

Appeal Decision

Site visit made on 3 January 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 16th January 2017

Appeal Ref: APP/R1038/W/16/3159813 43 Hallgate Lane Pilsley, S45 8HN

- 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 G Barlow of Fairgrove Homes against the decision of North East Derbyshire District Council.
 - The application Ref: 16/00792/FL, dated 26 July 2016, was refused by notice dated 21 September 2016.
 - The application sought planning permission for demolition of outbuilding, erection of seven detached dwellings and garages and construction of access without complying with a condition attached to planning permission Ref: 14/00622/FL, dated 13 April 2015.
 - The condition in dispute is No. 14 which states that: Notwithstanding the submitted details, prior to the occupation of any dwelling hereby approved, a new tarmac footway linking the new access to Hallgate lane and the existing footway to the front of 41 Hallgate Lane, incorporating a vehicular footway crossing to 43 Hallgate Lane shall be provided in accordance with details which shall firstly be submitted to and approved in writing by the Local Planning Authority. The footway shall be retained as such thereafter. For the avoidance of doubt it is the developer's responsibility to ensure that the access and vehicular footway crossing to 43 Hallgate Lane can continue to be used without damage, either to a vehicle or the highway infrastructure, following implementation of the footway and vehicle footway crossing.
 - The reason given for the condition is: In the interests of highway safety and in accordance with Policies H12 and T2 of the North East Derbyshire Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of outbuilding, erection of seven detached dwellings and garages and construction of access at 43 Hallgate Lane Pilsley, S45 8HN in accordance with the application Ref: 16/00792/FL made on the 26 July 2016 without complying with condition No. 14 set out in planning permission Ref: 14/00622/FL granted on 13 April 2015 by the North East Derbyshire District Council, but otherwise subject to the following conditions in the attached schedule.

Main Issue

2. Planning permission has been granted for seven dwellings. The appeal seeks permission to carry out the development without complying with condition 14. This requires the provision of a footway along the frontage of number 43 to link to an existing footway on Hallgate Lane prior to the occupation of the first
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dwelling on the development. The planning application sought an amendment to the wording of this condition to require the provision of the footway link prior to the occupation of the last house on the development. The main issue in this appeal is, therefore, whether it is necessary in the interests of highway safety to provide the footway link prior to first occupation of any dwelling on the development.

Reasons

3. Saved Policy T2 of the North East Derbyshire Local Plan 2005 (Local Plan) requires that new development is served by a safe and suitably designed access, and that the needs of pedestrians, disabled persons, cyclists and public transport users are met. Saved Policy H12 sets out general design criteria for new housing development, amongst which is a requirement for new development to provide safe traffic circulation system for vehicles and pedestrians. Although these policies are now of some age, they are still consistent with the requirement in the National Planning Policy Framework (the Framework) for new development to provide a safe and suitable access to the site for all people and, therefore, significant weight can still be given to them.
4. It is common ground between the parties that the footpath link is required and the need for it is not in dispute. The planning application sought to amend the wording of condition 14 of the planning permission 14/00622/FL to require the provision of the footpath link prior to occupation of the last house on the development. The reason given for seeking the change was due to a delay in the finalising of an agreement under s278 of the Highways Act in respect of the highways works associated with the development. From the copies of correspondence within the Statement from the Highway Authority, I can see no evidence that that there was any untoward delay by that Authority.
5. The proposed amendment of the condition to require the provision of the footway prior to the occupation of the last house on the development would not provide any certainty in respect of the timescale for its delivery. In addition to the residents of the proposed development, there are three dwellings on Hallgate Lane beyond the appeal site. Hallgate Lane has a relatively narrow carriageway and whilst the section where the appeal site is located is lightly trafficked at present, the new development would increase the number of vehicles using this section. I also saw on my site visit that there is a caravan site which operates from Hallgate Farm, further up the lane which will seasonally increase the levels of both vehicular and pedestrian use of the lane.
6. The provision of the footway link prior to the occupation of the final house would result in the occupiers of the existing three dwellings on Hallgate Lane and the occupiers of up to six dwellings on the new development being obliged to walk on the carriageway at a time when the level of traffic had been significantly increased by the additional six houses, which would proportionately increase the risk to pedestrians using Hallgate Lane. This would conflict with the requirements of Policies T2 and H12 of the Local Plan and be inconsistent with the requirements of the Framework to ensure that new developments provide a safe and suitable access for all people.
7. The appellant has suggested that the condition could be varied to require the provision of the footway link prior to the occupation of the third dwelling on the development. I note from the evidence submitted by the Highway Authority, at the time of the planning application the Authority were not aware of any

property sales on the site which might support a variation of the condition and consequently were not reassured about timescales for the delivery of the footway link. I also note that the Highway Authority states that it is now aware that two dwellings have been sold and that it could realistically support the provision of the footway link prior to the occupation of the third dwelling in an attempt to lessen any delay in occupation for the first two owners.

8. I saw on my site visit that two dwellings on the development have been completed and are occupied. I also saw that a third has been constructed to the level of the floor slab and that foundations were being excavated for a fourth unit. The need for the footway is dependent on the occupation of the dwellings and, due to the extent to which the development has progressed, a condition requiring the provision of the footway prior to the occupation of the third dwelling would result in it being implemented within a short timescale.
9. Whilst this would mean that in the interim, the occupiers of a small number of dwellings will be required to walk on the carriageway, I am mindful that this is only for a short distance and would be for a limited time period. Hallgate Lane is lit at this point and the number of vehicles generated by the existing and proposed houses would still be low during the period before the completion and occupation of the third house. In this respect the effect on highway safety would not be severe.
10. Consequently, whilst I find that it is necessary in the interests of highway safety to provide the footway link before the occupation of the final house on the development, in the light of the stage that construction has advanced to, I conclude the provision of the footway prior to the occupation of the third house on the development would not cause harm to highway safety and would comply with the relevant requirements of Local Plan Policies T2 and H12 which seek to ensure that new development provides safe access and circulation for vehicles and pedestrians.

Conditions

11. As the development has already commenced it is not necessary to impose a time limit in respect of the development starting. I have had regard to the Councils suggested conditions. In the interests of highway safety it is necessary to impose a condition requiring that the footway link to the existing footway on Hallgate Lane is provided prior to the occupation of the third dwelling on the development. I also note that a number of conditions attached to planning permission reference 14/00622/FL have now been discharged. However, there are still a number of conditions on the original permission that the Council states are still relevant and capable of having effect. As these are not in dispute, I have re-imposed these conditions.

Conclusion

12. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed, subject to the conditions discussed above.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 52-SL-P-1e; 52-P-BDL-P-2c; 52-P-BRM-P-3c; 52-P-RCH-P-4c; 52-P-WLB-5c; 52-SL-P-6e; ST/229-G8FT; and ST/229/G8FT.
- 2) The scheme for mitigating climate change through the sustainable design and construction of the dwellings as set out in the submitted sustainability statement received on 19th June 2014 shall be implemented in full in accordance with the approved details and timetables and shall be retained as such thereafter.
- 3) Before any dwelling hereby approved is first occupied, the landscaped area on the Hallgate Lane frontage of the site to the west of the new private driveway and any additional hedgerow planting along the boundaries with properties on Lonsdale Road and Broom Avenue shall be implemented in full in accordance with the approved details. Any trees or plants which die, are removed, or become seriously damaged or diseased shall be replaced in the next planting/seeding season with others of a similar size and species.
- 4) Before each dwelling hereby approved is first brought into use, the hard and soft landscaping to that dwelling shall be implemented in full in accordance with the approved details. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting/seeding season with others of a similar size and species.
- 5) The development hereby approved shall be constructed using the external walling and roofing materials specified on drawing number 52-SL-P-6e.
- 6) The development hereby approved shall be carried out in accordance with the finished floor levels and finished ground levels specified on drawing number 52-SL-P-6e.
- 7) Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order, either in whole or in part) and with the exception of the requirements of any other condition contained in this decision, no means of enclosure (Schedule 2, Part 2, Class A) shall be erected/constructed within the rear gardens of the new dwellings hereby approved, without first obtaining planning permission.
- 8) Before any other operations are commenced, a new access to Hallgate Lane shall be created in accordance with the details contained on drawing number 52-SL-P-1e. The new access shall be provided with exit visibility sightlines extending from a point 2.4 metres back from the Hallgate Lane carriageway edge, measured along the centreline of the access to the extremity of the site frontage abutting the highway. From the first use of the new access, the exit visibility sightlines shall be retained in perpetuity clear of any obstruction greater than 1 metre in height relative to the nearside carriageway channel level.
- 9) Before any dwelling hereby approved is occupied, the private driveway, manoeuvring and parking area to serve that dwelling shall be constructed in accordance with the details contained on drawing number 52-SL-P-1e.

The approved private driveway, manoeuvring and parking areas shall be retained for their designated use thereafter.

- 10) No more than three of the dwellings hereby approved shall be occupied until a new tarmac footway linking the new access to Hallgate Lane and the existing footway to the front of 41 Hallgate Lane, incorporating a vehicular footway crossing to 43 Hallgate Lane, has been provided in accordance with details which shall first have been submitted to, and approved in writing by, the Local Planning Authority. The footway shall be retained as such thereafter.
- 11) With the exception of the creation of the new access to Hallgate Lane, before development commences, a temporary contractor's compound and wheel washing facilities shall be implemented in full, in accordance with the details contained on drawing number 52-SL-P-6, and shall be retained as such for the duration of the works.
- 12) No removal of structures, trees, hedgerows or other vegetation shall take place during the bird breeding season (March to August inclusive), unless a detailed survey has been undertaken by a suitably qualified person to confirm the absence of active birds' nests immediately prior to the structures/vegetation being cleared and written confirmation of the absence of nesting birds provided to the Local Planning Authority.
- 13) If any unexpected, visibly contaminated or odorous material is encountered during development, works shall cease and remediation proposals for the material shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter all required remediation works shall be implemented in full in accordance with the approved details and construction works recommenced.
- 14) Construction works likely to cause noise to neighbouring properties and deliveries to the site shall be undertaken only between the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 15:00 on Saturdays. There shall be no work undertaken on site or deliveries to the site undertaken on Sundays or public holidays.