The Planning Inspectorate

Appeal Decision

Site visit made on 15 February 2017

by A A Phillips BA(Hons) DipTP MTP MRTPI

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

Decision date: 30 March 2017

Appeal Ref: APP/H2733/W/16/3163007
Land West of Farside Road, West Ayton, Scarborough, North Yorkshire

- 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 Linden Homes North against the decision of Scarborough Borough Council.
- The application Ref 16/00348/FLA, dated 3 February 2016, was refused by notice dated 13 May 2016.
- The application sought planning permission for the erection of 71 dwellings with associated infrastructure without complying with a condition attached to planning permission Ref 15/01632/FL, dated 22 January 2016.
- The condition in dispute is No 2 which states that: "*The approved emergency access shall be complete prior to the occupation of the first dwelling on site*."
- The reason given for the condition is: *"To ensure safe and adequate access to the site."*

Decision

1. The appeal is allowed and planning permission is granted for the erection of 71 dwellings with associated infrastructure on Land West of Farside Road, West Ayton, Scarborough, North Yorkshire in accordance with the application Ref 16/00348/FLA, dated 3 February 2016, without compliance with condition No 2 previously imposed on planning permission Ref 15/01632/FL, dated 22 January 2016, but subject to the conditions in the Schedule to this decision.

Application for costs

2. An application for costs was made by Linden Homes North against Scarborough Borough Council. This application will be the subject of a separate Decision.

Procedural matter

3. The Council refers only to Policy E12 of the Scarborough Borough Local Plan (Saved Policies) in its committee report and no development plan policies are identified in its appeal statement. In its appeal questionnaire it indicates that Policy DEC1 of the Proposed Submission Scarborough Borough Local Plan (November 2015) is relevant. However, the Council's evidence has no assessment under this emerging policy which does not yet form part of the development plan and therefore it does not appear to form any part of the Council's case.

Main Issues

4. The main issue is whether the condition is reasonable or necessary in the interest of the safety of those using the highway.

Reasons

5. The appeal site is situated on the edge of the settlement of West Ayton and is currently agricultural land. In January 2016 planning permission was granted conditionally for the erection of 71 dwellings with associated infrastructure. The approved drawings show an emergency link to Garth End Road running along an existing public right of way adjacent to the south eastern boundary of the site. The main vehicular access to the site would be via Farside Road.

6. Although in its statement the Council does not dispute that the main access to the site is to standard, the issue in question is whether a separate emergency access should be provided.

7. In reaching its decision, the Council has relied upon the North Yorkshire County Council Residential Highway Design Guide 1998 (Second Edition) (NYCC Design Guide), which was adopted in October 1998, having been amended to take account of the recommendations of Design Bulletin 32 Residential Roads and Footpaths (Second Edition) which was published by the Departments of the Environment and of Transport in April 1992. The Guide states that where cul-de-sacs serve between 50 and 100 dwellings a separate access for emergency use should be provided. The Design Bulletin includes a standard for the number of dwellings that should be served by a single point of access, suggesting that a road serving more than around 50 dwellings and up to around 100 dwellings should preferably be a loop or a through route, or at least have a footpath link for use by vehicles in an emergency.

8. Therefore, the Council's decision to strictly adhere to the Highway Standard seems to be largely based on the principles established in Design Bulletin 32, which was replaced by Manual for Streets (MfS) in 2007. MfS has a different approach to Design Bulletin 32 in relation to requirements for emergency vehicles, omitting the upper limit on the number of dwellings served from a single access, explaining that fire services adopt a less numbers-driven approach and consider each application based on a risk assessment for the site and response time requirements.

9. I observed on site that there are several different options through the existing housing estate to the point of access to the development from the A170 Pickering Road. The length of route proposed by the emergency access would be comparable to the existing residential streets, including cul-de-sacs within the estate. Although local residents have questioned the accuracy of the appellant's appeal submission, the evidence before me and my observations on site show that the existing highway infrastructure has dimensions capable of accommodating emergency vehicles and complies with relevant guidance in MfS.

10. Residential properties along the quiet, lightly trafficked local access routes in the residential estate leading to the site have off street parking for at least two cars. At the time of my early afternoon mid-week site visit approximately 10 cars were parked along Candler Avenue and 3 were parked near to the site on Farside Road. There were also 3 utility vehicles parked on Farside Road.

Elsewhere in the vicinity of the site there was no on-street parking. Visibility throughout the residential estate for road and other highway users is good. Although this is a snap-shot of the situation at a particular time the appellant's survey also confirms that there are no existing issues with on-street parking in the vicinity of the site.

11. Evidence from local residents does suggest that at certain times there is more on-street parking and other obstructions. I acknowledge that there may be occasions when unusual events such as a vehicle breakdown may occur. However, I do not have any clear evidence of the circumstances that may have led to the levels of parking shown on the photographs, nor do I have accident data. Therefore, based on my own observations of local conditions and evidence before me, I conclude that the risk that all routes to the site would be inaccessible is extremely low and the risk to there being an obstruction to emergency vehicles using the existing access roads is unlikely.

12. Evidence before me shows that without the emergency access the development would remain within the North Yorkshire Fire and Rescue Service's average response time of 10.9 minutes, the actual expected response time being 9 minutes.

13. The Council rejected the Highway Authority's 'no objection' on the grounds that it did not provide reasons why the standard set out in the NYCC Design Guide should be set aside and that the Highway Authority's comments appear to rely on pre-application correspondence between the appellant and the Fire Service. However, the Council have provided no clear justification for maintaining their requirement that a separate emergency access should be provided, but instead remain reliant on the published standards of the Highway Authority which, as described above, advocate a more numbers-based approach than the up-to-date MfS guidance.

14. I have noted the concerns of local residents with respect to the access to the proposed residential development, including the conditions on Garth End Road and their views that a separate vehicular access to the site is required off the A170. However, this appeal is concerned with the emergency access provision only and does not relate to overall vehicular access arrangements. Whatever the outcome of the current appeal the main vehicular access to the site would be via Garth End Road off the A170 Pickering Road.

15. The reason for the relevant condition is to ensure safe and adequate access to the site. It has been demonstrated that the removal of the condition would not compromise safe access for emergency vehicles using the existing highway infrastructure and would not result in any material increase in emergency vehicle response times which are well within the Fire Service's average response times. There is no evidence that the removal of condition 2 would be be detrimental to the safety of those using the highway. Therefore, taking account of the above, I find no reason why condition 2 should not be removed.

16. I conclude that the condition is not reasonable or necessary in the interests of the safety of those using the highway. The development without the condition would not adversely affect the safety of those using the highway. As such there would be compliance with the Framework which requires developments to provide safe and suitable access for all people.

Conditions

17. The guidance on the Planning Practice Guidance makes it 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 will grant a new planning permission without the disputed condition but retaining those non-disputed conditions from the original planning permission that appear still to be relevant. In the event that some have in fact been discharged that is a matter which can be addressed by the parties.

18. Condition 2 (of the new permission granted as a result of this decision) specifies the approved plans for certainty. Condition 3 relating to materials is required in the interest of the completed appearance of the development. Condition 4 is in the interests of minimising the risk of crime. Conditions 5 and 6 are attached in order to ensure future residents of the development have access to good quality open space. Conditions 7, 8 and 9 are imposed in the interests of the visual amenity of the area. Similarly, condition 10 regarding boundary treatment is imposed in the interests of visual amenity and in order to protect the amenity of future residents.

19. I have imposed conditions 11, 12, 13, 14 and 15 in the interests of achieving satisfactory and sustainable drainage and in order to ensure that the risk of flooding is not increased elsewhere. Conditions 16 and 17 are required to ensure the proper protection of drinking water.

20. To ensure an appropriate highway is constructed in the interest of highway safety and the convenience of highway users I have imposed conditions 18, 19 and 20.

21. Condition 21 is imposed to safeguard the recording and inspection of matters of archaeological importance within the site. Under Condition 22 no roof lights and dormer windows shall be added to the east facing roof slopes of specified plots in order to mitigate potential future harm from overlooking.

22. Condition 23 is required to ensure the provision of play equipment of sufficient value that is suitably robust. Finally the provision of bat boxes is required by condition 24 to provide habitat for protected species.

Conclusions

23. For the reasons given above and taking account of other matters raised I conclude that the appeal should be allowed.

Alastair Phillips

INSPECTOR

SCHEDULE

Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of the original planning permission Ref 15/01632/FL, dated 22 January 2016.

2. Except where modified by the conditions of this consent, the development shall be carried out in accordance with the following drawings:

   Site location plan, HG2378-001

   Layout plan, HG2378-013 Rev F

   Landscape plan, 2518/4 (C)

   Proposed play area, 2518/4 (C)

   Proposed build out, Conyers Ings, LTP/1903/T2/001(1)(0)

   House type 202 plans, 202-01

   House type 301 plans, 301-01

   House type 304 plans, 304-01

   House type 310 plans, 310-01

   House type 310/304 plans, 310/304-01

   House type 401 plans, 401-01

   House type 402 plans, 402-01

   House type 404 plans, 401-P48 (plot 48)

   House type 404 plans, 404-01

   House type 412 plans, 412-01

   House type 413 plans, 413-01

   Overton house type plans, OV-01

   Willow detached elevations and plans, WD-01

   Willow semi-detached elevations and plans, WS-01

   Willow terrace elevations and plans, WT-01

   Garage plans, LHN-G106(C)

   Garage plans, LHN-G213.1(A)

3. No development shall commence until a schedule of external materials of construction of buildings and hard-surfaced areas has been submitted to and approved in writing by the Local Planning Authority. The Development shall be implemented in accordance with the approved schedule and sample materials.

4. No development shall commence until a written scheme of crime prevention measures to be incorporated into the development has been submitted to and

approved in writing by the Local Planning Authority. This document shall adopt the principles of 'Secured by Design' and shall make particular reference to: on plot lighting; windows, doors and gates to all dwellings; the design of boundary treatments. The development shall be implemented in accordance with the approved written scheme.

5. No development shall commence until a plan for the maintenance of the areas open space on the development site (including all equipment in the play area, means of enclosure, grassed areas, trees and hard surfaced areas but excluding all on-plot landscaping) has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:

    - proposals for the maintenance of the public open space;
    - provision for litter picking;
    - provision for the replacement of all equipment when it reaches the practical end of its operational life (the definitions for this shall be set out in the plan); and
    - a starting point for the maintenance regime.

    The approved plan shall be implemented (i.e. the maintenance regime shall begin) in accordance with the submitted plan and shall continue in perpetuity.

6. No development shall commence until a phasing plan for the provision of the areas of the public open space has been submitted to and approved in writing by the Local Planning Authority. The landscaping of the development site shall be carried out in accordance with the approved phasing plan.

7. During the construction phase, all trees shown to be retained on the site on the approved drawings shall be protected in accordance with British Standard BS 5837:2012 'Trees in relation to design, demolition and construction'.

8. Notwithstanding the submitted details, prior to the commencement of development, a precise landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall:

    - be in accordance with the approved landscaping drawing ref: 2518/4 (C), and shall specify the species of the trees and shrubs to be planted; and
    - provide a phasing plan for the implementation of the landscaping scheme.

    The development shall be carried out in accordance with the approved scheme and phasing plan. In the event of any trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub of equivalent number and size, shall be planted as a replacement and thereafter properly maintained.

9. The hedge running along the west side of the application site shall be retained.

10. Notwithstanding the submitted details, a specification for the proposed boundary treatments for all plots on the development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The specification shall:

- provide typical scale elevation drawings of the boundary treatments to be used;
- specify which treatments will be used on which plots;
- specify the materials to be used; and
- specify brick walls to plots 1, 25, 33, 41, 45, 46, 58 and 61.

The development shall be carried out in accordance with the approved specification.

11. The site shall be developed with separate systems of drainage for foul and surface water on and off site.

12. No development shall take place until precise details (including drawings) for a system for the disposal surface water from the development have been submitted to and approved in writing by the Local Planning Authority. The details of the proposed system shall:

- be in accordance with Sustainable Urban Drainage principles;
- be based on an assessment of the hydrological and hydrogeological context of the development;
- not allow for surface water to discharge from the development or to place to soakaways or other any other mechanism that requires direct discharge to the ground;
- include measures to prevent the disposal of surface water on to the public highway; and
- include proposals for the phasing of the surface water drainage system.

The system, and the development as a whole, shall be carried out in accordance with the approved details.

13. No development shall be commenced until a proposal for a scheme of maintenance for the surface water drainage system has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage system shall be maintained in accordance with the approved scheme for the lifetime of the development.

14. The surface water drainage system shall not discharge into the infrastructure of the Internal Drainage Board at a rate of more than 1.41 litres per second per hectare (the greenfield rate).

15. No development shall take place until precise details of the system for the disposal foul water from the development have been submitted to and approved in writing by the Local Planning Authority, including details of any balancing works and off-site works to include any pumping stations. The submitted details shall include proposals for the phasing of the foul water drainage system. The system, and the development as a whole, shall be carried out in accordance with the approved details.

16. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved by the Local Planning Authority. The development shall be constructed in accordance with

the approved CEMP. The CEMP shall include robust mitigation measures designed to protect groundwater during all stages of the site's construction.

17. No development shall commence until a risk based scheme for the construction of surface water drainage features (above and below ground) and foul sewers has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following measures for foul sewers lying within a Source Protection Zone 1 (as defined by the Environment Agency):

    - All foul sewers shall be constructed with a secondary Cured in Place Plastic (CIPP) liner or with an equivalent lining technology.
    - Any foul sewer chambers / manholes shall be constructed with a full concrete surround.
    - Any pumping stations shall be constructed with a full concrete surround incorporating internal benching.
    - Details of how any lining measures will be constructed and how they will tie into any new or existing sewers.

    The approved scheme shall be implemented in full and certification that the liners have been installed to the correct standard and prior to occupation, submitted to and approved in writing by the Local Planning Authority.

18. No development shall commence until a phasing plan for the implementation of the approved highway works on Conyers Ings (as specified on drawing LTP/1903/T2/001(1)(0)) has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with approved phasing plan.

19. There shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the following drawings and details have been submitted to and approved in writing by the Local Planning Authority:

    a) Detailed engineering drawings to a scale of not less than 1:500 and based on an accurate survey showing:

    - the proposed highway layout including the highway boundary;
    - dimensions of any carriageway, cycleway, footway, and verges;
    - visibility splays;
    - accesses and driveways;
    - the highway drainage system and its relationship with the site-wide drainage system;
    - any lining and signing;
    - any traffic calming measures; and
    - all types of surfacing (including any tactile surfacing), kerbing and edging

    b) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:

- the existing ground level;
- the proposed road channel and centre line levels; and
- the highway drainage system proposals and its relationship with the site-wide drainage system.

c) Full highway construction details including:

- typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths;
- cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels;
- kerb and edging construction details;
- typical drainage construction details; and
- the highway drainage system.

e) Details of all proposed street lighting.

f) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.

g) Full working drawings for any structures which affect or form part of the highway network.

h) A programme for completing the works.

The development shall only be carried out in accordance with the approved drawings and details.

20. No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/ footpath from which it gains access is constructed to basecourse macadam level and/or blocked paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

21. An archaeological watching brief shall be maintained during the course of all groundworks taking place on the site in accordance with a written specification which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

22. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, or any Act or Order revoking or modifying this Order, no rooflights or dormer windows shall be added to the east facing roof slopes of the dwellings on plots 2, 3, 4, 5, 6 and 7.

23. Notwithstanding the submitted details, a revised design for the play area shall be submitted to and approved in writing by the Local Planning Authority. The revised design shall specify the replacement of the following items of play equipment with more robust alternatives of greater play value:

- Altitude 10B (an Altitude 12B may be a suitable alternative);

- 2 bay, 4 seat swings (two separate two-swing sets, one with flat seats and one with cradle seats is a suitable alternative) ;
- Ely and piggy (a Wicksteed Elephant, ref 6060-027 and Horse, ref 6060-026 may be suitable alternatives)
- Zingo seasaw (a Wicksteed Flying Saucer, ref 6060-072 may be a suitable alternative)
- Mini spinner (a Kompan Supernova ref GXY916000 may be suitable alternative)

Further, the revised design shall specify:

- Bow top railings with a diameter of at least 15mm;
- A vehicular access gate with a clear opening of 3m to allow access for maintenance and emergency vehicles;
- A separate pedestrian gate with a self-closing mechanism;
- At least two steel benches;
- A litter bin;
- Poured rubber safety surfacing with pin kerb edges;
- The area between the rubber safety surfaced areas to be tarmac or similar hard surfacing, with pin kerb edging, to extend under the perimeter fence;
- A hard surfaced path between the play area and the highway.

24. At least 7 of the approved dwellings shall be fitted with a proprietary bat box prior to their first occupation.

END OF SCHEDULE