



Appeal Decision

Site visit made on 15 April 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th July 2019

Appeal Ref: APP/G0908/W/18/3218502

Land at Moss Bay Road, Workington

- 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 Mrs Rachael Graham Persimmon Homes Lancashire against the decision of Allerdale Borough Council.
- The application Ref 2/2018/0373, dated 30 July 2018, was refused by notice dated 23 October 2018.
- The application sought planning permission for variation of conditions 2, 3, 4, 5 and 6 of 2/2011/0227 for amendment to play area position, boundary treatments and surfacing and to secure timing and implementation for completion of all works without complying with a condition attached to planning permission Ref 2/2018/0042, dated 4 April 2018.
- The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out solely in accordance with the following plans:
 - PL01 - Red Line Plan
 - PL02 - Site Plan
 - PL03 - Sketch of Forward Visibility Splays
 - PL04 - Street Scenes
 - PL05 - Streetscene Key Drawing
 - C001 - Autotrack Analysis for Large Refuse Vehicle
 - NFDS-138 - Detached Garages Single bay and Double Bay - Floor Plan/Elevations
 - NFDS-138 - Roseberry Detached 4 Bed Unit Elevations Village Style
 - NFDS-138 - Roseberry Detached 4 Bed Unit Floor Plans Village Style
 - NFDS-138 - Swale Terrace x 3, 3 Bed Unit Elevations
 - NFDS-138 - Swale Terrace x 3, 3 Bed Unit Floor Plans
 - NFDS-138 - Rufford Detached 3 Bed Unit Elevations
 - NFDS-138 - Rufford Detached 3 Bed Unit Floor Plans
 - NFDS-138 - Hatfield Detached 3 Bed Unit Elevations
 - NFDS-138 - Hatfield Detached 3 Bed Unit Floor Plans
 - NFDS-138 - Penrose Terrace x 4, 2 Bed Unit Elevations
 - NFDS-138 - Penrose Terrace x 4, 2 Bed Unit Floor Plans
 - NFDS-138 - Roseberry XL Detached 4 Bed Unit Elevations
 - NFDS-138 - Roseberry XL Detached 4 Bed Unit Floor Plans
 - NFDS-138 - Greyfriars, 3 Bed, 3ST. Unit Elevations
 - NFDS-138 - Greyfriars, 3 Bed, 3ST. Unit Floor Plans
 - NFDS-138 - Dormer Bungalow Detached 2/3 Bed Elevations
 - NFDS-138 - Dormer Bungalow Detached 2/3 Floor Plans
 - NFDS-138 - Hanbury Semi Detached 3 Bed Unit Elevations
 - NFDS-138 - Hanbury Semi Detached 3 Bed Unit Floor Plans
 - NFDS-138 - Rufford Semi Detached 3 Bed Unit Elevations
 - NFDS-138 - Rufford Semi Detached 3 Bed Unit Floor Plans
 - NFDS-138 - Conservatory Elevations/Floor Plans

Noise Assessment report dated March 2011 (ref A032608- 1)

154.PPS.01 - Play Path Park - Section

863-1 Rev Z - Engineering Layout

863-13 Rev C - Private drainage

FHW: 305 Revision L - Fencing plan

Playdale Site layout

Playdale equipment

FHW: 304 Revision H - External finishes plan

Amended Dwg 4116.04 Rev C Landscape Proposal Sheet 2 of 2 (27-3-18)

Amended Dwg 4116.03 Rev E Landscape Proposal Sheet 1 of 2 (27-3-18).

The reason given for the condition is: In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.

Decision

1. The appeal is allowed and planning permission is granted for the variation of conditions 2, 3, 4, 5 and 6 of 2/2011/0227 for amendment to play area position, boundary treatments and surfacing and to secure timing and implementation for completion of all works at land at Moss Bay Road, Workington, in accordance with the application Ref: 2/2018/0373 dated 30 July 2018, by varying condition 1, previously imposed on planning permission Ref: 2/2018/0042 dated 4 April 2018 and subject to the conditions in the attached schedule.

Procedural Matters

2. The play area has been laid out and some equipment has been installed in accordance with a previously approved scheme. I have determined this appeal on the basis of the submitted plans.
3. The officer's report recommended approval subject to a section 106 agreement to secure ongoing obligations. The Council did not submit an appeal statement but were given the opportunity to make comments in respect of this matter. They responded to confirm that they would seek to apply a deed of variation to an existing section 106 agreement if the appeal were allowed. The deed of variation was made on 9 July 2019 and I have therefore determined the appeal on this basis.

Background and Main Issue

4. The original planning permission was for the erection of 92 dwellings (including 13 affordable houses) Ref: 2/2011/0227. There have been two subsequent applications for variations to the permission and the appeal proposal seeks to vary the approved plans in respect of the provision of play equipment within the approved play area.
5. The main issue is whether the proposed play equipment would address the deficiency in the provision of play and recreation spaces designed for children and young people.

Reasons

6. The location of the play area is already approved and would not change. The differences between the previously approved scheme and the appeal proposal relate to the replacement of the 'Shimmy Plus' with the 'Eccup Plus' and the relocation of a bin and bench.

7. I am aware that the proposed variations to the play equipment are required in order to comply with a European Safety Standard for playground equipment and surfacing EN 1176:2017 which introduced an additional requirement for spacing between swings to fences.
8. Criterion (e) of Policy S25 of the Allerdale Borough Council Local Plan (Part 1) Strategic and Development Management Policies (the Local Plan) requires that the improvement of play, sports and other public open space provision is delivered through giving priority to addressing the deficiency in the provision of play and recreation spaces designed for children and young people.
9. The proposed play equipment includes provision for children and young people ranging from 2 - 16yrs. Unlike the previously approved scheme, the appeal proposal would ensure that there is provision for those under the age of 5yrs. The bin and bench would be relocated away from the nearest neighbouring houses to the play area but would be adjacent to it.
10. Third parties have raised matters in respect of the location of the play area, flooding, disabled access, access by emergency service vehicles and the location of play equipment in relation to boundaries. However, as the location of the play area and equipment is already approved these matters have no bearing on the planning merits of this proposal. There is no evidence to demonstrate that the relocation of the bin and bench would lead to an increased fire risk as such this is a matter of little weight in my assessment.
11. In the absence of substantive contrary evidence, I consider that the proposal would provide a play area and recreation space for children and young people and there is no conflict with Policy S25 of the Local Plan.

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. The Council have reviewed those conditions imposed on the original permission and have suggested conditions be imposed which they consider remain relevant. As I have little information before me about the status of the conditions imposed on the original planning permission, I shall impose those suggested by the Council which 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 away from this appeal.

Conclusion

13. For the reasons given above and having had regard to all other matters raised, subject to the conditions in the attached schedule, the appeal is allowed.

Felicity Thompson

INSPECTOR

Schedule of conditions

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

PL01 - Red Line Plan
PL02 - Site Plan
PL03 - Sketch of Forward Visibility Splays
PL04 - Street Scenes
PL05 - Streetscene Key Drawing
C001 - Autotrack Analysis for Large Refuse Vehicle
Noise Assessment report dated March 2011 (ref A032608- 1)
154.PPS.01 - Play Path Park - Section
863-1 Rev Z - Engineering Layout
863-13 Rev C - Private drainage
FHW: 305 Revision L - Fencing plan
17083rev5/LAN/CUM - Playdale Site layout
Playdale equipment sheet
Little Hamlets – Eccup Plus specification
FHW: 304 Revision H - External finishes plan
4116.03 Rev E – Landscape Proposal Sheet 1
4116.04 Rev C – Landscape Proposal Sheet 2

- 2) The landscaping relating to the play area and associated works shall be undertaken in accordance with the submitted landscaping scheme hereby approved within the next available planting season. Any trees or plants planted under the approved landscaping plan for the estate which within a period of five years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.
- 3) The development shall be carried out in accordance with Fencing Plan FHW: 305 Revision L. The means of enclosure shall be erected as approved prior to the play area being brought into use. All means of enclosure shall be retained and no part thereof shall be removed without the prior consent of the local planning authority.
- 4) The development shall be carried out in accordance with External Finishes Plan FHW: 304 Revision H. The external finishes shall be completed prior to the play area being brought into use.
- 5) The play equipment hereby approved shall be installed and available for use within 3 months of the date of this approval. The development shall be carried out in accordance with the approved scheme and shall be retained for the lifetime of the development.
- 6) Any rainwater harvesting facilities implemented at the site under condition 11 of 2/2011/0227 at the site shall not be removed without the prior approval of the local planning authority.

- 7) The visibility splays implemented at the access junction of the development site and the A597 shall be retained and remain unobstructed throughout the lifetime of the development.
- 8) Details of the surface water drainage scheme relating to the play area and access path shall be submitted to and approved by the local planning authority within 3 months of the date of this approval. The drainage scheme for the play area shall be implemented prior to the play area being brought into use and shall be maintained operational thereafter.
- 9) All noise mitigation measures associated with glazing and ventilation specifications shall be implemented in accordance with sections 6.1, 6.2 and 6.3 of the Noise Assessment Report dated March 2011 (ref A032608-1).
- 10) Within 3 months of the date of this approval, a validation report confirming the implementation of the details required in condition 9 shall be submitted to and approved in writing by the local planning authority.