

Appeal Decision

Site visit made on 20 September 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 17th October 2016

Appeal Ref: APP/D4635/W/16/3154308

**Woodthorne, Wergs Road, Tettenhall, Wolverhampton, West Midlands
WV6 8TQ.**

- 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 Phil Grove of David Wilson Homes Mercia against the decision of Wolverhampton City Council.
 - The application Ref 15/00827/RC, dated 2 June 2015, was refused by notice dated 3 February 2016.
 - The application sought planning permission for 58 dwellings (46 houses and 12 apartments) without complying with a condition attached to planning permission Ref 13/01174/RC, dated 13 March 2014.
 - The condition in dispute is No 14 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking, replacing and re-enacting that Order with or without modification) the windows or other form of opening above ground floor level, on the northern and southern elevations of the proposed apartments shall be obscure glazed (to a standard no less than Pilkington Level 4 or equivalent).
 - The reason given for the condition is: In the interests of residential amenity.
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Decision

1. The appeal is allowed and planning permission is granted for 58 dwellings (46 houses and 12 apartments) at Woodthorne, Wergs Road, Tettenhall, Wolverhampton, West Midlands WV6 8TQ in accordance with the application Ref 15/00827/RC dated 2 June 2015, without compliance with condition No 14 previously imposed on planning permission Ref 13/01174/RC dated 13 March 2014 but subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made on the basis that the proposal had not taken place. However, the Council's Officer Report of the 2 February 2016 makes it clear that the obscure glazing as proposed by the application had been inserted. I have set out that the appeal is made in relation to section 73 of the Act rather than section 73(A) on the basis of how the application was made. In effect there is no difference for my consideration of the appeal.
 3. The application included a proposal to have clear glazing within the first and second floor windows on the southern elevation of the apartment block. The reason for refusal on the decision notice did not cite any issue with this part of the proposal and consequently I do not address this matter in my reasoning below.
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4. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented. The 2014 permission¹ is described as a variation of condition 17 of permission 12/01478 in accordance with a revised Energy Strategy. However, as the original permission² was for 58 dwellings (46 houses and 12 apartments) I have used this description in the formal decision and banner heading.
5. The appellant and the Council's Solicitor have confirmed that a Deed of Variation in relation to the original S106 Agreement is not required as the terms and conditions of that agreement have been complied with.

Main Issue

6. Planning permission has been granted for 58 dwellings and the majority of the dwellings are now complete. The appellant wishes to retain the Pilkington Level 1 Glazing in the first and second floor windows on the northern elevation of the apartment block. The main issue is the effect of retaining this glazing on the living conditions of the occupiers of 92 Wergs Road with particular regard to privacy.

Reasons

7. The appeal property is a three storey block of apartments that has recently been constructed as part of a larger housing development set between existing housing on Wergs Road and Woodthorne Road. The surrounding area is predominantly residential and the appeal site is bounded on all sides by housing. There is a tall evergreen hedge and other landscaping including trees on the boundary with the properties in Wergs Road.
8. The northern elevation of the apartment block has a number of windows at first and second floor levels. The windows serve lounges/kitchens and were obscure glazed with Pilkington Level 1 Glazing at the time of my site visit. I noted that the evergreen hedge does not provide screening from the first or second floor windows. However, the other landscaping does provide some screening of views. I acknowledge that in winter months when the landscaping is not in leaf that the level of screening will be reduced.
9. The Council's Residential Development Supplementary Planning Guidance No 3 (SPG) states that a distance of at least 22 metres between opposing windows of normal two storey houses will be encouraged and additional separation may be required for units of greater height. The separation distance between the northern elevation windows and the rear elevation of 92 Wergs Road is about 43 metres³ which far exceeds that recommended in the SPG. Moreover, the Pilkington Level 1 Glazing does obscure views to some extent although the windows are capable of being opened (top hung). Condition No 14 does not control the opening of the windows.
10. Accordingly, given the separation distances and the restricted views available, I consider that the development results in only a limited level of overlooking of 92 Wergs Road. This will not have a significant effect on the living conditions of the occupiers of that dwelling, particularly given the location of the property within a built up area where some degree of overlooking between dwellings

¹ 13/01174/RC

² 12/01478/FUL

³ Taken from Site Layout – drawing No 6215/AOG/01

could reasonably be expected. As such I do not consider it necessary or reasonable to require Pilkington Glazing Level 2 or 4 as suggested by the Council or required by the original condition. It follows that there is no conflict with Policies H6 and D8 of the Wolverhampton Unitary Development Plan which, amongst other things, require a high standard of design for all development with a massing that protects the amenity of neighbouring residents in respect of privacy.

Other Matters

11. Local residents object to the proposal on a wider basis, including harm to the privacy of the occupiers of Woodthorne Road, noise, disturbance and light pollution. These did not form part of the Council's reason for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.

Conditions

12. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
13. I have imposed a condition specifying the relevant drawings as this provides certainty. The conditions in relation to materials, landscaping, bin storage, external lighting and obscure glazing are necessary in the interests of amenity and character and appearance. Given the residential character of the area, it is appropriate that controls are placed upon hours of construction and commercial vehicle movements and that is carried out in accordance with the approved documents in relation to the construction phase. Conditions regarding wildlife and trees associated with the site are necessary to safeguard ecological interests and existing landscaping. The condition in relation to cycle parking facilities is required to promote the use of sustainable transport modes.
14. To reduce the risk of flooding and ensure that any unacceptable contamination risks to humans, controlled waters or the wider environment are minimised I consider that levels, drainage and decontamination conditions are necessary. Conditions in relation to the waste management plan and revised energy strategy are required to minimise waste and in the interests of achieving renewable energy targets. A highways condition for the provision of visibility splays is necessary to ensure highway safety. The conditions restricting permitted development rights are required in the interests of amenity and the character and appearance of the area.

Conclusion

15. In conclusion in its present form condition No 14 is not reasonable or necessary, and so does not meet the tests set out in the National Planning Policy Framework and the Planning Policy Guidance. Accordingly, I conclude that the appeal should be allowed. I have therefore granted a new permission for 58 dwellings with a new condition in place of the disputed one.

D. Boffin

INSPECTOR

- Schedule Attached.-

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: -

Plan Type	Reference	Version No.	Date Received
Proposed Site Plan	11083-P02	D	4/3/13
Bayswater Plans & Elevations	11083-P03	N/A	20/12/12
Layton Plans & Elevations	11083-P04	N/A	20/12/12
Shelbourne Plans & Elevations	11083-P05	N/A	20/12/12
Hertford Plans & Elevations	11083-P06	N/A	20/12/12
Emerson Plans & Elevations	11083-P07	N/A	20/12/12
Emerson Special Plans & Elevations	11083-P08	N/A	20/12/12
Gracedieu Plans & Elevations	11083-P10	N/A	20/12/12
Lichfield Plans & Elevations	11083-P11	N/A	20/12/12
Maddoc Plans & Elevations	11083-P12	N/A	20/12/12
Moorecroft Plans & Elevations	11083-P13	N/A	20/12/12
Evesham Plans & Elevations	11083-P14	N/A	20/12/12
Conservatory Details	11083-P15	N/A	20/12/12
Proposed Apartments Floor Plans	11083-P16	A	14/2/12
Proposed Apartments Elevations	11083-P17	A	14/2/12
Garage Details 1 of 5	11083-P20	N/A	20/12/12
Garage Details 2 of 5	11083-P21	N/A	20/12/12
Garage Details 3 of 5	11083-P22	N/A	20/12/12
Garage Details 4 of 5	11083-P23	N/A	20/12/12
Garage Details 5 of 5	11083-P24	N/A	20/12/12
Moorecroft Plans & Elevations	11083-P25	N/A	20/12/12
Draft Tree Protection Plan	5140-A-03	N/A	20/12/12
Drainage Plan	12037-100	F	10/4/13
Facing Materials Layout	6215/FM/01	E	04/09/13
Section 38 Plan	400	B	06/12/13
Apartment Block Obscure Glazing	6215/AOG/01		03/06/15

2. The development hereby permitted shall be built in those materials indicated on facing materials layout 6215/FM/01 Rev E, unless prior agreement to an alternative has been obtained in writing from the Local Planning Authority.
3. Prior to the occupation of any part of the development hereby permitted the landscaping shall be delivered in accordance with the following approved plans:
- 1219-PL 1 05 Rev F
 - 1219-PL 1 06 Rev D
 - 1219-PL 1 07 Rev D
 - 1219-PL 1 08 Rev D
 - 1219-PL 1 09 Rev F
 - 1219-PL 1 10 Rev E
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), areas of soft landscaping shall not be replaced by the provision of a hard surface nor shall they be used for

- parking or storage, unless otherwise agreed in writing by the local planning authority.
5. The development hereby granted shall be in accordance with proposed levels and drainage plan, 12037-100 Rev.F received on the 10th of April 2013 unless otherwise agreed in writing by the local planning authority.
 6. During the construction phase of this development, operational hours and commercial vehicle movements to or from the site during construction shall be restricted to [0800 to 1800] hrs Mondays to Fridays and [0800 to 1300] hrs Saturdays, and at no time on Sundays or Bank and Public Holidays.
 7. During the construction phase the development shall be built out in accordance with the following approved documents:
 - Pre-commencement check list - ref SHE 02
 - Pre-construction information pack - ref SHE 04
 - Construction Phase Safety, Health and Environmental Plan - ref SHE 05
 - Traffic Management Plan – 6215/TMP/01 Rev A
 8. The development hereby permitted shall be carried out in accordance with the Phase II Geo-environmental Assessment report produced by Georisk Management Reference no.11172/1 - May 2012, unless otherwise agreed in writing by the local planning authority.
 9. The development hereby permitted shall be carried out in accordance with the recommendations of the Protected Species Report, prepared by FPCR, dated July 2012, submitted 29th of January 2013 unless otherwise agreed in writing by the Local Planning Authority.
 10. The approved details of the bin stores and cycle parking facilities for the apartments at the site are shown on plans 11083 P02 F, 11083-111 B and 11083-112 C shall be provided prior to the use or occupation of any of the apartments.
 11. The development hereby permitted shall be carried out in accordance with the recommendations within the Site Waste Management Plan ref 12591, prepared by Reconomy, dated 14 June 2013, unless agreed in writing by the Local Planning Authority.
 12. External lighting details shall be delivered in accordance with Lighting Layout 01 prepared by Candela Light. The approved lighting shall be delivered prior to occupation of the first dwelling.
 13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking, replacing and re-enacting that Order with or without modification) no external lighting shall be erected, other than that set out in condition 12 of this consent, without written permission of the local planning authority. External lighting shall be provided in accordance with the approved details and retained at all times thereafter.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking, replacing and re-enacting that Order with or without modification) the windows or other form of opening above ground floor level, on the north facing side elevation of the apartments shall be obscure glazed (to a standard no less than Pilkington Level 1 or equivalent) and the obscured glazing shall be retained thereafter.
15. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any other revoking, replacing and re-enacting that Order with or without modification) the proposed highway, off Wergs Road, as highlighted brown on drawing no.400 RevB, received on the 6th of February 2013, shall be available for unencumbered public access for lawful use and shall in no way be inhibited or restrained by a gate, fence, wall or other means of enclosure for any reason whatsoever.
16. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any other revoking, replacing and re-enacting that Order with or without modification) those dwellings hereby permitted, shall not be enlarged, improved or altered where the work would be nearer to any highway which bounds the curtilage of the dwellinghouse, than the part of the original dwellinghouse nearest to that highway.
17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking, replacing and re-enacting that Order with or without modification) no gates, fences, walls or other means of enclosure (other than those shown on the approved plans) shall be placed or erected adjacent to any highway.
18. Prior to the occupation of the development hereby permitted, vehicular visibility splays, which ensure that a minimum visibility splay of 2.4 x 66m in both directions at the junction of the proposed access and Wergs Road shall be provided. Thereafter, unless otherwise agreed in writing, the visibility splay shall be permanently maintained free from obstruction to visibility above a height of 1 metre above the level of the adjacent carriageway.
19. The development hereby permitted shall be carried out in accordance with the recommendations of the Revised Energy Strategy (and appendices), prepared by 'Turley Associates' dated November 2013, unless agreed in writing by the Local Planning Authority.
20. The development hereby permitted shall be carried out in accordance with the recommendations of the Arboricultural Assessment, prepared by 'FPCR Environment & Design Ltd', dated July 2012, submitted 20th December 2012, unless agreed in writing by the Local Planning Authority.