) The development hereby permitted shall be carried out in complete accordance with the arboricultural impact assessment, tree protection plan and method statement accompanying the application (updated 1st June 2015) and the tree protection methods agreed shall be maintained to the Local Planning Authority's reasonable satisfaction until the completion of the development.
 - 20) Whilst the principles and installation of sustainable drainage schemes are to be encouraged, no infiltration of surface water drainage into the ground is permitted without the prior approval in writing by the local

planning authority. Approval may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

- 21) Piling or any other foundation designs using penetrative methods shall not be permitted without the prior approval in writing by the local planning authority. Approval may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. Where soil contamination is present, a risk assessment should be carried out in accordance with Environment Agency guidance 'Piling into Contaminated Sites'. Piling activities will not be permitted on parts of a site where an unacceptable risk is posed to controlled waters.
- 22) The development hereby permitted shall be carried out in complete accordance with the survey, mitigation and biodiversity enhancement recommendations outlined in the Ecological Appraisal document accompanying the application. Any deviation from these recommendations shall be submitted to and approved in writing by the Local Planning Authority prior to works commencing.