



Appeal Decision

Site visit made on 21 November 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 15 December 2017

Appeal Ref: APP/X4725/W/17/3181346

Westfield Grove (land off), Low Ackworth, Pontefract WF7 7HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Furniss against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref:17/00518/OUT, dated 27 January 2017, was refused by notice dated 15 May 2017.
 - The development proposed is the erection of 4 detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 detached dwellings at Westfield Grove (land off), Low Ackworth, Pontefract WF7 7HF in accordance with the terms of the application, Ref: 17/00518/OUT, dated 27 January 2017, subject to the conditions in the Annexe to this decision.

Procedural Matters

2. The address of the proposal has been taken from the Council's decision notice as it most accurately describes the land.
3. The proposal is for outline planning permission with matters of access and scale of the development for consideration now, with appearance, landscaping and layout being reserved for later approval. To the extent that any of the submitted plans touch upon any of the reserved matters, they shall be treated as being illustrative only.

Main Issue

4. The main issue of the appeal is the effect of the proposed access on highway safety.

Reasons

5. The appeal site is an area of agricultural paddock land, accessed via the unadopted Westfield Grove which leads from Station Road. Open agricultural fields are located to the north of the site, with the existing fence line on the northern boundary separating the site from the Green Belt. A public right of way runs along Westfield Grove and extends north across the site and into the field beyond.
6. The existing access from Westfield Grove is in a poor state of repair and fails to comply with standards required for adoption. Westfield Grove currently serves

a number of dwellings, including the relatively new development on The Orchards, Rosewood Cottage, 2-16 Westfield Grove and Wellgarth Cottage. Significant concern has been raised by local residents in regard to the existing condition of the road.

7. The planning history of the site is noted. In particular, the planning permission granted for 7 detached dwellings in 2008¹ and the outline application which was refused in 2015². In their evidence, the appellant has confirmed that the scheme before me is a resubmission of the 2015 application; however further information in relation to highways issues has been included.
8. The proposal would include the erection of 4 detached dwellings, with the first section of Westfield Grove being upgraded to adoptable standards. The remaining length of the access road ranges in width from approximately 3.5 to 6 metres. It is proposed that this section would form a shared private drive for the 4 proposed dwellings and Wellgarth Cottage.
9. Concern that emergency vehicles would not be able to access the proposed site via the shared private drive has been raised. As part of the Transport Statement³ prepared on behalf of the appellant the autotrack drawing⁴ confirms that a fire appliance would have enough space to be able to travel along the access road and turn at the western end of the site. From observations made during the site visit, I also concur with this view.
10. Paragraph 4.48 of the Wakefield Council Street Design Guide Supplementary Planning Document 2012 (the SDG) states that any development which serves more than 5 houses, or an existing Private Street which will serve more than 5 dwellings after completion of the development, should be laid out to an adoptable standard and be able to be offered for adoption. However, the Council will not usually adopt development where there are 5 or less dwellings. As this section of the access track would only serve 5 dwellings, the appellant intends that this section is designated as a Private Street and would not be offered for adoption.
11. The proposed upgrade of the first section of Westfield Grove would bring the access track up to an adoptable standard. This section would be used by the surrounding dwellings, Wellgarth Cottage and the proposed 4 dwellings. Subject to an agreement with the Council, under the relevant section of the Highways Act 1980 and the expiration of the appropriate maintenance period, this section of Westfield Grove could be adopted. Accordingly, if this first section of Westfield Grove was successfully adopted, the guidance provided at paragraph 4.5.3 of the Wakefield District Residential Design Guide Supplementary Planning Document 1996 (the RDG) would be complied with.
12. The entire length of Westfield Grove is contained within the red line boundary on the plans submitted by the appellant. The appellant is however unable to provide title to Westfield Grove. Despite the serving of Certificate D with the planning application form, publication of an advertisement in the local press, the Council's site notice and searches by both the appellant's legal team and the Land Registry, it has not been possible to identify whether any part of the Westfield Grove is in third party ownership. Although ownership has not been

¹ Council reference 08/01891/FUL

² Council reference 15/01694/OUT

³ Fore Consulting - Transport Statement Version 1.0, 21 February 2017

⁴ Fore Consulting - Transport Statement. Drawing number 3312/SK001/002A

confirmed, it is considered that the appellant has taken all reasonable steps to establish ownership.

13. Due to the ownership situation, the Council consider that the road cannot be altered. They have therefore determined the application on the basis that Westfield Grove and the access with Station Road would remain unaltered. In addition, the Council contend that if such improvement works were to be executed future occupiers would potentially be accessing their dwellings illegally. The appellant would therefore be at risk of legal action from the owner, if they were to come forward.
14. Due to the substantial work undertaken in terms of identification of any third party ownership of Westfield Grove, it is not considered likely that the owner of the access road will come forward to challenge its use. However, it is not the role of the planning system to become involved in or manage such risk. Nevertheless, from the submitted evidence it is clear that the appellant is aware of the possible implications should an owner be identified or come forward.
15. The improvements to the two sections of Westfield Grove are considered both necessary and appropriate. The works would provide an improved and safe access for future occupiers of the proposed dwellings and existing users. As I am minded to allow the appeal, it is considered reasonable to impose a condition that requires the proposed highway works are implemented prior to the construction of the dwellings, in order to ensure that a safe access exists.
16. Planning Policy Guidance (PPG) states that conditions requiring works on land that is not controlled by the applicant, often fail the tests of reasonableness and enforceability. However, it is possible to achieve a similar result using a condition worded in a negative form, known as a Grampian condition.
17. Grampian conditions prohibit development authorised by the planning permission until a specified action has been undertaken, in this instance the upgrade of the access road to adoptable standards. Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
18. As it is unlikely an owner will come forward or be identified, it is considered that a reasonable prospect exists that the works would be carried out and the condition implemented but there is no substantive evidence before me to confirm whether this was connected to the land ownership issue.
19. Despite the intensification of use of the Westfield Grove access by the proposed new dwellings, the upgraded access would significantly improve the access arrangement and would comply with the relevant highway standards and requirements. Accordingly, the proposal is not considered be detrimental to highway safety.
20. It therefore follows that the proposal complies with Policy D14 of the City of Wakefield Metropolitan District Council Local Development Framework: Development Policies 2009 and guidance contained the RDG and SDG. When taken together this policy and guidance seek, amongst other things, to ensure the safe and free flow of traffic.

21. The proposal would also comply with paragraph 32 of the National Planning Policy Framework (the Framework), insofar as the proposal would provide a safe and suitable access to the site.

Other Matters

22. Concern has been raised regarding matters which were not dealt with in the substantive matter above. These include the impact on the public right of way; location in proximity to the Green Belt; impact on school places; location of facilities and services required for everyday living; increased flood risk; impact on ecology and character and appearance of the proposal; loss of light and property values.
23. Concern has been raised that the use the public right of way would be significantly affected and become less attractive to users. Matters relating to layout are reserved for later approval by the Council. Nevertheless, it is noted that the illustrative plans depict the right of way following the existing pathway. This has also been confirmed by the appellant within the submitted statement of case. Subject to the control that can be exerted at the reserved matters stage, it is considered that the public right of way will be in a similar location and will remain accessible to users.
24. The site is located adjacent to the Green Belt, with open agricultural land sited to the north. It is accepted that the proposed site is adjacent to the boundary of the Green Belt. However, no substantive evidence has been submitted which confirms that the proposed boundary to the north of the site encroaches into the Green Belt.
25. As the proposal is for family dwellings, concern has been raised as to the extra school places which would be required. The Council has confirmed that this issue would be addressed through the Community Infrastructure Levy (CIL). CIL is a planning charge put in place as a tool for Councils to help support development by funding important infrastructure, such as road schemes or school places. The proposal would be liable for CIL, but only when the development is built. The level of liability would be calculated at the reserved matters stage.
26. In terms of access to services and facilities, from observations made during the site visit, a convenience store and education facilities are located a short walk from the site. In addition, the site is located close to a bus stop on Station Road. Services from here give regular access to Wakefield city centre, Pontefract and Castleford. Future occupiers of the site would be therefore able to adequately access services and facilities without reliance on the private car.
27. The various concerns include the impact of the proposal in regard of the impact on ecology, character and appearance, the potential for loss of light to neighbouring dwellings and flooding are acknowledged. Landscaping and layout are issues reserved for later approval. Any concerns in regard of these issues would therefore be considered at this stage.
28. The planning process is concerned with land use in the public interest. The effect of development on private interests, such as property value, therefore can carry only very limited weight.

29. The importance of the above matters to those involved is not underestimated. However, there is no substantive evidence which would lead me to conclude the scheme should be resisted on these grounds.

Conditions

30. The Council's suggested conditions have been considered against the tests set out within Paragraph 206 of the Framework and advice contained with the PPG. Where necessary the wording has been amended or conditions combined in the interests of precision and clarity.
31. Given the outline nature of the application, conditions are needed to ensure that the matters reserved for future consideration remain subject to the Council's approval. A condition to ensure the development is carried out in accordance with the approved plans is necessary in order to ensure certainty.
32. A condition securing a Construction Management Plan is necessary in the interests of highway and pedestrian safety and the living conditions of nearby residents. Conditions are necessary to prevent pollution of the water environment, ensure satisfactory and sustainable drainage and to ensure the risk of flooding is not increased. In the interests of highway safety, a condition relating to access is necessary.
33. Conditions 5 -10 are specified as pre-commencement conditions. This is justified as they cover important aspects of the development which require consideration and control before development commences.
34. Conditions have not been imposed for external materials, boundary treatments, finished floor and slab levels, layout of pedestrian and vehicles areas, security requirements, lighting, protective tree and woodland measures as these would be addressed by the reserved matter submissions relating to appearance, landscaping and layout. A condition relating to the installation of bat tubes is not considered necessary as the appellant's submitted ecology survey did not identify any evidence of bat roosts at the site. Moreover, no substantive evidence has been provided by the Council to confirm the presence of bats on the site.

Conclusion

35. For the above reasons it is therefore concluded that, subject to conditions, the appeal should be allowed.

Helen Cassini

INSPECTOR

Annexe

Schedule of Conditions

- 1) Details of appearance, landscaping and layout (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) An application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 2337 (PL)01 Rev A – Location Plan, 2337 (PL)06 Rev D – Proposed Site Plan, 3312 SK001 01 Rev A – Proposed Site Access; but only in respect of those matters not reserved for later approval.
- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include scaled drawings illustrating the provision for:
 - i) the parking of site operatives and visitors vehicles;
 - ii) loading and unloading of plant and materials;
 - iii) management of construction traffic and access routes;
 - iv) storage of plant and materials used in constructing the development; and
 - v) measures to prevent mud and debris being brought onto the highway.
- 6) No development shall take place until a scheme for the accommodation of additional flows impacting upon the watercourse network has been submitted to and approved in writing by the local planning authority. The scheme shall cater for the impact resulting from the minimum 100 year return period storm event. No part of the development shall be brought into use until the works comprising the scheme hereby approved have been completed.
- 7) No development shall take place until a scheme detailing temporary surface water drainage generated during the construction of the site, has been submitted to and approved in writing by the local planning authority. The scheme shall detail the phasing of the development and phasing of any temporary drainage provision. The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme

shall be maintained until the approved permanent surface water drainage system is in place and functioning.

- 8) No development shall take place until a scheme detailing foul and surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall detail the phasing of the development and phasing of drainage provision, where appropriate. Principles of sustainable urban drainage shall be employed wherever possible. The works shall be implemented in accordance with the approved phasing. No part or phase of the development shall be brought into use until the drainage works approved for that part or phase has been completed. No discharge of foul or contaminated drainage from the site shall be accepted into the public system, whether directly or via soakaway.
- 9) No development shall take place until a scheme restricting the rate of development flow runoff from the site has been submitted to and approved in writing by the local planning authority. The flowrate shall be restricted to the maximum flowrate of 2.5 litres per second per hectare. A 30% allowance shall be included for climate change effects for the lifetime of the development. Storage shall be provided to accommodate the minimum 1 in 100 year plus climate change critical storm event. The scheme shall include a detailed maintenance and management regime for the storage facility. No part of the development shall be brought into use until the development flow restriction works comprising the hereby approved scheme have been completed. An approved maintenance and management scheme shall be implemented throughout the lifetime of the development.
- 10) Notwithstanding the submitted details, development shall not commence until a scheme detailing the upgrading works to the access to the site has been submitted to and approved in writing by the local planning authority. The submitted scheme shall demonstrate the access on the first section of Westfield Grove and Station Road can be completed to a standard which is acceptable for adoption by the local highway authority. The development hereby approved shall not be brought into use until the approved scheme has been implemented. The approved scheme shall be thereafter retained and maintained for the lifetime of the development.

End of schedule