



Appeal Decision

Site visit made on 20 May 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th August 2019

Appeal Ref: APP/W3005/W/18/3211579

**Land to the rear of 249 & 251 Alfreton Road, Sutton-in-Ashfield,
Nottinghamshire, NG17 1JP**

- 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 Mr Matthew Anderson (Gleeson Homes) against the decision of Ashfield District Council.
 - The application Ref V/2018/0082, dated 1 February 2018, was refused by notice dated 12 April 2018.
 - The application sought planning permission for residential development for 118 dwellings and associated works including demolition of existing dwelling to create access without complying with a condition attached to planning permission Ref V/2016/0487, dated 26 October 2017.
 - The condition in dispute is No.13 which states that: *No development shall take place until the following matters have been submitted to and agreed in writing by the Local Planning Authority:*
 - (a) *Full details of the proposed treatment of the site's boundaries.*
 - (b) *A phasing scheme for the implementation of the agreed boundary treatment.*
 - (c) *Specific acoustic walls to the site boundaries alongside the initial 50m of the access road, adjoining Nos 249 and 251A Alfreton Road.**The boundary treatment shall be undertaken in accordance with the agreed details.*
 - The reason given for the condition is: *To safeguard the amenities of residents living in the vicinity of the application site.*
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Decision

1. The appeal is allowed and planning permission is granted for residential development for 118 dwellings and associated works including demolition of existing dwelling to create access at Land to the rear of 249 & 251 Alfreton Road, Sutton-in-Ashfield, Nottinghamshire, NG17 1JP in accordance with the application Ref: V/2018/0082 dated 1 February 2018 by deleting condition 13, previously imposed on planning permission Ref: V/2016/0487 dated 26 October 2017 and subject to the conditions in the attached schedule.

Procedural Matters

2. The address in the banner heading above is taken from the original decision notice as that given on the application form referred to 249 – 281 which appears to be an error.

3. Since the appeal was submitted the Ashfield District Council Publication Local Plan 2016 has been withdrawn from examination and I have considered the appeal on this basis.
4. The plans submitted to the Council show a 'hit and miss' fence and the area in front of the fence being planted with shrubs and ground cover planting. The appellant has submitted revised plans as part of the appeal which show a close boarded fence and a hawthorn hedge to be planted between the fence and the proposed pavement. These changes do not materially alter the nature of the proposal and I am content to consider the appeal on the basis of the revised plans and consider that no party is prejudiced by me doing so.
5. The appeal relates specifically to condition 13 (c) and I have considered the appeal on this basis.

Background and Main Issues

6. The application sought to remove criteria (c) of condition 13 and in doing so the appellant submitted details of alternative treatment to the site boundaries along the access road.
7. The Council's reason for the condition was to safeguard the amenities of residents living in the vicinity of the application site. In refusing the application they stated that the appellant had failed to demonstrate that the noise levels arising from the development would not be increased over and above the ambient levels which would cause harm to the residential amenity of occupiers of adjoining properties. Further, that the omission of a walled treatment would cause harm to the character and appearance of the area.
8. It is evident from the Council's report and appeal statement that further reasons for requiring a wall are to ensure that adequate privacy and screening is provided for neighbouring occupants, and in order to create an attractive entrance to the development.
9. On the basis of the above and the submitted evidence, I consider the main issues to be whether the condition is reasonable or necessary, having regard to the effect on the living conditions of the occupants of 249 and 251A Alfرتون Road with particular regard to noise, disturbance and privacy; and the effect on the character and appearance of the area.

Reasons

Living conditions

10. The originally submitted Access Road Noise Assessment (noise assessment) was assessed on the basis of an 18-hour period for 'daytime' and a 6-hour period for 'night-time' and the peak hour flow was assumed to be constant throughout the 18-hour period. The original noise assessment assessed the proposals on the basis that no barrier would be provided on the boundary and concluded that, even with no barrier, the worst-case situation with traffic levels based upon peak flows, there would be a 1.6dB(A) increase during the day and 0.4dB(A) at night. This is in the 'minor adverse' levels category in the short-term and 'negligible' in the long-term and it was concluded that the change in noise levels, together with no boundary treatment, would not be perceptible.

11. The revised noise assessment concludes that the inclusion of a 1.8m high fence reduces the noise impact to 0.5dB(A) increase during the day and 0.2dB(A) at night. This assessment was based on the originally proposed 'hit and miss' style fence however, the appellant's noise consultants state that on the basis of a solid wooden fence, the effects on noise levels within the external amenity space of adjoining properties would be negligible.
12. The Council have not provided any substantive contrary evidence in respect of the conclusions of the noise assessments and there is no contradictory evidence to suggest that a solid fence would not achieve better acoustic screening than the originally proposed 'hit and miss' fencing. Ashfield District Council Environmental Protection acknowledge that both the day and night time adverse impacts would be negligible but objected to the proposal as they would be greater than the existing and as such their minimum requirement would be the provision of an acoustic fence.
13. However, third parties have raised concerns about the noise assessments. I noted at my site visit that there are habitable room windows in the side and front elevation of no.251A which are located in close proximity to the approved access and its junction with Alferton Road. Whilst I acknowledge the conclusions of the noise assessments, there is little analysis of the effects of noise from vehicles accelerating away from the junction. In the absence of such information I am not satisfied that the proposed fence would safeguard the living conditions of the occupants of no.251A in particular, in respect of noise.
14. Furthermore, the proposed fence would run from around the front elevation of numbers 249 and 251A to their rear boundaries. I note that no.249 has a tall timber fence on their boundary which, if retained would maintain privacy to their front garden and windows. However, the fence on the side boundary of no.251A and the site is low and as such pedestrians would have views from the footpath into the front windows of the dwelling, which would result in significant harm as a result of loss of privacy.
15. Consequently, the proposed fence would be contrary to Policy HG5 of the Ashfield Local Plan Review Adopted November 2002 which requires that the amenity of neighbouring properties is protected, and states that residential development will be permitted where boundary treatment provides an acceptable standard of privacy. It would also conflict with the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users.
16. I acknowledge concerns raised in respect of privacy to the rear garden of no.249 however, at a proposed height of 1.8m the fence would be substantial and as such views would be limited and there would be no harm as a result of loss of privacy.
17. Concerns have also been raised about the effects of vehicle headlights on the living conditions of neighbouring residents however, the proposed fence at 1.8m would ensure that such light would not penetrate the windows on the side elevation of no.251A. The side fence at no.251A is low in height and whilst the headlights of vehicles turning into the access from a broadly north easterly direction may be visible from the windows in the front of the dwelling should curtains or blinds be open during the hours of darkness, I consider this would not result in a material deterioration of living conditions. The height and length of the existing fence to the side of no.249 would mean that there would be no

harmful impact from such light on the internal living conditions of its occupants.

18. I have had regard to third party representations in respect of air pollution however, there is no evidence which demonstrates that the development would increase air pollution to unacceptable levels or that a fence could not deliver the same protection as a wall, as such this is of little weight in my assessment. I note that the Council found no harm in this regard.

Character and appearance

19. As the appellant points out there is a wide variety of design and materials exhibited in boundary treatments in the surrounding area and there is no prevailing character, albeit red brick features regularly.
20. Based on my site observations, it is evident that residential side roads are a feature of the area. Nevertheless, as the primary access to the development the road will form an important part of the visual environment within the area and whilst the fence would be set back from Alfretton Road, it would be located adjacent to the access and would be prominent in views of its users.
21. The proposed fence has a bland, functional appearance and would be of little visual interest. Whilst the landscaping may soften the appearance, any such measures would take a reasonable period of time to become fully established and harm to the character and appearance of the area would result in the meantime. Furthermore, the fence and landscaping would have an incoherent appearance as they would be set back from the junction, broadly in line with the front elevations of numbers 251A and 249 and with the exception of the hedge on the northern side of the access, which would form a continuation of an existing Hawthorn hedge, would not align with any other boundary feature.
22. Although I noted timber fences and specifically timber boarded fences at some properties, those in the immediate vicinity of the appeal site are generally lower in height and used to divide side boundaries between dwellings, with fencing to front boundaries being more decorative in nature and are therefore not directly comparable to the appeal scheme. There are occasional examples of fencing of a similar height in the wider area, as shown in the images provided in Appendix 9 of the appellant's statement. However, with the exception of the fence at the entrance to Topaz Crescent none are sufficiently similar to the appeal scheme in terms of appearance and scale. In any event, the presence of unsympathetic development elsewhere does not amount to a justification for further harm to the character and appearance of the area.
23. I do not have details of the proposed boundary treatment which has been approved for use on plots 1 and 118 and as such this is of little weight in my assessment. Further, that the Council's landscape team had no objection to the proposal does not alter my judgement.
24. For the reasons given above, I conclude that the proposed fence and landscaping would cause harm to the character and appearance of the area contrary to Policy ST1 and HG5 of the Local Plan which state that development will be permitted where it will not adversely affect the character or quality of the environment and where boundary treatment provides an acceptable standard of visual amenity. It would also conflict with the overall design aims of the Ashfield Residential Design Guide Supplementary Planning Document

November 2014 and paragraph 130 of the Framework which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Conclusion on main issues

25. Whilst I appreciate that there is no prevalent boundary treatment in the area, it appears to me that the living conditions of neighbouring residents and the character and appearance of the area could be safeguarded without the harm that the appeal scheme would cause. Nevertheless, there is no evidence to demonstrate that an acoustic wall is the only means by which any noise impacts from vehicles using the access road could be mitigated and, given the variety of materials used in boundary treatments in the area, I consider that it is not reasonable to require that the boundary consists solely of a wall and in this respect having regard to advice in the Framework and the Planning Practice Guidance (PPG), I find that the condition is not reasonable. The Council have provided confirmation that the details required under condition 13 (a) and (b) have been approved, therefore I have deleted condition 13 and substituted it accordingly with condition number 9 as set out in the schedule of conditions below.

Other Matters

26. The appellant states that a fenced boundary was shown on the original application plans as listed in the decision notice. However, planning conditions can be used to make minor modifications to development permitted. Overall, considering the scale of the permitted scheme, I consider the condition and its requirements are a minor modification. Further, I note that the use of such a condition was discussed, albeit not specifying a wall, and a draft shared with the appellant prior to the original application being reported to committee.
27. The appellant has provided a copy of an appeal decision in respect of a proposal by the appellant in another district however, that related to a pedestrian and emergency access to a residential development site, not a primary access route. As such this is not sufficiently similar to the scheme before me and has little bearing on my assessment of the planning merits of this case.
28. There is no substantive evidence which demonstrates that the use of a fence would assist in crime prevention or enhance the safety of nearby properties.
29. That there would be environmental benefits for wildlife as a result of the proposed hedgerows is of limited weight and does not outweigh the harm identified above.
30. The misgivings expressed by the appellant about the way the Council dealt with this and the previous application are separate from the planning merits of the proposed development and have no bearing on the outcome of this appeal.

Conditions

31. The guidance in the PPG 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. Although the house which stood where the access now is has

been demolished, given the enforcement history, I am unsure whether a lawful commencement has been made. I have therefore imposed the standard time limit condition, amended as appropriate, in the interests of certainty. For the same reason I have imposed a condition requiring the development to be carried out in accordance with the approved plans.

32. The Council have provided confirmation in respect of those conditions where details have been submitted and approved, but as the development is not complete these conditions have not yet been discharged. I have therefore imposed conditions which require compliance with the approved details to ensure the development is completed in accordance with them. I have also imposed those conditions which are ongoing as set out in the Council's letter to the appellant dated 26 March 2019.

Conclusion

33. For the reasons given above and having regard to all matters raised, the appeal is allowed.

Felicity Thompson

INSPECTOR

Schedule of conditions

- 1) The development hereby approved shall be begun before 26 October 2020.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Revised red line boundary plan, received 24 January 2017
 - 484-02R – Planning Layout
 - 404/02B – Street elevations & sections
 - 16/191/TR/003, Rev.H Proposed access arrangement
 - 201/1F – house type 201
 - 202/1F – house type 202
 - 301/1G – house type 301
 - 302/1G – house type 302
 - 304/1E – house type 304
 - 307/1B – house type 307
 - 309/1E – house type 309
 - 310/1D – house type 310
 - 311/1A – house type 311
 - 313/1 – house type 313
 - 314/1 – house type 314
 - 404/1F – house type 404
 - SD-100, Rev.D – 1.8m high fencing detail
 - SD-103, Rev.B – Post & wire fence detail
 - SD-700, Rev.A – Detached garage detail
 - SD-701, Rev.A – Detached double garage detail
- 3) The development shall be carried out in accordance with the following details approved by the approval of details required by condition application Ref: V/2018/0061 dated 17 May 2018:
 - i) Surface and foul water drainage details.
 - ii) Proposed floor levels.
 - iii) Tree and hedgerow protection measures.
 - iv) Hard and soft landscaping scheme.
 - v) Bat and bird boxes.
 - vi) Air quality assessment.

- vii) Boundary treatments and phasing scheme for implementation of approved boundary treatments.
 - viii) Details of new roads, street lighting, highway drainage and outfall proposals, construction specification, provision and diversion of utility services and any structural works, details of work on Alfreton Road to provide a new junction, footway and cycleway improvements, plan showing areas for site compound and offices, parking for site operatives and visitors, loading and unloading areas, storage of plant and materials.
- 4) The development shall be carried out in accordance with the following details approved by the approval of details required by condition application Ref: V/2019/0062 dated 26 March 2019:
- i) Japanese Knotweed Management Plan.
 - ii) Details and location of wheel washing facilities.
 - iii) Travel Plan.
- 5) On completion of the remedial works and prior to the occupation/use of the development, the applicant must submit to the local planning authority for their written approval a Validation Report with confirmation that all remedial works as required by condition 3i and 3ii of planning permission reference V/2016/0487, details of which were approved under application reference V/2017/0635, have been completed and validated, in accordance with the agreed details.
- 6) The hedge(s) indicated on the approved plan No. 484-02R shall be retained in perpetuity and shall not be uprooted or destroyed without the prior written approval of the local planning authority.
- 7) Unless in the event of an emergency, or as otherwise may be previously agreed in writing with the local planning authority:
- a) No construction work shall take place on Sundays, Public or Bank Holidays, and
 - b) No deliveries to site; construction work undertaken; or plant operated except between 07:30 hrs – 18:00 hrs Monday to Friday and 09:00 hrs – 13:00 hrs on Saturdays, and
 - c) No earth moving operations shall be carried out except between 08:00 hrs – 18:00 hrs Monday to Friday and 09:00 hrs – 13:00 hrs on Saturdays.
- 8) No part of the development hereby permitted shall be brought into use until the following details have been submitted to and approved in writing by the local planning authority and thereafter implemented in full:
- a) Full details of the proposed arrangements and plan for the future management and maintenance of the proposed streets including associated drainage contained within the development until such time as an agreement has been entered into under Section 38 of the Highways Act 1980.

- 9) Notwithstanding the submitted plans, no above ground development shall take place until details of the proposed boundary treatment alongside the initial 50m of the access road adjoining 249 and 251A Alfreton Road and a phasing scheme for its implementation have been submitted to and approved in writing by the local planning authority. The approved boundary treatment shall thereafter be undertaken and maintained in accordance with the approved details.
- 10) No dwellings hereby approved shall be occupied until the roads serving the development have been completed in accordance with the details of said roads that have been submitted to and approved by the local planning authority.
- 11) No part of the development hereby permitted shall be brought into use until all drives and any parking or turning areas are surfaced in a hard-bound material (not loose gravel), for a minimum of 6 metres behind the highway boundary. The surfaced drives and any parking or turning areas shall then be maintained in such hard-bound material for the life of the development.
- 12) No part of the development hereby permitted shall be brought into use until the pedestrian visibility splays 2m by 2m have been provided on each side of the vehicle access. These measurements are taken from and along the highway boundary. The areas of land forward of these splays shall be maintained free of all obstructions over 0.6m above the carriageway level at all times.
- 13) No part of the development hereby permitted shall be brought into use until the access driveway/parking areas are constructed with provision to prevent the unregulated discharge of surface water from the driveway/parking areas to the public highway in accordance with details first submitted to and approved in writing by the local planning authority. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.
- 14) No part of the development hereby permitted shall be brought into use until the visibility splays are provided as indicated on drawings a) Junction Visibility Rev.G; b) Forward Visibility Rev.G; and c) Proposed Access Arrangement with Proposed Site Layout 16/191/TR/003, Rev.H. The areas within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.6m in height.
- 15) Any proposed soakaways shall be located at least 5m to the rear of any highway boundary.
- 16) No part of the development hereby permitted shall be brought into use until the parking/turning areas are provided in accordance with the approved drawing No.484-02R – Planning Layout. The parking and turning areas shall not be used for any purpose other than for parking/turning/loading and unloading of vehicles.