



Appeal Decision

Site visit made on 15 October 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Appeal Ref: APP/X2410/W/19/3233285

Land off Seagrave Road, Sileby, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Mitesh Rathod - Bellway Homes Limited (East Midlands) against the decision of Charnwood Borough Council.
 - The application Ref P/18/2335/2, dated 5 November 2018, sought approval of details pursuant to condition No 26 as detailed in the last bullet point of this header.
 - The application was refused by notice dated 15 January 2019.
 - The development proposed is described as site for the erection of up to 135 dwellings.
 - The details for which approval is sought are: Details for the public use of the MUGA out of school hours as required by condition 26 of planning permission Ref P/12/2235/2, dated 20 December 2013.
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Decision

1. The appeal is dismissed and approval of the details is refused, namely details for the public use of the MUGA out of school hours submitted in pursuance of condition 26 attached to planning permission Ref P/12/2235/2 dated 20 December 2013.

Procedural Matter

2. The condition subject of this appeal as worded makes reference to Policy RT/3 of the Borough of Charnwood Local Plan (2004). The Council has confirmed that since the determination of the original application, this policy has now been superseded. The parties have instead referred to Policy CS15 (Open Spaces, Sports and Recreation) of the Charnwood Local Plan Core Strategy 2011 – 2028 (2015) (the CS) within their submissions and I have considered the appeal on the basis of this updated policy position.
3. The appeal form indicated that it would not be possible to see the relevant parts of the appeal site sufficiently to judge the proposal from public land. On arrival at the previously agreed day and time, a representative of the appellant was not present. However, I was still able to obtain a full appreciation of the site and its surrounding context. On this basis, I am content that I am in a position to assess the main issue and proceed with my decision.

Main Issue

4. The main issue is whether or not the details of public use meet the requirements of condition 26 having regard to the reason it was imposed, the development plan and national policy.

Reasons

5. Policy CS15 of the CS states that the Council will work with partners to meet the strategic open space needs of the community by 2028 by, amongst other things, requiring new developments to meet the standards set in the Council's Open Spaces Strategy, having regard to local provision and viability as well as seeking to secure long term management and investment plans for existing and new facilities.
6. In respect of Outdoor Sports Facilities, the Charnwood Open Spaces Strategy (2018 – 2036) includes at Policy 6a that the Council will seek to encourage school recreation facility provision, wherever feasible, to be made available to the community.
7. The reason for condition 26, as set out on the Council's decision notice, is clear that it is to ensure appropriate children's recreational facilities are available for residents of the estate. This intention is consistent with Policy CS15 and standard set in the Open Space Strategy.
8. It is evident from the approved plans, associated legal agreement dated 16 December 2013 and Condition 26 that the MUGA is intended to be a shared facility for Highgate Primary School and for public use. The appellant is bound by the associated planning obligation to transfer the Multi Use Games Area to Leicestershire County Council (the County Council) as part of the 'Primary School Facilities Land'. There is no clause allowing that in the alternative the 'School Facilities Land' could be transferred to the Council. Therefore, if the Council were to reach an agreement to uptake the management of the MUGA, whilst securing exclusive use by the school during school hours, this would need to be through a separate obligation. I must therefore consider the proposal based on the current situation and the obligations in place.
9. There is a balance to strike between managing the MUGA so that it is maintained in a good and safe condition for school use, whilst also ensuring the facility is available as a children's recreational facility for residents of the estate. The arrangements put forward by the appellant, requiring prior booking and payment of a hire fee, would be prohibitive to children on the estate wishing to use the court on a more spontaneous basis outside school hours. Equally, some limitations of use are a reasonable expectation for any party accepting liability for the future management and maintenance of the MUGA.
10. The correspondence between the appellant, the Council and the County Council indicates when the MUGA would be likely to be made available and that this might not include weekends or public holidays. However, this remains unclear as no formal details have been provided to demonstrate how the proposed booking system to be directed by the Primary School would be managed. This is needed to confirm the days and times that the MUGA would be available for public use and what the terms and conditions of hire would be.
11. The proposal before me does not put forward the suggested terms of a charging structure for hire of the facility. The appellant suggests that this would be a moderate fee so as not to discourage people from using the MUGA. However, I have not been provided with even an indicative scale of charges. Without more detailed information, I am unable to reach a view as to whether such a fee could be reasonably imposed.

12. Taking the above matters into consideration, I do not have the necessary assurance that hire of the MUGA outside school hours would be genuinely accessible for the public use required by the condition, this being children of residents on the development, at times and a cost that would facilitate such use.
13. To conclude, the details before me do not demonstrate that the MUGA would be genuinely available for public use to ensure that the appropriate children's recreational facilities are available for future residents. Consequently, in that regard, the proposals do not meet the requirements of Condition 26 having regard to the reason the condition was imposed and are contrary to Policy CS15 of the CS.
14. In reaching this conclusion I have also had regard to the National Planning Policy Framework (the Framework) which states amongst other things that decisions should plan positively for the use of shared spaces (including open space) to enhance the sustainability of communities and residential environments.

Other Matters

15. I acknowledge the comments of the appellant raising concerns that, whilst the condition remains to be discharged, the development cannot lawfully proceed and the MUGA is not being used by the school. I also note the concerns of the appellant and third-parties that the MUGA is currently being accessed despite being padlocked as well as the anti-social behaviour that has been experienced by nearby residents. I recognise that until agreement is reached, the MUGA is not being effectively utilised or managed. However, this is not reason to accept insufficient details that would not ensure the MUGA is genuinely available for the use of the school and the public. Any allegations of anti-social behaviour would be a matter for the police to investigate.
16. The appellant contends that the MUGA is not the only recreational community facility provided by the scheme with public open space including a children's play area also provided. However, these other aspects of the development do not overcome the requirement of the condition to allow for public use of the MUGA.

Conclusion

17. For the reasons set out the appeal is dismissed.

M Russell

INSPECTOR