
Appeal Decision

Site visit made on 1 October 2019

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th October 2019

Appeal Ref: APP/M3455/W/19/3232155

Land at Shelton New Road, Hartshill, Stoke-on-Trent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Pleszko of Lesko Developments (Stags Head) Ltd / Dyson Industries Ltd against the decision of Stoke-on-Trent Council.
 - The application Ref 63444, dated 20 December 2018, was refused by notice dated 3 May 2019.
 - The development proposed is erection of 27 no. new residential dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Stoke-on-Trent Council against Lesko Developments (Stags Head) Ltd / Dyson Industries Ltd. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant submitted additional evidence with the appeal that the Council has had the opportunity to consider. As a result, they have concluded that subject to conditions, they are satisfied that their concerns over flooding and drainage could be satisfactorily addressed by condition. I have seen nothing that would lead me to a different conclusion. I have not therefore identified this as a main issue for the appeal. The Council has maintained its other objections and I considered the appeal on this basis.

Main Issues

4. Having regard to the above, I consider the main issues are (i) whether the development makes a sufficient contribution toward affordable housing (ii) the effect of the development on:
 - protected trees;
 - the living conditions of future occupants, with particular regard to noise and disturbance; and
 - biodiversity.

Reasons

Affordable Housing

5. Policy CSP6 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS)(2009) requires all residential development over 15 dwellings to provide affordable housing at a rate equivalent to 25%. There has been dispute between the parties as to whether it would be viable to provide any affordable housing on the site. Various viability assessments have been produced. The Council's own assessment suggests the development would be capable of providing 10% affordable housing if constructed using traditional rather than 'modular build' methods as originally proposed. The appellant has confirmed in their final comments that this is acceptable to them on the basis that they are no longer pursuing a 'modular build' approach for this development.
6. This constitutes a change to the proposal since the appeal was submitted. As set out in the Planning Inspectorate's Procedural Guide, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is what was considered by the Council, and on which any interested person's views were sought. However, I am content that taking account of this amendment would not prejudice any interested party. I have therefore given no weight to modular build or any associated benefits put forward by the appellant.
7. There is however still no mechanism before me to secure the affordable housing now proposed. The appellant would be content for a condition requiring the provision of a Unilateral Undertaking within three months of a decision. No wording for this condition has been put forward. Planning Practice Guidance (PPG) makes it clear that negatively worded conditions limiting the development that can take place until a planning obligation has been entered into are unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation is entered into prior to granting permission is the best way to deliver sufficient certainty for all parties about what is being agreed. The PPG goes on to state that in *exceptional* circumstances, a negatively worded condition may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk. It highlights that this might apply for particularly complex schemes. It also states that where consideration is given to using a condition of this sort, it is important that heads of terms are agreed prior to planning permission being granted.
8. This is not a complex scheme and there is no evidence to suggest that delivery is at serious risk if conditions are not used. Furthermore, other than a broad percentage figure, there is no additional detailed information on how affordable housing would be provided or what form it would take. Based on what I have before me, any condition would be likely to be too vague and imprecise to secure what is required. This would not meet the PPG's expectations either in terms of negatively worded conditions or the generic tests, including that conditions should be precise and reasonable in all other respects. Without an appropriate mechanism to secure affordable housing, I therefore find that the development must conflict with CSS Policy CSP6.

Trees

9. Mature trees protected by a Tree Preservation Order (TPO) border the site to the north and west. Irrespective of the biodiversity benefits the trees might have, it is clear they collectively enhance the quality of the street scene in this location.
10. The appellant has submitted a Tree Constraints plan with the appeal which identifies which trees are to be retained, their assessed 'quality' and the extent of their root protection areas (RPAs). The Council has drawn my attention to a wall that would be constructed across part of the northern extent of the site. This would potentially impact on the RPAs of several trees in this area, including those identified as being of high or moderate quality with prolonged lifespans. The appellant's final comments indicate that they no longer wish to build the wall but would instead install acoustic fencing. No additional plans or evidence has been provided identifying the design or siting of the fencing. Moreover, no information has been provided to substantiate the appellant's claim that the fencing could be erected without harm.
11. As referred to above, the appeal process should not be used to evolve a scheme. While the measures referred to might relate only to boundary treatments, there are nevertheless sensitivities relating to the protected trees that cannot be set aside. In particular, there are likely to be issues relating to the location, height and installation of any potential fencing and/or the proposals as shown on the submitted plans. Based on the limited information before me, I cannot conclude with any certainty that the development, either in its submitted or amended form, would not result in unacceptable harm to some of the protected trees.
12. In addition, there are several RPAs that would be affected by proposed access drives. The Tree Constraints plan does not provide enough detail to determine what proportion of the RPAs would be affected or the likely risks to the health of relevant trees. The lack of detail on these factors, or any information on how the drives would be constructed, adds weight to my concerns that there is too little certainty about the effect of the development. This gives rise to substantial concerns over their short- and long-term health. Any loss of trees as a result of this could have an unacceptably harmful impact on the street scene.
13. Imposing conditions requiring tree protection measures is not necessarily unusual. However, they should only be imposed where there is reasonable certainty they can be discharged appropriately. The evidence provides little comfort that trees could be adequately protected either during construction or in the longer term. The interrelationship with issues relating to noise mitigation is also an important consideration. Relying on conditions in these circumstances would not therefore be appropriate. The resulting potential risk to the health of affected trees would conflict with CSS Policy CSP4, which expects development to mitigate or enhance the City's distinctive natural assets. Moreover, risks to the trees could have impacts on the character and appearance of the area. This would conflict with CSS Policy CSP1, which expects development to contribute positively to an area's identity.

Noise and disturbance

14. The main source of noise would be from Shelton New Road. I am satisfied by what is before me that noise and disturbance are a legitimate concern. This is particularly the case considering the findings of the noise assessment and planning permission for the adjacent site, which concluded that some forms of mitigation would be needed. While there would undoubtedly be some similarities in conditions between sites, it is reasonable in the circumstances to expect some analysis of the specific conditions on the appeal site and the effect of the proposed layout. This evidence was not provided during the consideration of the application. The appellant's final comments allude to a new noise assessment having been carried out and that this has recommended the installation of acoustic fencing. This document has not been provided and thus I can give little weight to the appellant's summary or the apparent mitigation measures proposed. Nevertheless, the appellant's comments appear to confirm that there are genuine risks from noise.
15. Not only would there be potential issues associated with noise in habitable rooms, the rear gardens of a number of dwellings would be relatively close to the road. The impact on the enjoyment of future occupants' outdoor space is also a legitimate issue, which could have a detrimental impact on living conditions. There are therefore specific issues relating to the layout that give cause for concern and no detailed evidence has been provided to identify either the scale of any impacts or measures to mitigate them.
16. The appellant again seeks to rely on the imposition of conditions to address this issue. The lack of evidence on the impact of noise, potential mitigation measures or their effectiveness, does not provide me with the comfort needed that satisfactory mitigation can be provided while ensuring other aspects of the development remain acceptable. This is particularly pertinent in relation to the siting and height of any fencing that might be necessary and the potential implications for protected trees discussed above. As already noted, these are important interrelated issues where addressing one might have consequences for the other. Again, imposing a condition in these circumstances would not be appropriate.
17. The Council has referred to CSS Policy CSP1 in its reason for refusal. This refers to development contributing to a healthy lifestyle. Noise and disturbance can have detrimental impacts on health and thus I consider there to be conflict with this policy. Furthermore, there would be conflict with paragraph 127f of the National Planning Policy Framework (the Framework), which requires development to ensure a high standard of amenity for future users.

Biodiversity

18. The site has been largely cleared for development. As such, there are unlikely to be any significant biodiversity risks other than in relation to the trees bordering the site. The appellant's bat survey concludes there is negligible potential to support bat roosts, but there is potential for the trees to provide suitable habitats for foraging and commuting. There are also signs of nesting birds. There is nothing to suggest this is not a robust assessment.
19. The survey therefore recommends a number of measures that would be necessary to provide mitigation, including the provision of bird and bat boxes

on trees and/or buildings, measures relating to lighting and controls on when any works to trees could take place. These suggested measures all appear reasonable and appropriate to mitigate any impacts that might exist.

20. Notwithstanding my concerns over the risks to some trees, I see no reason in this instance why an appropriately worded condition would not be capable of securing adequate mitigation for biodiversity. There are risks associated with some trees from the development. However, the mitigation measures identified pose no particular risks in themselves and there is no other evidence to suggest there would be unacceptable harm to biodiversity assets.
21. Accordingly, there would be no conflict in this regard with CSS Policy CSP4 which expects development to mitigate or enhance the City's distinctive natural assets. There would also be no conflict in principle with paragraphs 170 or 174 of the Framework, which seek to protect or enhance biodiversity.

Other Matters and Planning Balance

22. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the plan in relation to affordable housing, potential unacceptable risks to protected trees and impacts on living conditions.
23. There is nothing to suggest the Council cannot demonstrate a five-year supply of deliverable housing land. Nevertheless, the provision of an additional 27 dwellings on a brownfield site in a sustainable location, would provide several social and economic benefits. However, such benefits would not be unique to this development. Therefore, while I have given them moderate weight, they do not outweigh my concerns or justify allowing a deficient proposal.
24. As discussed above, I have given no weight to either the potential for modular build or affordable housing. I have found no material harm in relation to biodiversity, and matters relating to flooding and drainage can be adequately resolved. However, a lack of harm in these respects is neutral and weighs neither for nor against the development. The Council has raised some additional concerns in their evidence regarding the design and layout of the development. However, it did not consider these sufficient to warrant a reason for refusal. As I have dismissed the appeal on other grounds, this is not a matter I need to consider any further.
25. Taking all relevant matters into account, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusion

26. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR