



Appeal Decision

Site visit made on 16 July 2019

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 5 August 2019

Appeal Ref: APP/M2325/W/19/3221605

Land off Lytham Road, Warton, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Warton East Developments against Fylde Borough Council.
 - The application Ref 17/0851 is dated 6 October 2017.
 - The application sought outline planning permission for the erection of up to 350 dwellings without complying with a condition attached to planning permission Ref. 14/0410, dated 13 February 2017.
 - The condition in dispute is no. 7 which states that: No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:
 - a) The Preston Western Distributor Road;
 - b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue;
 - c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.
 - The reason given for the condition is: The safety and convenience of highway users.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 350 dwellings at land off Lytham Road, Warton, Lancashire in accordance with application Ref. 17/0851, dated 6 October 2017, without compliance with condition nos. 3, 7 and 8 previously imposed on planning permission Ref. 14/0410, dated 13 February 2017, and subject to the conditions set out in the Schedule of conditions at the end of this decision.

Main Issues

2. The original application subject of this appeal sought the modification of condition no. 7 attached to planning permission Ref. 14/0410, dated 13 February 2017. The desired modifications included the removal of requirements a) and b) of the condition, and a relaxation of the restriction on development prior to satisfying requirement c) from 15% to 65%. However, during the planning application process, the extent of the relaxation sought by the appellant was modified, such that up to 33% of the development could be occupied prior to requirement c) being satisfied. Therefore, I have considered the appeal on the basis of a relaxation to 33%, rather than the original 65% sought.
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3. I consider that the main issue in this case is the effect on the safety and convenience of highway users of modifying condition no. 7 as proposed.

Reasons

4. On 13 February 2017 the Secretary of State granted outline planning permission Ref. 14/0410 for the erection of up to 350 dwellings on land off Lytham Road, Warton. The planning permission was the subject of 21 conditions and those related to local highway improvements included condition no. 7. The appellant argues that there has been a change of circumstances since the grant of planning permission Ref. 14/0410 by the Secretary of State, which justifies a relaxation of condition no. 7. This argument is accepted to some extent by the Council, as set out below, and is rejected by a number of objectors.
5. I deal first with the development limitation of 15% prior to highway improvement works a), b) and c). The appellant asserts that the approach to traffic forecasting contained in the Local Highway Authority's (LHA) sensitivity test model presented at the Inquiry, upon which the 15% threshold was based, resulted in unrealistically high estimates of future year baseline traffic volumes which have not materialised over the period since the Inquiry was held.
6. In support of that view, the appellant has indicated that the assumptions underlying the sensitivity test model resulted in a predicted increase, between 2013 and 2024, in traffic on the approaches to the Church Road/Lytham Road/Highgate Lane junction (CLH junction) in the range 34% to 54%. Furthermore, this equates to predicted levels of growth in vehicle movements around 2 to 3 times greater than predicted using the Government's *National Trip End Model* and *TEMPRO* software.
7. Notwithstanding the delivery of a significant quantum of development in the area, in the period 2013 to 2018, traffic surveys undertaken in January 2018 by the appellant and separately by the LHA indicate that the actual degree of growth is significantly below the levels of growth associated with the sensitivity test model. For example, using the LHA survey results, the highest growth rate in traffic approaching the CLH junction between 2013 and 2018, which is associated with a net change in the AM peak hour on Lytham Road (west) of 146 vehicles, equates to around 10%.
8. I have had regard to the concern of the Council that as the surveys were all undertaken at a similar time of year, they could only be taken as a 'snap-shot' in time and could not be considered to be representative of a consistent pattern. However, the appellant has also provided data from the Department for Transport's annual count database for a count site on Lytham Road to the west of Church Road, which indicates that in the period 2001 to 2016, whilst there have been limited year on year variations in traffic levels, there has been a slight downward trend. Under these circumstances and in the absence of any compelling evidence to the contrary, I consider that the survey results can be relied upon.
9. Furthermore, against this background, I share the appellant's view that there has been a change of circumstances since planning permission was granted and the sensitivity test model presented at the previous Inquiry is likely to

have resulted in unrealistically high estimates of future year baseline traffic volumes. It was in the context of those estimates, and the highway improvements to be secured by condition no. 8, that the addition of traffic associated with 15% of the appeal site development was found to be acceptable in terms of the safety and convenience of highway users by the previous Inspector.

10. The Council has indicated, on reflection, that minor modifications would need to be made to condition no. 8, which relates to the provision of MOVA/UTC control at local junctions, to ensure that it is effective. The appellant does not object to those changes and I consider that they would be necessary in the interests of clarity and enforceability.
11. The appellant has estimated that the difference in development related traffic associated with 15% and 33% of the development is around 38 vehicle movements in the AM peak hour and 42 in the PM Peak hour, figures which have not been disputed. In my judgement, these relatively small increases would be likely to be more than offset by a reasonable downward correction of the unrealistically high estimates of future year baseline traffic volumes, such that overall, the effect on the safety and convenience of highway users would be no worse than previously approved in association with planning permission Ref. 14/0410.
12. Requirement a) of condition no. 7 relates to the completion of a road scheme known as the Preston Western Distributor Road (PWDR). It is a local highway authority improvement scheme, for which planning permission was granted in November 2018, and forms part of the *Lancashire County Council Fylde Coast Highways & Transport Masterplan*. The Council has confirmed it is anticipated that construction will start towards the end of 2019 and will be completed in early 2023. Furthermore, the Council indicates that its construction does not rely on the implementation of planning permission Ref. 14/0410, nor is it directly required as a mechanism to relieve traffic arising from the appeal development. The main purpose of the PWDR being to redirect traffic movements into and out of BAE Systems, which is the dominant source of peak traffic on the local highway network, away from the western end of the settlement. The previous Inspector (Ref. 14/0410) indicated that, compared with traffic from BAE Systems, the effects of the appeal site development are relatively insignificant.
13. Requirement b) of condition no. 7 relates to the relocation of the BAE Systems access from Mill Road to Typhoon Way and is associated with the development of an Enterprise Zone within BAE Systems land. The Council has confirmed that planning permission was granted for that development in 2013 and the access proposal is tied to development within the Enterprise Zone, which has yet to take place.
14. Furthermore, the Council has indicated that since the appeal before me was made, the appellant has submitted a further planning application which seeks to remove requirements a) and b) of condition no. 7 and to keep the proportion of development that can come forward in advance of requirement c) at 15%. The Council has resolved to approve that application.
15. In the circumstances set out above, I conclude that neither requirements a) nor b) are necessary to ensure that the effect of the appeal site development on the safety and convenience of highway users would be acceptable.

As regards requirement c), the dispute relates to the increase in traffic that would necessitate improvements at the CLH junction, in the interests of the safety and convenience of highway users, rather than the works themselves. Based on my findings above, I consider that those interests of acknowledged importance could be safeguarded by a limitation of 33%, as proposed by the appellant. The LHA did not object to the proposed relaxation of the requirements of condition no. 7 and this adds further weight to my findings.

16. I conclude that the effect on the safety and convenience of highway users of modifying condition no. 7 as proposed would be acceptable and it would not conflict with aims of Policy GD7 of the *Fylde Local Plan, 2018* (FLP) or the *National Planning Policy Framework* (the Framework) insofar as they seek to ensure that development would not prejudice highway safety or the efficient and convenient movement of highway users.

Other conditions

17. In the event that the appeal is allowed and a new planning permission granted, the Council considers that in addition to modified condition nos. 7 and 8, it would be necessary to modify condition no. 3 to ensure that the time limit for submission of applications for reserved matters is consistent with the original permission. I agree, as a section 73 application cannot be used to vary the original time limit for implementation.
18. In addition, the Council considers that an entirely new condition should be imposed to ensure that the development delivers the housing mix identified in FLP Policy H2, which has been adopted since planning permission Ref. 14/0410 was granted. In support of its view, the Council cites part of the guidance on section 73 applications set out in the national *Planning Practice Guidance* (PPG) to the effect that local planning authorities should, in making their decisions, focus their attention on national and Development Plan policies, and other material considerations which may have changed significantly since the original grant of planning permission¹.
19. However, further guidance provided by the PPG includes that in deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application; it is not a complete re-consideration of the application. The Secretary of State will take the same approach when considering an associated appeal². It is in this context that the PPG indicates that the application is considered against the Development Plan and material considerations and conditions attached to the existing permission³.
20. To my mind therefore, the scope of the considerations is limited to the proposed changes to condition no. 7 and consequential changes to other previously imposed conditions, in light of the current Policy framework. In my judgement, the proposed new condition, which is unrelated to condition no. 7 and the matters it seeks to address, lies outside that scope. However, even if that were not the case, the PPG indicates that in granting planning permission under section 73 the local planning authority may impose new conditions-provided the conditions do not materially alter the development

¹ ID: 17a-019-20140306.

² ID: 21a-031-20180615.

³ ID: 21a-040-20190723.

that was subject of the original permission and are conditions which could have been imposed on the earlier planning permission⁴. The Council has indicated that at the time when planning permission Ref. 14/0410 was granted the Development Plan did not include the same requirements as FLP Policy H2. It is not self-evident therefore, that the proposed condition could have been imposed on the earlier permission. In either circumstance, I conclude that it would not be reasonable to impose the proposed new housing mix condition promoted by the Council and this amounts to a compelling reason not to do so.

Other matters

21. Planning permission Ref. 14/0410 is subject to a number of planning obligations secured by a unilateral undertaking (UU) pursuant to section 106 of the *Town and Country Planning Act 1990*. The obligations include, amongst other things, provisions related to Affordable Housing and contributions towards infrastructure made necessary by the approved development. The appellant has provided a viability appraisal to show that it would only be viable to provide 14 Affordable dwellings, in addition to the financial contributions, as part of the first 33% of the development, which is equivalent to the construction of 117 dwellings. The balance needed to fulfil an overall level of provision of 30% Affordable Housing across the site, in accordance with the requirements of FLP Policy H4, could be delivered in the later phase(s) of the development. This position is accepted by the Council. The appellant has provided a planning obligation to secure the necessary changes to the extant UU, in the form of a deed of modification under section 106A of the *Town and Country Planning Act 1990*, which would link the obligations to the section 73 application. The Council has confirmed that it meets its requirements, with reference to FLP Policies H4, T4 and INF2. I have no reason to take a different view on these matters.
22. I conclude that the UU would satisfactorily secure planning obligations necessary to make the appeal proposal acceptable in planning terms. It meets the tests of planning obligations set out in the Framework.
23. I have had regard to the concern of objectors that the appeal proposal, if successful, could be used to support the modification of development restrictions attached to planning permissions for development elsewhere in the area. However, there is no compelling evidence before me to show that this would be likely. In any event, each case must be considered primarily on its own merits and it would remain open to the Council in any future cases to show that harm would be caused.
24. The appellant has indicated that the previously approved development is not deliverable, due to the constraints imposed by condition no. 7, and the appeal scheme would assist in kick starting the delivery of housing on that allocated strategic site by improving its marketability. This position is accepted by the Council and I have no reason to disagree. In light of the Government's desire to boost significantly the supply of housing, this weighs in favour of the appeal proposal.

⁴ ID: 21a-040-20190723.

Conclusions

25. I found that the effect of the appeal scheme on the safety and convenience of highway users would be acceptable. Furthermore, I conclude on balance that the scheme would accord with the Development Plan taken as a whole and it would amount to sustainable development under the terms of the Framework.

I Jenkins

INSPECTOR

Schedule of conditions

- 1) No development shall take place until a plan detailing the phasing of development and the allocation to each phase of a share of a total open space provision of not less than 2ha including a LEAP/LAP has been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 2) Details of the access within each phase of the site, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins on the phase in question and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of planning permission 14/0410 (i.e. by 13 February 2020).
- 4) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) The access on to Lytham Road to the development hereby permitted shall be carried out in accordance with approved plan number SK21338-12. No dwelling shall be occupied until the details shown on the approved plan have been completed and made available for use. Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (or any equivalent Order following the revocation or re-enactment thereof) the area indicated as an area to be kept free of obstruction to visibility shall thereafter be kept free of any obstruction higher than 0.6m above the level of the carriageway.
- 6) No greater quantity of housing shall be built than that which would give rise to traffic generated by the development no greater than that forecast in the submitted Transport Assessment 140603/SK21338/TA02 June 2014 by SK Transport Planning Ltd.
- 7) No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of

Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.

- 8) No dwelling hereby approved shall be occupied until a MOVA/UTC control has been installed and brought in to use at:

- a) The Church Road/Lytham Road/Highgate Lane junction;
- b) The Lytham Road/Mill Lane junction; and,
- c) The junction of Lytham Road and the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue.

Unless alternative details have first been submitted to and approved in writing by the local planning authority, the MOVA/UTC control at location a) shall include the following measures: (i) installation of MOVA control and setup; (ii) relocation of loop locations in the highway where required (in line with MOVA requirements); (iii) a new signal control box; (iv) new signal poles and signal heads; and, (v) installation of remote CCTV monitoring of the junction.

- 9) No dwelling shall be occupied until details of travel mode share targets for the development and measures to achieve them (a Travel Plan) have been submitted to and approved in writing by the local planning authority. The development shall be carried out and retained in accordance with the approved details.
- 10) No dwelling shall be occupied until it has been provided with a Visitors Pack which shall have been previously submitted to and approved by the local planning authority, highlighting the sensitivity of the Ribble & Alt Estuaries to recreation activity and highlighting alternative recreational opportunities. The Visitors Pack shall thereafter be kept available in the dwelling for the use of future occupants.
- 11) No development shall take place on any phase of the site until details of foul and surface water drainage for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until it is provided with its drainage as approved.
- 12) No development shall take place on any phase of the site until details of finished floor levels and external ground levels of each plot on that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) No development shall take place on any phase of the site until an intrusive site investigation of the nature and extent of contamination and unexploded ordnance has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any new construction begins on that phase. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate that phase of the site to render it suitable for the development hereby permitted shall be submitted

to and approved in writing by the local planning authority. That phase of the site shall be remediated in accordance with the approved measures before new construction begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the relevant phase of the site shall incorporate the approved additional measures.

- 14) No development shall take place within any phase of the site until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 15) No development shall take place on the relevant phase until details of the pedestrian and cycle access to Canberra Way at the north-western corner of the site and to Butlers Meadow at the south-western corner of the site (both shown indicatively on the illustrative master plan accompanying the application) have been submitted to and approved in writing by the local planning authority. No dwelling on the relevant phase shall be occupied until the relevant pedestrian and cycle access shall have been completed and made available in accordance with the approved details.
- 16) The external fabric of any dwelling hereby approved having a direct line of sight to Lytham Road and the boundary fences around their rear or private amenity areas shall be constructed so as to comply with the sound reduction performance recommended in section 5 of the Noise Impact Assessment by Resource & Environmental Consultants Ltd reference 90342R2.
- 17) No dwelling on any particular phase shall be occupied until the public open space allocated to that phase has been laid out and made available for its intended purpose. The public open space shall be retained thereafter in accordance with a maintenance scheme which shall have been submitted to and approved by the local planning authority before development commences on the relevant phase. No dwelling on the last of any phase of the development which includes residential dwellings shall be occupied until the LEAP/LAP and all the public open space on all phases has been laid out and made available for its intended purpose.
- 18) In this condition "retained tree" means an existing tree or hedgerow which is to be retained in accordance with the recommendations contained in section 5 and drawing 60072-002 of the Arboricultural and Hedgerow Assessment reference 60072P1R4 by Resource and Environmental Consultants Ltd dated 2 June 2014 and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the last completed dwelling for its permitted use.
 - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or

lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

- ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

19) None of the ponds and ditches shown on figure 2 of the Ecological Survey and Assessment reference 2013_089 by ERAP Ltd dated September 2013 (Updated June 2014) shall be removed or filled in except in accordance with details submitted and approved in compliance with other conditions of this permission. A buffer zone of 10m around the edge of each pond shall be kept free of development.

20) No clearance of any vegetation in preparation for or during the course of development shall take place during the bird nesting season (March to July inclusive) unless an ecological survey has first been submitted to and approved in writing by the local planning authority. Should the survey reveal the presence of any nesting species, then no clearance of any vegetation shall take place during the bird nesting season until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the local planning authority. Nest site protection shall thereafter be provided in accordance with the approved methodology.

21) No development shall take place, including any works of demolition, 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 provide for:

- i. The hours of site operation;
- ii. The parking of vehicles of site operatives and visitors;
- iii. Loading and unloading of plant and materials;
- iv. Storage of plant and materials used in constructing the development;
- v. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- vi. Wheel washing facilities;
- vii. Measures to control the emission of dust and dirt during construction; and,
- viii. A scheme for recycling/disposing of waste resulting from demolition and construction works.