



Appeal Decision

Site visit made on 1 October 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/X1118/W/19/3228648

1, 2 and 3 The Cedars, Higher Slade Road, Ilfracombe EX34 8LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 T Hatch against the decision of North Devon Council.
 - The application Ref 66263, dated 14 February 2019, was refused by notice dated 17 April 2019.
 - The application sought planning permission for erection of three chalet bungalows with associated access, parking & landscaping (amended plan & additional information) at former waterworks Higher Slade Road Ilfracombe without complying with a condition attached to planning permission Ref 61085, dated 15 November 2016.
 - The condition in dispute is No 2 which states: The development hereby permitted shall be carried out in accordance with the plans submitted as part of the application, numbers 016-010-9 Rev C, 016-010-2, 016-010-3, 016-010-5, 016-010-6 and 016-010-8 Rev A received on 19 May 2016 and the amended plans 016-010-1 Rev E, 016-010-4 Rev A and 016-010-7 Rev A received on 15 August 2016 ('the approved Plans').
 - The reason given for the condition is: To confirm the drawings to which the consent relates and to ensure the development accords with the approved plans.
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Decision

1. The appeal is allowed and planning permission is granted for erection of three chalet bungalows with associated access, parking & landscaping in accordance with the application Ref 66263, made on 14 February 2019 without complying with condition No 2 set out in planning permission Ref 63724 granted on 6 November 2017 by North Devon Council, but otherwise subject to the conditions set out in the schedule attached at the end of this decision.

Procedural Matters

2. I have used the address provided on the appeal form, as the address on the application form omits the name of the development.
3. Planning permission 61085 was granted on 15 November 2016. Thereafter a further planning application, reference 63724 (the variation permission), was submitted to alter the layout of Plot 3 by variation of conditions 2 and 5 on permission 61085. The variation permission was approved by the Council on 6 November 2017. The variation permission is in effect a standalone planning permission.
4. The application subject to this appeal seeks planning permission for variation of condition 2 imposed on permission 61085. However, the plan which is subject

of the application, reference 016-010-1 Rev. G (the previously approved plan), is in fact listed within condition 2 of the variation permission. Given that Plot 3 has been constructed in the position shown on the previously approved plan, works have been undertaken that are clearly not severable from those subject to the variation permission. Thus, I am of the opinion that condition 2 of the variation permission should be treated as the starting point for the determination of this appeal. This is in practice consistent with the way the Council approached its assessment. Therefore, for the purposes of my formal decision, I have referred to variation permission rather than permission 61085. I am satisfied that there is no prejudice to any party in me doing so.

5. The development has already been implemented. In addition to the changes to surfacing materials which form the basis for the appealed application, a number of additional external differences between the previously approved plan, and the scheme as built were apparent during my visit. These include the omission of soft landscaping to the front of the dwellings, the absence of a beech hedge along the site boundary, a reduced area of granite sets, a different wall alignment at the entry to the site, and additional walling within the site. Most of these changes are also noted by the Council.
6. I appreciate that the appellant submitted the application specifically in relation to the substitution of block paving shown on the previously approved plan, with gravel. However, the said gravel has been laid more extensively across the site than within those areas where block paving is shown on the previously approved plan. This has indeed occurred within the context of a site layout and landscaping which is clearly at odds with both the details shown on both the previously approved plan, and the annotated version of this plan submitted with the application subject of this appeal. Consequently, and given that access, parking and landscaping otherwise form specific subjects of the description of development, they fall to be considered as part of this appeal.
7. I have omitted the phase '(amended plan & additional information) at former waterworks Higher Slade Road Ilfracombe' from my decision above, as, notwithstanding their previous use by both of the parties, they do not describe acts of development.

Main Issue

8. The main issue is the effect that development in non-compliance with the disputed condition has upon the character and appearance of the area.

Reasons

9. The Cedars is a recently constructed development of 3 chalet bungalows, which are prominently sited in an elevated position just off Higher Slade Road. The bungalows are arranged perpendicular to the road, and served by a driveway across the front. This allows clear views into the development from the street. As the site lies at the edge of the built-up area, with countryside beyond, it occupies a point of transition within the streetscene.
10. The approved scheme entailed block paving of the driveway. I note that block paving is also used in some developments elsewhere along Higher Slade Road. However, there appears to be nothing distinctive or characteristic in its use within the local context. The gravel installed is similarly grey, and the textured surface it provides is not inherently unattractive. Though weeds have grown

through, this is also a common feature of block paving, and other permeable finishes. In both cases it is generally managed within the course of normal maintenance. In and of itself therefore, the use of gravel in place of block paving causes no obvious visual harm.

11. As outlined above however, the gravel has been laid extensively across the site. This includes within areas of the site which were to have been soft landscaped, both to the front of the dwellings, and along the edge of the site. In the absence of the visual contrast and softening such landscaping would provide, the large area covered by gravel provides the development with a visually monotonous and harsh appearance. This is accentuated by the apparently reduced area of granite setts at the entry, which further limits the extent of visual contrast within the scheme, and is given very little visual relief by minimal planting along the top of walling added within the site. This walling itself compromises the approved layout. At this prominent, transitional point within the streetscene, the extent and character of gravel surfacing within the development is both visually obtrusive, and harmful.
12. In view of the above, it is apparent that had other aspects of the previously approved landscaping scheme been fully and correctly implemented, the visual impact of the use of gravel in place of block paving would have been acceptable. In this regard, I am satisfied that remedial works in relation to implementation of the previously approved scheme and layout of boundary treatments, soft landscaping and granite sett paving, can be secured by condition.
13. For the reasons outlined above I conclude that, to the extent that gravel has been laid in areas where block paving was previously approved, and subject to imposition of a condition requiring remedial works, development in non-compliance with the disputed condition does not and would not unacceptably harm the character or appearance of the area. Thus, the scheme complies with Policy DMO4 of the North Devon and Torridge Local Plan 2011-2031 Adopted October 2018, which amongst other things seeks to secure public and private spaces that are well designed, safe, attractive and complement the built form, designed to minimise anti-social and criminal behaviour; and relevant related provisions of the National Planning Policy Framework.

Other Matters

14. An enforcement investigation has been launched in relation to conditions attached to permission 61085. However, as I am considering the appeal in relation to the variation permission, this not a matter for further consideration.
15. Additional concerns are raised by the Council with regard to the effects of the gravel surfacing on ecology, the quality of outlook from the dwellings, and on parking in the absence of marked parking spaces. Whilst concerns regarding outlook and ecology would however each presumably be addressed by provision of the previously approved soft landscaping, there is no clear necessity for the provision of marked parking spaces in a development of this scale. Furthermore, though the location of parking spaces is outlined on the previously approved plan, this is simply a conventional means of identification. I see no additional annotation on the plan which suggests otherwise.
16. Visual and safety concerns are expressed by interested parties in relation to the migration of gravel from the driveway onto the road surface. Whilst there is

indeed a risk of migration, I saw little evidence of this during my visit. Furthermore, provision of a larger area of granite sett paving at the entry, as was previously approved, would provide greater means of control.

17. Further concerns regarding the noise generated by the gravel have been raised. I accept that vehicles and people travelling across gravel generate more noise than if travelling across block paving. Such noise will also travel further on account of the elevated position of the site. However, other dwellings are located a reasonable distance from the site, and travel times across the gravel surface are limited in length and duration. Use of gravel within a residential context is itself not exceptional. Thus I see little reason to consider that the noise effects generated by the gravel surface give rise to any unacceptable harm.

Conditions

18. 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. Accordingly, the conditions imposed on the variation permission are the starting point for my consideration of the conditions that are necessary. I have therefore re-imposed these conditions with some modification, with the reasons for any changes being given below.
19. As the development has already been implemented there is no need for a condition setting a time limit for commencement. A condition identifying the approved plans is however necessary for the sake of certainty. As the approved plan and that submitted with the application both carry the same number, I have distinguished the latter by addition of '(with surfacing annotation)'.
20. Condition 2 is required in order to ensure that the development caters for the parking demand it will generate. As imposed on the variation permission, this condition solely related to Plot 3. As such it would not be effective in achieving its objective across the site. I have therefore had regard to the condition as originally drafted on permission 61085, which was applicable to all 3 plots, and revised the condition accordingly.
21. The purpose of condition 3 is to require the appellant to deal with matters of landscaping and layout which need to be addressed in order to make the development acceptable in planning terms. This specifically entails the provision of features shown on both the approved plan and the annotated version of this plan submitted as part of the application. Both parties have been consulted.
22. Condition 3 is drafted in this form because, unlike an application for development yet to be commenced, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already in part taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition and approved (either by the local planning authority or by the Secretary of State on appeal). Should the requirements of the condition not be met then the planning permission falls away.

Conclusion

23. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 016-010-1 Rev. G (with surfacing annotation); 016-010-3 Rev. A; 016-010-4 Rev. B; and 016-010-05 Rev. A.
- 2) The garage/hardstanding areas hereby approved shall be used solely for the garaging/parking of vehicles ancillary to the use of the approved dwellings and for no commercial purposes whatsoever without the formal consent of the Local Planning Authority.
- 3) The development hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in (i) – (iii) below:
 - (i) Within 2 months of the date of this decision a timetable relating to implementation of the scheme and layout of boundary treatments, soft landscaping and granite sett paving shown on plan 016-010-1 Rev.G (with surfacing annotation), shall have been submitted for the written approval of the Local Planning Authority.
 - (ii) If within 5 months of the date of this decision the local planning authority refuse to approve the timetable or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted timetable shall have been approved by the Secretary of State.

The scheme of boundary treatments, soft landscaping and granite sett paving shall be provided in accordance with the approved timetable, and shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.