



Appeal Decision

Site visit made on 24 June 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Appeal Ref: APP/L1765/W/18/3210599

Land to the West of Tangier Lane, Bishops Waltham, Hampshire SO32 1BU

- 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 Crest Nicholson Operations Ltd against the decision of Winchester City Council.
 - The application Ref 18/01114/FUL, dated 2 May 2018, was refused by notice dated 9 July 2018.
 - The application sought planning permission for the erection of 66 dwellings with associated access via Albany Road, associated parking, landscaping and public open space (Phase 1), without complying with a condition attached to planning permission Ref 16/01322/FUL, dated 30 June 2017.
 - The condition in dispute is No 5 which states that:
No development shall be commenced unless and until a schedule of materials and samples of such materials and finishes and colours to be used for external walls, roofs, window/door frames of the proposed buildings have been submitted to and approved by the Local Planning Authority in writing and all materials used shall conform to those approved. With respect to roof materials for all buildings, only natural slate and clay plain tiles shall be used. Any tile hung elevations shall be clay plain tiles.
 - The reason given for the condition is:
In order to safeguard the character and visual amenities of the locality.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 66 dwellings with associated access via Albany Road, associated parking, landscaping and public open space (Phase 1) at Land to the West of Tangier Lane, Bishops Waltham, Hampshire, in accordance with the application Ref 18/01114/FUL dated 2 May 2018, without compliance with condition number 5 previously imposed on planning permission Ref 16/01322/FUL dated 30 June 2017, but subject to the conditions on the attached Schedule 1.

Application for costs

2. An application for costs was made by Crest Nicholson Operations Ltd against Winchester City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect to the character and appearance of the area if an alternative to *plain* clay tiles or natural slate were used with the residential development.

Reasons

4. The development is for 66 dwellings and so would be a major residential development on the edge of this settlement. The condition in dispute refers to the need for details of materials to be submitted. However, the condition also stipulates that only natural slate or plain clay tiles should be used for roofing material.
5. The appellant has indicated their intention to use interlocking clay tiles, but not the use of *plain* clay tiles. The developer is seeking to use a clay interlocking tile (Sandtoft 20/20 Interlocking tile has been referred to), which are larger format than plain clay tiles. I note that the Sandtoft tile is stated to be a 'plain' tile but as accepted by the appellant these are different from the traditional small format plain clay tile. Visually, there would be some similarities, but from the information before me there would be some visually differences too.
6. The development is towards the edge of the settlement and would project into the surrounding countryside. Traditional plain clay tiles are evident in rural areas around Bishops Waltham but are also present as a material in the centre of this settlement. However, this site is not near the centre of the village. The residential areas that currently border the site (thereby currently adjacent to rural areas) have a mix of differing roof tiles and not just plain clay tiles.
7. It is clear that the Council generally consider plain clay tiles as a high quality material which is appropriate within this area. The Council's Supplementary Planning Document (SPD) 'High Quality Places' states that plain clay tiles are an example of "high quality roofing materials". However, this does not mean this is the only high quality roofing material that would be available and appropriate for development within this area.
8. The SPD 'Bishop's Waltham Design Statement' and some other parts of the 'High Quality Places' document do not explicitly state that *plain* clay tiles should be used but does encourage clay tiles in general. The revised wording of the condition would not, therefore, be contrary to these SPDs.
9. Part (vi) of the criteria of policy DM16 (Site Design Criteria) requires the use of high quality materials. The site does not need to be in a particularly sensitive location or within a Conservation Area for this criterion to apply. However, there is no substantive evidence before me that there could not be a clay tile of high quality proposed for this site other than a 'plain' clay type. Therefore, I find the condition as overly-prescriptive with the stipulation of 'plain' clay tiles unnecessary and unreasonable.
10. I recognise that the site is a major residential development, which would have a considerable visual impact to a wide area. Given its location on the edge of the settlement then it is particularly important that a high quality material appropriate to its surroundings is used for the roofing of the proposed houses. However, whilst I would agree that plain clay tiles could be suitable, alternatives which are also appropriate to this setting and of high quality are possible.

11. Examples have been submitted with reference to Sandtoft 20/20 Interlocking Tile and the comparison to a plain clay tile alternative. The Council has also referred to a plain clay tile used in another development nearby as a comparison. From the information before me it is not sufficiently clear whether the Sandtoft 20/20 interlocking tile would be a sufficiently high quality material appropriate for this site, with much of the information of this tile from the appellant being longer range photographs of houses built with interlocking roof tiles that lacks detail. However, the appeal before me is to change the wording of the condition and not to agree a specific alternative material.
12. As required by the National Planning Policy Framework, it is for the Council to work positively and proactively with applicants. From the information submitted the appellants were aware of the condition, including the reference to plain clay tiles, before determination of the planning application. This shows there was communication on this issue. However, this does not mean that the developer cannot seek to apply to amend the condition on subsequent reflection.
13. Furthermore, although this condition was attached to a 2017 condition which the appellant has been aware of for some time, I see no exceptional circumstance why this needs to require details of agreed materials prior to commencement of any development at the site. The condition could require details to be submitted prior to their use in the approved development. This would have the same effect of the Council controlling the external materials to be used, without any unnecessary delay to the commencement of development due to this condition.
14. Therefore, I regard the condition as imposed by the Council to be unnecessarily over-prescriptive and inflexible and would not meet the tests as outlined in Paragraph 55 of the National Planning Policy Framework. Control over the materials to be used in the development is required, to ensure that high quality materials are used in order to safeguard the character and visual amenities of the area. However, this can be achieved with an amended condition as set out in the attached conditions (No 5). This condition would accord with policies DM15 and DM16 of the Local Plan Part 2 (Development Management and Site Allocations) and the 'High Quality Places' Supplementary Planning Document (adopted 2015).' These policies require development to reflect local distinctiveness and use high quality materials, amongst other things.
15. For the reasons set out above I conclude that the appeal should be allowed. However, in doing so I have not agreed to any specific material, only the amendment to the condition wording. It should also be noted that the condition requires details of all external materials to be used, not just roofing material. I will grant a new planning permission without the disputed condition, which is superseded by an amended condition requiring details of materials for the development but not refer to plain clay tiles. I have also retained those non-disputed conditions from the previous permission that appear still to be relevant. From the information I have, these non-disputed conditions meet the tests and any 'pre-commencement' conditions are considered appropriate.

Conclusion

16. For the reasons given above, the appeal should be allowed subject to the conditions in the schedule below.

S. Rennie

INSPECTOR

Schedule 1 – Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall not be carried out except in complete accordance with the following drawings:
 - A-1000 Rev. J - Site Location Plan;
 - C-1006 Rev. N - Site Layout;
 - C-1010 Rev. C - Street Elevations A&B;
 - C-1011 Rev. C - Street Elevations C&D;
 - A-1015 Rev. C - Dwelling Distribution;
 - A-1016 Rev. C - Parking Allocation;
 - A-1017 Rev. C - Refuse Strategy;
 - C-2000 Rev. E - Brookfield - Elevations and Floor Plans;
 - C-2005 Rev. F - Leith - Elevations and Floor Plans;
 - C-2006 Rev. E - Leith 2 - Elevations and Floor Plans;
 - C-2010 Rev. F - Meadow - Elevations and Floor Plans;
 - C-2011 Rev. F - Meadow - Elevations and Floor Plans;
 - C-2015 Rev. F - Danbury - Elevations and Floor Plans;
 - C-2020 Rev. F - Laurel - Elevations and Floor Plans;
 - C-2025 Rev. F - Orchard - Elevations and Floor Plans;
 - C-3000 Rev. E - York - Elevations and Floor Plans;
 - C-3005 Rev. F - Leith Semi - Elevations and Floor Plans;
 - C-3010 Rev. F - Bramble & Meadow - Elevations and Floor Plans;
 - C-3011 Rev. F - Bramble & Meadow - Elevations and Floor Plans;
 - C-3015 Rev. D - Bramble & Leith 2 - Elevations and Floor Plans
 - C-3100 Rev. F - 2BH Affordable Elevations and Floor Plans;
 - C-3101 Rev. F - 2BHA Affordable Elevations and Floor Plans;
 - C-3115 Rev. F - 2BH/3BH Affordable Elevations and Floor Plans;
 - C-3116 Rev. F - 2BHA & 3BHA - Affordable Elevations and Floor Plans;

- C-3120 Rev. F - 3BH/4BH Affordable Elevations and Floor Plans;
 - C-3125 Rev. D - 3BH Affordable Elevations and Floor Plans;
 - C-3200 Rev. F - Plots 50-55 Flat Block;
 - A-3206 Rev. A - Garages and Stores - Plans and Elevations;
 - A-3207 Rev. A - Garages and Stores - Plans and Elevations.
 - 2658-LA-10 Rev. P3 - Illustrative Landscape Masterplan;
 - 2583-LA-12 Rev. P3 - The Green Core;
 - 2583-LA-13 Rev. P3 - The Mews and SINC;
 - 2583-LA-14 Rev. P3 - The Cottages and Open Space;
 - 120614/A/16 Rev. C - Proposed Albany Road Access;
 - Planning Statement (incorporating Affordable Housing Statement and draft S.106 Heads of Terms) and appendices;
 - Design & Access Statement - Addendum (Land to West of Tangier Lane) September 2016;
 - Landscape and Visual Impact Assessment May 2016 Ref: '2583-RE-02'
 - Transport Assessment;
 - Initial Travel Plan;
 - Flood Risk Assessment;
 - Foul Drainage Infrastructure Site Appraisal Report;
 - Ecological Appraisal May 2016
 - Arboricultural Impact Assessment and Tree Constraints Report;
 - Archaeological Desk-Based Assessment; Jan 2013 (revised May 2016) Ref: 'DH/KB/14845'
 - Phase I Environmental Statement (Ground Conditions); Ref: 'HYD-2111367'
 - Desk Study and Ground Investigation Report May 2016 Ref: 'R/151345/001 Rev 2'
 - Consultation Statement 30 May 2016
 - Biodiversity Checklist;
 - CIL Form;
3. This permission relates to the amended plan(s) ('2658-LA-10 Revision P3') submitted on 02.09.2016 and the addendum to the 'Design and Access Statement' submitted on 02.09.2016, and not to the plan(s) (2064-C-1006-F) originally submitted.
4. Before development commences, a 1:100 scale fully annotated plan to include elevations and floor plans for plot 2-5 shall be amended so to accord

with the revised 'Illustrative Site Layout Plan' labelled drawing no: '2658-LA-10 Revision P3'. The development hereby permitted shall therefore exclude the details as submitted from within drawing no: '2064-C-3205-D' and 'C-2007 Rev. E'. The requirements approved shall be carried out as specified under condition 2 and maintained thereafter in accordance with the approved details.

5. Prior to their use in the development hereby approved, a schedule of materials and samples of such materials and finishes and colours to be used for external walls, roofs, window/door frames of the proposed buildings shall be submitted to and approved by the Local Planning Authority in writing and all materials used shall conform to those approved. With respect to roof materials for all buildings, only natural slate or clay tiles shall be used. Any tile hung elevations shall be clay tiles.
6. Unless otherwise agreed in writing by the Local Planning Authority any walls of the buildings to be painted or treated shall be painted or treated with a paint or stain approved in writing by the Local Planning Authority within four months of erection or prior to the building being brought into use whichever is the sooner. Thereafter the building shall be maintained with the approved paint or stain.
7. The development hereby approved shall be used for planning use class C3 - dwellinghouses and for no other purpose (including any other purpose in any class [C] in the schedule to the Town and Country Planning (Use Classes) Order 1987.
8. Prior to the commencement of the development hereby permitted detailed information (in the form of SAP design stage data and a BRE water calculator) demonstrating that all homes meet the Code 4 standard for energy and water (as defined by the ENE1 and WAT 1 in the Code for Sustainable Homes) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be built in accordance with these findings.
9. Prior to the occupation of the dwellings hereby permitted detailed information (in the form of SAP "as built" stage data and a BRE water calculator) demonstrating that all homes meet the Code 4 standard for energy and water (as defined by the ENE1 and WAT 1 in the Code for Sustainable Homes) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be occupied in accordance with these findings.
10. The number of dwellings hereby permitted to be constructed at the site shall be restricted to 66.
11. The proposed dwellings shall be constructed as two-storey buildings with the main eaves line level with the first floor window-heads.
12. No development, or works of site preparation or clearance, shall take place until details, including plans and cross sections of the existing and proposed ground levels of the development and the boundaries of the site and the height of the ground floor slab and damp proof course in relation thereto, have been submitted to and approved in writing by the Local Planning

Authority. The works hereby permitted shall be carried out in accordance with the approved details.

13. No development shall take place until details of screen walls and/or fences have been submitted to and approved in writing by the Local Planning Authority and no dwellings/buildings shall be occupied until such screen walls and/or fences associated with them have been erected. Thereafter the screen walls and/or fences shall be retained as approved and maintained in accordance with the approved details.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or Orders amending or revoking and re-enacting the same, no gate, fence, wall or other means of enclosure shall be erected or constructed in front of the forward most part of any proposed building(s) which fronts onto a highway or around the boundary of the site unless prior written permission has been granted by the Local Planning Authority (pursuant to an application for the purpose).
15. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2015 (or any order amending or revoking and re-enacting that Order with or without modification) no development falling within Classes A B C D E F G and H of Part 1 of Schedule 2 to the order shall be erected constructed or placed within the curtilage(s) of the dwelling(s) hereby permitted so as to enlarge improve or otherwise alter the appearance or setting of the dwelling(s) unless permission is granted by the Local Planning Authority pursuant to an application for the purpose.
16. Details of measures to be taken to prevent mud from vehicles leaving the site during construction works being deposited on the public highway shall be submitted and approved in writing by the Local Planning Authority and fully implemented before development commences. Such measures shall be retained for the duration of the construction period. No lorry shall leave the site unless its wheels have been cleared sufficiently to prevent mud being carried onto the highway.
17. Details of provisions to be made for the parking and turning on site of operative and construction vehicles during the period of development shall be submitted to and approved in writing by the Local Planning Authority and fully implemented before development commences. Such measures shall be retained for the construction period.
18. The parking areas shall be provided in accordance with the approved plans before each of the dwellings are first occupied and thereafter permanently retained and used only for the purpose of accommodating private motor vehicles or other storage purposes incidental to the use of the dwelling houses as residences.
19. Before the development hereby permitted is commenced, detailed plans of access and parking facilities for the disabled shall be submitted to and approved by the Local Planning Authority in writing. The use hereby permitted shall not commence until these facilities have been provided in accordance with the approved plans.

20. No dwelling shall be occupied until such time as the access onto Albany Road as shown on Drawing No. 120614/A/16C has been completed in accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority.
21. The buildings hereby permitted shall not be occupied until all access(es) to the site (Tangier Lane) other than that hereby approved shall have been stopped up permanently and obliterated in accordance with details to be first submitted to and approved by the Local Planning Authority in writing.
22. Notices shall be erected and maintained throughout the period of construction of the development hereby permitted at the site exit indicating to drivers the route agreed by the Local Planning Authority for traffic leaving the site.
23. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or Orders amending or revoking and re-enacting the same, no access, vehicular or pedestrian, shall be formed to any section of the site unless permission is granted pursuant to an application for the purpose.
24. No work for the implementation of the development hereby permitted shall be undertaken on the site except between the hours of 08.00 and 18.00 on Mondays to Fridays inclusive and 08.00 hours and 13.00 hours on Saturdays, and no work shall be undertaken on Sundays, Bank and Public Holidays unless otherwise agreed in writing by the Local Planning Authority.
25. Details of any external lighting of the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. This information shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation. The external lighting will not be switched on between the hours of 22:00 in the evening and 07:00 the following morning.
26. Development shall cease on site if, during any stage of the works, potential contamination is encountered which has not been previously identified, unless otherwise agreed in writing with the Local Planning Authority. Works shall not recommence before an assessment of the potential contamination has been undertaken and details of the findings along with details of any remedial action required (including timing provision for implementation), has been submitted to and approved in writing by the Local Planning Authority. The development shall not be completed other than in accordance with the approved details.
27. Protective measures, including fencing and ground protection, in accordance with the Arboricultural Impact Appraisal and Method Statement reference 9009_AIA.002 written by James Bardey of Aspect Arboriculture and submitted to the Local Planning Authority shall be installed prior to any demolition, construction or groundwork commencing on the site.
28. The Arboricultural Officer shall be informed once protective measures have been installed so that the Construction Exclusion Zone (CEZ) can be

inspected and deemed appropriate and in accordance with 9009_AIA.002. Telephone 01962 848403.

29. The Arboricultural Officer shall be informed prior to the commencement of construction of special surfacing under tree canopies so that a pre commencement site visit can be carried out. Telephone 01962 848403.
30. No arboricultural works shall be carried out to trees other than those specified and in accordance with the Arboricultural Impact Appraisal and Method Statement 9009_AIA.002.
31. Any deviation from works prescribed or methods agreed in accordance with the Arboricultural Impact Appraisal and Method Statement 9009_AIA.002 shall be agreed in writing to the Local Planning Authority.
32. No development, or site preparation prior to operations which has any effect on compacting, disturbing or altering the levels of the site, shall take place until a person suitably qualified in arboriculture, and approved as suitable by the Local Planning Authority, has been appointed to supervise construction activity occurring on the site. The arboricultural supervisor will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary by the approved arboricultural method statement. Where ground measures are deemed necessary to protect root protection areas, the arboricultural supervisor shall ensure that these are installed prior to any vehicle movement, earth moving or construction activity occurring on the site and that all such measures to protect trees are inspected by the Local Planning Authority Arboricultural Officer prior to commencement of development work.
33. A pre-commencement meeting will be held on site before any of the site clearance and construction works begins. This will be attended by the site manager, the Arboricultural consultant and the LPA tree officer.
34. No development/demolition or site preparation shall take place until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological mitigation work in accordance with a Written Scheme of Investigation that has been submitted to and approved by the local planning authority in writing. No demolition/development or site preparation shall take place other than in accordance with the Written Scheme of Investigation approved by the LPA. The Written Scheme of Investigation shall include:
 - The programme and methodology of site investigation and recording
 - Provision for post investigation assessment, reporting and dissemination
 - Provision to be made for deposition of the analysis and records of the site investigation (archive) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
35. Following completion of archaeological fieldwork a report will be produced in accordance with an approved programme including where appropriate post-excavation assessment, specialist analysis and reports and publication. The report shall be submitted to and approved by the local authority.

- 36.No development shall commence until full details of means of surface water drainage to serve the development shall be submitted to and agreed in writing by the Local Planning Authority prior to works commencing on development. The scheme agreed shall be implemented strictly in accordance with such agreement unless subsequent amendments have been agreed with the Local Planning Authority.
- 37.No development shall commence until full details of the proposed means of foul and surface water sewage disposal have been submitted to and agreed in writing by the Local Planning Authority prior to works commencing on development.
- 38.Detailed proposals for the disposal of foul water, notably confirmation from SW that connection to their system shall not pose any capacity problems and that the pump has a long term management process in place shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development hereby permitted.
- 39.No development or new tree planting should be located within 3 metres either side of the centreline of the public sewer. No new soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 metres of a public (also adoptable) sewers. All existing infrastructure should be protected during the course of construction works.
- 40.No development, demolition pursuant to the permission granted, or alterations to buildings, shall take place until details indicating how suitable provision will be made for protected species and their habitats have been submitted to and approved by the Local Planning Authority in writing and such provision shall be made before development commences and thereafter be retained and maintained in accordance with the approved details.
- 41.Works shall be carried out in full accordance with the specific recommendations and mitigation measures set out in the following reports, unless otherwise approved in writing by the Local Planning Authority:
Ecological Appraisal May 2016.
- 42.All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out before the use hereby permitted is commenced and prior to the completion of the development, or in accordance with a programme agreed with the Local Planning Authority. If within a period of five years after planting any tree or plant is removed, dies or becomes, in the opinion of the Local Planning Authority, seriously damaged, defective or diseased, another tree or plant of the same species and size as that originally approved shall be planted at the same place, within the next planting season, unless the Local Planning Authority gives its written consent to any variation.