



Appeal Decision

Site visit made on 23 March 2020

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 2 April 2020

Appeal Ref: APP/P4605/W/19/3243560

Lea Hall Allotments and Institute, Wood Lane, Lozells & Handsworth, Birmingham B20 2AP

- 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 Justin Howell (Countryside Properties (UK) Ltd) against the decision of Birmingham City Council.
- The application Ref 2019/08267/PA, dated 4 October 2019, was refused by notice dated 20 November 2019.
- The application sought planning permission for Redevelopment of Lea Hall allotments to provide 107 dwellings (Use Class C3) relocated allotment space, public open space including play area, parking, altered access from Wood Lane, landscaping and associated works without complying with a condition attached to planning permission Ref 2017/08883/PA, dated 30 January 2019.
- The condition in dispute is No. 29 which states that:

The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers:

Site Sections - SKM07_SEC_02; Affordable Plan - SKM07-AHP-01 - - Rev A; Boundary Treatment Plan SKM07-BTP-01 - Rev F; Management Company Plan SKM07-Man-Co-01 - Rev A; Materials Plan SKM07-MP-01 - Rev C; Location Plan - SKM07-PL-01 - Rev B; Planning Layout - SKM07-PL-01 Rev P; Site Sections SKM07-SEC-01 - - Rev C; Proposed Streetscene SKM07-SS-01 - Rev C -; Gate - Lea Hall SKM07-WT-01 - - Rev A Boundary Treatment Plans

Acoustic Fence Detail - WYG; Wall Type 1 MSD9001 -; Post & Rail Fence Detail NSD 9000 MID-01; Fence Types A to D - NSD 9102; Hooped Top Railing NSD 9202; Single Garage Detached NSD 9800; typical retaining wall details 214-036-E01; typical retaining wall details 214-036-E02;

Landscaping

Landscape Layout - M16.201.D.001D; POS & Play Area - M16.201.D.002C; Planting Layout 1 M16.201.D.003C; Planting layout 2 M16.201.D.004C; Planting Layout 3 M16.201.D.005C; Planting layout 4 M16.201.D.006C; Landscape Masterplan M16.201.D.008G

House type drawings

Affordable

Affordable 3B4P Floor Plans - LIFE-3B4P(90)/01; Affordable 3B4P Elevations (side Aspect) - 3B4P/04 SA; Affordable 3B4P Floor Plans (Side Aspect) - 3B4P/01 SA; Affordable 3B4P Elevations - LIFE-3B4P(90)/6.0/02

Private for Sale/Rent

The Ashbourne Ground Floor Plan - ASHB(14)-01 Rev. C; The Ashbourne First Floor Plan - ASHB(14)-02 Rev A; The Ashbourne Elevation (Brick) - ASHB(14)-6.0 Rev. B; The Ashbourne - Elevation (Brick) Side Aspect ASHB(14)-6.1 FCT (Rev.B); Coniston First Floor Plan - CON(14)-02; Coniston Ground Floor Plan - CON(14)-01; Coniston Render Elevations - CON(14)-6.1; The Dee Elevations Brick/Render - DEE-6.1-SEMI(A); The Dee Ground/First Floor Plans - DEE-01; The Dee Site Aspect - Brick/Render (Detached)

- DEE SA-6.1-DET; The Dee Site Aspect - Floor Plans - DEE-SA-01; Dunham Elevation Brick - DUN-B(14)-6.0 Rev. A; Dunham Elevation Brick/Tile hung - DUN-B(14)-6.2 Rev. A; Dunham First Floor Plan - DUN-B(14)-02 Rev A; Dunham Ground Floor Plan - DUN-B(14)-01 Rev. A; Dunham Second Floor Plan - DUN-B(14)-03 Rev. A; Longmere Elevation (Brick) Semi Alt - LONGM-6.0SEMI(A); Longmere Floor Plans Longmere-01; - The Longmere UP 6.0 Elevations (3Block) - LONGM(14)-UP-6.0-3Blk; The Longmere UP Floor Plans - LONGM-UP-01; The Lymington Elevations 6.0 Brick - LYMI(14)-6.0; The Lymington First Floor - LYMI(14)-02; and The Lymington Ground Floor - LYMI(14)-01.

- The reason given for the condition is:
Requires the scheme to be in accordance with the listed approved plans.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2019¹ (the original permission) for the redevelopment of the Lea Hall Allotments and Institute on Wood Lane for the construction of 107 dwellings, including relocated allotment space and provision of public open space. That permission was subject to a planning obligation under the provisions of section 106 (s106) of the Town and Country Planning Act 1990 (as amended) (the Act) and a range of planning conditions. With regard to the matter before me, the permission included a condition² setting out the approved plans for the development in question.
3. The appellant now seeks to vary the wording of condition No. 29 to amend the approved plans and, specifically, the provisions and content of the 'planning layout' drawing³ so as to confirm there to be no public use of, or access to, an area of land to the south of the existing bowling green. The area of land in question was, at the time of my visit to the site and also, I understand, at the time of the original planning application, principally an overgrown area of land with a woodland border located on the site's Wood Lane frontage, between Wood Lane and the bowling green.
4. The approved scheme made provision for the enhancement of this area with selective removal of a small number of existing trees, replanting of trees, clearance of undergrowth and replanting as a wildflower meadow. The appellant has stated that despite its inclusion in open space calculations it was never intended as publicly accessible open space. Rather, the intention then, and what is now sought, is that the area is planted and laid out solely as an ecological resource with clearance and planting as originally intended and shown on the originally approved plans, but without public access.
5. The appeal was accompanied with a draft Deed of Variation (DofV) in relation to a previous planning agreement (s106) reached under section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). The DofV seeks to substitute the provisions of Part 1 of the Third Schedule of the s106 to remove reference to public access to the off-site open space land. I return to the matter of the DofV, below.

¹ LPA Ref No: 2017/08883/PA – 30 January 2019

² Condition 29

³ Drwg No: SKM07-PL-01 Rev P

6. Having regard to the above, the main issue is therefore whether the appeal proposal would make adequate provision for public open space.

Reasons

7. The Birmingham Development Plan (BDP) was adopted in January 2017. BDP policy TP9 sets out the Council's approach to development on open space. Amongst other requirements, it seeks to ensure that open space is provided at a minimum standard of 2 hectares per 1000 population and that a range of accessibility and quality criteria are satisfied. It goes on to set out walking distances for residents to varying types of publicly accessible open space. It also states that 'in most circumstances, new residential schemes of 20 or more dwellings should provide on site public open space and / or children's play provision'.
8. Although the Council's submission refers to the definition of public open space set out in the '*Public open space in new residential development*' Supplementary Planning Document (SPD)⁴, this is in turn an extract from the Birmingham Plan 2005⁵. Whilst both it, and the SPD, are now of some age, the BDP in any event provides a more up to date definition⁶ of both 'open space' and 'public open space' with a useful distinction between the two.
9. The appellant accepts⁷ the Council's proposition that the appeal proposal would result in the wider residential development failing to provide sufficient open space within the application site's red-line defined extent. Regardless of the point at which the appeal site was incorporated within the original application site boundaries, it forms part of the approved application site. I have not been presented with any compelling evidence that would lead me to conclude that the land within the appeal site was not, nor could not, reasonably be considered to be part of the site's overall public open space provision.
10. It may not have been the appellant's intention that that land was to be considered as public open space, but the plans submitted do not back that position up. The approved 'Landscape masterplan drawing'⁸, an extract of which is provided in the appellant's Planning Appeal Statement at paragraph 12, appears to show a reasonably sizeable and obvious gap between the western boundary hedge and the existing boundary treatment between the site and the bowling green area. Moreover, that same plan also indicates that the wildflower meadow would incorporate a mown grass path. Access to the area does not appear to be physically barred, whilst movement within it would also appear to be suggested and possible.
11. Nor do I see any fundamental reason why the area of land could not fulfil an ecological and biodiversity role as well as being a publicly accessible open space, particularly given the indicated presence on the approved landscape masterplan drawing of a mown grass path within this area. I have not been presented with any evidence to support the suggestion that the area of land would be of any greater ecological benefit or value if access were to be restricted, nor has it been satisfactorily explained how, by retaining public access, the security of the bowling club would be jeopardised.

⁴ Paragraph 1.5 – SPD adopted July 2007

⁵ Attributed as an extract from paragraph 3.48 of the Birmingham Plan, 2005

⁶ Paragraph 6.57

⁷ Paragraph 41, Planning Appeal Statement

⁸ Drwg No: M16.210D.008G

12. The appellant has suggested that the Lea Hall Institute (the Institute) have very real concerns regarding the security of the bowling green facilities but has not expanded upon what those concerns are. Nor can I understand how, if public access were to be restricted as the appeal proposal seeks, security would be maintained or enhanced. There would not appear to be any physical barrier to entry to the area of land and its position, vegetation levels and layout would not otherwise lend itself to natural surveillance from surrounding areas. Without the possibility of public access, there would be very limited natural surveillance of this area which would, in my judgement, reduce rather than enhance the security of the bowling green.
13. Indeed, the appellant has expressed concerns that were a fence to be erected around the bowling green for security purposes it would result in the bowling green area being enclosed with no public surveillance and the area be prone to instances of anti-social behaviour. However, to my mind, that is just what the appeal proposal would facilitate; the removal of freely accessible public access, which if left publicly accessible would provide a degree of natural surveillance, but without would result in an area with no public access and limited natural surveillance. Any benefits in terms of ecology and biodiversity, which it has not been demonstrated would be materially harmed or reduced in any event should public access remain, would not outweigh either these factors or the consequent reduction in public open space within the wider residential development site. The removal of the appeal site as public open space would further compound the shortfall of such space across the wider residential development.
14. I accept that there appears to be sufficient public open space per 1000 population across the wider surrounding area, whichever variations of existing or past ward boundaries or accounting areas are adopted. However, that does not, nor should not, disguise the already deficient provision with regard to public open space within the residential development of which it is part, and which the effects of the appeal proposal would further compound. For the reasons I have set out therefore, the proposal would fail to accord with BDP policy TP9 and it has not been adequately demonstrated that material considerations indicate a decision other than in accordance with the development plan.
15. The appellant's DofV seeks to formalise the mechanism by which public access to the appeal site would be restricted and removed by amending the wording of Part 1 of Third Schedule of the original section 106 planning agreement. It is, however undated and unsigned and has not been executed. Even if it were to be so, the proposal would be contrary to BDP policy TP9 for the reasons I have set out above.

Conclusion

16. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR