



Appeal Decision

Hearing Held on 13 December 2017

Site visit made on 13 December 2017

by Stephen Roscoe BEng MSc CEng MICE

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

Decision date: 03 January 2018

Appeal Ref: APP/H1840/W/17/3173392

**Walcot Meadow, Walcot Lane, Drakes Broughton, Pershore,
Worcestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Amber Residential Developments Ltd against the decision of Wychavon District Council.
 - The application Ref W/16/01895/RM, dated 29 July 2016, sought approval of details pursuant to condition Nos 1, 2, 3, 4, 6, 8, 9 and 14 of a planning permission Ref W/14/00273/OU, granted on 4 August 2015.
 - The application was refused by notice dated 3 March 2017.
 - The development proposed is 32 dwellings with associated parking, landscaping and open space with details of appearance, scale, landscaping, layout and access.
 - The details for which approval is sought are: details of the access, appearance, landscaping, layout, scale, external materials and floor slab levels, surfacing and surface water drainage, boundary treatment, refuse storage and ecological mitigation and enhancement.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely the access, appearance, landscaping, layout and scale, external materials and floor slab levels, surfacing and surface water drainage, boundary treatment, refuse storage and ecological mitigation and enhancement details submitted in pursuance of condition Nos 1, 2, 3, 4, 6, 8, 9 and 14 attached to planning permission Ref W/14/00273/OU dated 4 August 2015 subject to the conditions listed at the end of this decision.

Procedural Matters

2. The reserved matters application was submitted as set out above, and the parties have identified it as the 'August submission'. Following a meeting with the Council, the appellant submitted revised details, which the Council received on 14 October 2016, and the appellant requested that these be taken into account as an amendment to the reserved matters application. The parties have identified these revised details as the 'October submission'. The Council did not take the October submission into account in deciding to refuse the reserved matters application. This was on the basis that the revised details were so significantly different to the August submission so as to make its acceptance unlawful. As a result of these circumstances, and before

considering the refusal itself, I will turn to whether the October submission should form part of the matters to be considered in relation to this appeal.

3. The August submission was validated by the Council. It has showed in detail how this process was carried out, and I am satisfied that this was undertaken correctly and that proper consultation followed. There is a dispute between the main parties as to whether the October submission was made as a result of comments made by the Council following the August submission or whether it was made of the appellant's own volition. Whichever is the case, the Council has subsequently agreed that the October submission satisfies its previous concerns, and to my mind, this is the key point rather than how the revisions were initiated.
4. The October submission was an amendment to the application and therefore there was no need for it to be formally validated. The amendments were fully consulted upon and, if the Council had been minded to accept the October submission as being valid, it is of the view that it would not have required any further consultation before proceeding to a decision. There is no evidence that, at this stage, the Council sought to reject the October submission on the basis that it was tantamount to a new reserved matters application.
5. The main parties have agreed that the relevant case law is *Inverclyde*¹, and the Council has referred to other cases which support the *Inverclyde* judgement. The *Inverclyde* judgement clearly sets out firstly that the planning authority must simply deal with the application procedurally in a way which is just to the appellant in all circumstances. It then adds that there is no good reason why amendment of an application should not be permitted at any stage, if that should prove necessary in order that the whole merits of the application should be properly ascertained and decided upon.
6. Here, the Council has carried out a full consultation exercise in respect of the October submission which, in my view, is just to the appellant and indeed all other parties involved. There is no doubt that the Council had concerns in respect of the August submission. There was therefore a necessity for the amendment in order that the merits of the application for the 32 dwellings could be properly ascertained and decided upon. On this basis, I consider that the amendment should have been considered.
7. Secondly though, and importantly in this appeal, the *Inverclyde* judgement fixes a limitation on this freedom to amend following the expiry of the period allowed for the application for the approval of reserved matters. This is that, after the above period, any amendment must not alter the whole character of the application, so as to amount in substance to a new application. This is because any such amendment would obviously circumvent the time limit for the submission of reserved matters.
8. Here, the Council's consultation actions following receipt of the October submission do not support its later view that the submission amounted to a new application. When considered in more detail, I accept that there are significant visual differences between the two submissions. These include the plot and road layouts in terms of their formality, housing mix,

¹ *Inverclyde District Council v Secretary of State for Scotland*: House of Lords: 12 November 1981: 1982 S.L.T 200

vehicle circulation and parking details. The differences also include architectural details, materials and roof slopes.

9. The judgement however refers to the whole character having to be altered to render an amendment unacceptable. This to me is a high bar, and here there are basic aspects of the character of the proposals which have not changed. Examples of this are the access to the site and the nature of the access roads, the quantum and type of development, the locations of open space within the Walcot Lane corridor and towards the south east corner of the site, landscape design principles and parking arrangements for the smaller dwellings. These similarities result in the character changes being well below what could be considered to be the alteration of the whole character of the August submission. As a result of all of the above points, I am satisfied that the consideration of the October submission as an amendment to the August submission is lawful, and I have made my decision on this basis. As the Council's refusal reason is based on the August submission, I have also considered this within my decision.
10. At the Hearing, the parties were content that I was to undertake my site visit on an unaccompanied basis, which I did following the Hearing.

Reasons

11. As a result of my finding on the procedural matters above, the main issue in this case is the effect of the proposals under the August and October submissions on the character and appearance of the surrounding area.

August Submission

12. The road and plot layout under the August submission would be somewhat formal and structured, with dwellings in rows behind consistent building lines. Development along Walcot Lane is however very varied and organic in its nature due to the differing ages of development. Despite the linear arrangement of plots along the lane, there are no obvious building lines in contrast to the layout of the proposal and particularly its terraced dwellings visible from the lane. Many of the other proposed dwellings would be inward facing, and the proposal would therefore give the impression of an inward facing enclave that would fail to blend in with its surroundings.
13. Compact linear residential development is evident in other parts of Drakes Broughton. Walcot Lane however, and the existing development along it, provides a seemingly impenetrable barrier between the appeal site and other such development. The layout of the proposal would therefore appear very much out of character with its surroundings, despite the existence of the other compact linear residential development.
14. The proposal in the August submission would provide some views towards open countryside and Bredon Hill. These would however be along the straight estate road corridors and, as such, would appear somewhat forced and accentuate the regimented appearance of the proposal.
15. In terms of dwelling design, the proposal would be somewhat bland, which would reflect the regimented nature of the layout. This lack of variety would however contrast with that along Walcot Lane.

16. I therefore consider that the proposal within the August submission would not effectively integrate with its surroundings in terms of form and function in conflict with Development Plan² (DP) Policy SWDP21. I also consider that the proposal would not reflect the surrounding area in terms of design and character as required by Neighbourhood Plan³ (NP) Policy DBWP1.

October Submission

17. The layout of the October submission exhibits a generally non-linear and organic structure, although there would be some linear elements. These elements would however follow the form of development on the opposite side of Brickyard Lane to the appeal site and on other parts of Walcot Lane, albeit that these other areas have less spacing between dwellings than would be the case with the proposal. Moreover, the proposed terraced dwellings would not be readily visible from either Walcot Lane or Brickyard Lane.
18. Some rear garden boundaries would abut Brickyard Lane, but the development associated with these would be at a lower density than that on the opposite side of the lane, and they would not appear awkward in comparison. Bungalows would face Walcot Lane, being set back behind landscaping. The nature of this area of proposed development and its setting would therefore retain the character of Walcot Lane to a great degree.
19. There would be glimpses of the countryside to the south of the development from Walcot Lane. The limited nature of these views would however not be sufficient to weigh against the appeal. This is particularly because the permission for 32 dwellings has already been set and there is no requirement in the outline permission to retain the views. This is notwithstanding that their retention has been referred to as being possible to some degree in the previous appeal decision giving the outline permission. The design of the dwellings in the October submission is also varied to complement the somewhat organic layout, and the dwellings would include traditional design features.
20. I therefore consider that the proposal within the October submission would effectively integrate with its surroundings in terms of form and function in accordance with DP Policy SWDP21. I also consider that the proposal would reflect the surrounding area in terms of design and character as required by NP Policy DBWP1.

Other Matters

21. Many objections have been made against the application and the appeal, and some of these relate to matters outside of this appeal. Planning permission for the appeal site has however already been granted, and I can only consider the acceptability of the reserved matters which are before me. There is no scope for me to reconsider matters which were dealt with at the outline stage.
22. Objections did though relate to sustainable drainage, details of which were included as reserved matters under the outline permission. I am satisfied that the incorporation of sustainable drainage measures could be regulated by the Council's suggested condition relating to highway construction standards and the submitted Ecological Mitigation and Enhancement Scheme and the

² South Worcestershire Development Plan: February 2016

³ Drakes Broughton and Wadborough with Pirton Neighbourhood Plan: April 2017

submitted Water Management Strategy. Furthermore, outline condition No 5 requires drainage details to be submitted prior to the commencement of development, and there is no evidence that this condition has been sought to be discharged to date.

23. The Highway Authority has raised concerns relating to some of the highway elements of the October proposal. I am however satisfied that the traffic generation from the proposal would not be sufficient for these elements to have an unacceptable effect in terms of highway safety.
24. The affordable housing would appear to be grouped around a cul-de sac, in some conflict with NP Policy DBWP4. It would however be accessed from the centre of the site, and its location is acceptable to the Council's Housing Officer. I therefore do not consider that the location of the affordable housing would be sufficient reason to dismiss the appeal.
25. I have also taken into account all other representations that relate to the reserved matters which are before me.

Conditions

26. In the Hearing, the main parties agreed that the Council's suggested conditions for the August submission could be imposed on the October submission. I consider that the following conditions, which arise directly from the reserved matters application, would be necessary in relation to the October submission. Conditions which relate to anything other than the matters to be reserved could only have been imposed when outline planning permission was granted. I therefore consider that conditions relating to external materials and ground floor slab levels, and landscaping would be necessary to protect the character and appearance of the surrounding area. Conditions in respect of highway design standards, junction details, visibility splays and individual dwelling accesses and parking details would be necessary in respect of highway safety.
27. It would however be necessary to amend the conditions suggested by the Council in the interests of precision and enforceability, including the plot references on condition No 9 and to regulate the implementation of landscaping. It would also be necessary that the development should be undertaken in accordance with the approved plans and documents for the avoidance of doubt and in the interests of proper planning. A condition would therefore be required to define the approved plans and documents.

Conclusions

28. Having taken into account all other matters raised, none carry sufficient weight to alter the decision, and my conclusion is based on the evidence before me in terms of policy as a whole. For the reasons given above, I conclude that the appeal should be allowed in relation to the October submission only.

Stephen Roscoe

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Kimberlin QC	Instructed by Mr D Onions, Pegasus Group
Mr D Onions DipTP MRTPI	Director, Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Miss S Clover of Counsel	Instructed by Ms P James, Solicitor for the Council
Ms E Worley	Senior Planner, Wychavon District Council

INTERESTED PERSONS:

Mr I Spencer	Drakes Broughton Local Residents Group and the Drakes Broughton and Wadborough with Pirton Parish Council
Mr K Skillern	Drakes Broughton and Wadborough with Pirton Neighbourhood Plan Steering Group
Mr J Cooper	Local Resident

DOCUMENTS

- 1 Detailed Hard & Soft Landscape Proposals – Drg Ref P16-0074_01-A
- 2 Suggested Site Visit Itinerary
- 3 Statement of the Drakes Broughton Local Residents Group and the Drakes Broughton and Wadborough with Pirton Parish Council
- 4 Statement of the Drakes Broughton and Wadborough with Pirton Neighbourhood Plan Steering Group
- 5 Council without prejudice review of the appellant's October Submission
- 6 Oxfordshire County Council v Oxford City Council, Catherine Mary Robinson

PLANS AND DOCUMENTS

October Submission

Master Plan	1010 Rev U
Street Scenes	1011 Rev C
Boundary Treatments	1012 Rev A
Accommodation Schedule	1014 Rev C
1 Bed Flats	1015 Rev B
2 Bed Bungalow A	1016 Rev A
2 Bed Bungalow B	1017 Rev B
2 Bed House A	1018 Rev A
3 Bed Bungalow B	1019 Rev A
3 Bed House A	1020 Rev A
3 Bed House B	1021 Rev C
4 Bed House A	1022 Rev B
5 Bed House A	1023 Rev B
4 Bed House B	1024 Rev A
5 Bed House B	1025 Rev A
3 Bed House C	1026 Rev B
3 Bed House D	1027 Rev A
2 Bed House B	1028 Rev A
Detailed Hard & Soft Landscape Proposals	P16-0074_01 Rev A
Ecological Mitigation and Enhancement Scheme	27 October 2016
Water Management Strategy	February 2014

CONDITIONS

- 1) This approval must be read in conjunction with outline planning permission ref. App/H1840/W/15/3005494 and the conditions attached thereto.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans and documents listed in the schedule of plans and documents attached to this permission.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces and the ground floor slab levels of the dwellings 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.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the 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.
- 5) Unless indicated on the approved landscape plan, P16-0074_01 Rev A, to be removed, all existing trees and hedges on the application site, or branches from trees on adjacent land that overhang the application site, shall be retained and shall not be felled or pruned or otherwise removed. If any retained tree/hedge is removed, uprooted or destroyed or dies, replacement planting shall be carried out in the first available planting season, in accordance with details to be approved in writing by the local planning authority.
- 6) Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the estate road junction to the application site and 2.4m back from the nearside edge of the adjoining carriageway, Walcot Lane (measured perpendicularly), to points 47m in each direction along the nearside edge of the adjoining carriageway 0.6m above ground level. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above and these areas shall thereafter be retained and kept available for visibility purposes at all times.
- 7) No development shall commence until details of the junction between the estate road and Walcot Lane have been submitted to, and approved in writing by, the local planning authority; and the development shall not be occupied until that junction has been constructed in accordance with the approved details. The submitted details shall include 2m wide footways on each side of the junction along Walcot Lane and a pedestrian crossing of Walcot Lane.
- 8) No development shall commence until details of the standards to which the estate roads serving the development are to be constructed have been submitted to, and approved in writing by, the local planning

authority. The submitted details shall include engineering details and specifications for the roads, 2m wide footways, 1m wide service strips and highway drains. No dwelling shall be occupied until the roads to serve it have been constructed in accordance with the approved details.

- 9) Plots 1 to 3 shall not be occupied until the estate road junction serving these plots has been provided with a visibility splay 0.6m above ground level and 2.4m back from the nearside edge of the estate road carriageway, parallel to the estate road between the centre line of the junction and Walcot Lane. Nothing shall be planted, erected and/or allowed to grow on the area of land so formed which would obstruct the visibility described above and this area shall thereafter be retained and kept available for visibility purposes at all times.
- 10) No dwelling shall be occupied until the individual vehicular accesses, private drives and parking facilities associated with it have been consolidated, surfaced, drained and constructed in accordance with details that have been submitted to, and approved in writing by, the local planning authority, and these areas shall thereafter be retained and kept available for users at all times.
