



Appeal Decision

Site visit made on 12 February 2020

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/G2625/W/19/3241227

The Bungalow, Eaton Chase, Norwich NR4 7QW

- 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 Philipps against the decision of Norwich City Council.
- The application Ref 19/01318/VC, dated 12 September 2019, was refused by notice dated 7 November 2019.
- The application sought planning permission for an outline application including matters of access, layout and scale for the erection of 5 no. two storey dwellings and associated works (Revised) without complying with a condition attached to planning permission Ref 18/01190/O, dated 19 June 2019.
- The condition in dispute is No 10 which states that: "During the construction phases of development in pursuance of the permission hereby approved no construction vehicles and deliveries or contractors or site operatives / workers access shall be taken through Ryrie Court into or from the application site for access in association with the construction of the development.

No development shall take place, including any works of demolition, in pursuance of this permission until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. This shall include details of methods for review and update of the Statement as might be required and a road conditions survey for the Unthank Road access area (see also informative 6 below).

The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- (a) the parking of vehicles of site operatives and visitors;
- (b) loading and unloading of plant and materials;
- (c) storage of plant and materials used in constructing the development;
- (d) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
- (e) wheel washing facilities;
- (f) measures to control the emission of dust and dirt during construction; and
- (g) a scheme for recycling/disposing of waste resulting from demolition and construction.

The construction operations on the site shall fully accord with the approved Construction Method Statement and any update of the Statement as might be agreed by the Local Planning Authority".

- The reasons given for the condition are: "In order to safeguard highway safety and the amenity of the surrounding area, in accordance with policy 6 of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk (adopted March 2011, amendments adopted January 2014) and policy DM2, DM11 and DM30 of the Development Management Policies Local Plan 2014. Given that the condition relates to construction details it is essential that it is a true condition precedent".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal process the appellant submitted an Access Review of Ryrie Court ("AR") document dated February 2020. A revision (No. P03) of Vehicle Tracking Sheet 7 of the AR was additionally submitted. The appellant requested that these documents are taken into account in my determination on the matter. I have accepted the documents for consideration in my decision as they are directly relevant to the appeal. The Council has provided comments on the AR.

Background and Main Issues

3. Planning permission has been granted for 5 dwellings. The appeal seeks permission to carry out the development without complying with elements of condition 10. These prevent the use of an access through Ryrie Court by vehicles associated with the development during its construction.
4. The main issues are whether the condition is necessary and reasonable having regard to:
 - The safety and convenience of users of the Ryrie Court access and parking; and
 - The living conditions of the residents of Ryrie Court with regard to noise and disturbance.

Reasons

Safety and convenience

5. Four of the permitted dwellings would lie on land adjacent to the access and parking area of Ryrie Court, which is a complex of sheltered retirement housing. The appeal seeks the variation of the condition so as to allow for construction traffic to use this area for access to the development site.
6. The Ryrie Court area contains 36 properties, which share 9 parking spaces. These are for the use of residents and their visitors. As sheltered housing, the properties are occupied by a number of vulnerable residents. A high proportion of these occupiers have conditions which necessitate regular visits by medical, care and emergency service staff, as well as home deliveries. Therefore the parking is used by visitors for these purposes.
7. The AR document and the revised vehicle tracking sheet are intended to indicate that both a small skip lorry and a larger heavy goods vehicle could turn within the site so as to be able to access and exit in a forward gear. This is necessary because reversing a vehicle is a manoeuvre which carries a higher risk of collision with other road users due to the reduced visibility available to the driver. A regular need for large vehicles to reverse would be particularly undesirable in view of the vulnerability of some users of the Ryrie Court parking area.
8. The revised tracking sheet shows that a heavy goods vehicle would need to pass very close to the dwelling on plot one in order to turn within the site.

Once the dwelling were constructed its presence appears likely to prevent this manoeuvre. Alternative heavy goods vehicle tracking shown within the AR indicates the use of areas of ground close to protected trees for turning. This is likely to be unacceptable due to the potential for damage to their roots through compaction of the soil structure by vehicle movements. The appeal consequently does not provide assurance that larger vehicles would be able to safely access the site for the duration of the construction period.

9. The AR states that larger vehicles which are unable to access the site would park on Pettus Road and unload onto a smaller vehicle to transfer items along Ryrie Court. However, such an arrangement would increase the number of construction vehicle trips through Ryrie Court and hence the potential for inconvenience to residents and their visitors due to congestion in the area. It would additionally give rise to the potential for construction-related activity to conflict with other vehicular use of Pettus Road, such as access by refuse lorries and buses.
10. Furthermore, any requirement for the use of the central area of the site for turning by construction vehicles would preclude its use for parking for those accessing the site. Regular parking close to the surrounding protected trees is unlikely to be a possibility due to the potential negative effects on their roots which I have identified above. Therefore only limited space around the buildings would remain for use by vehicles to park within the site. As a result, the AR document fails to demonstrate that sufficient space would be available to accommodate construction parking on-site.
11. The limited information before me on the matter does not suggest that the Ryrie Court parking would have the capacity to accommodate additional development-related use without causing unacceptable inconvenience to residents through the delay or prevention of parking for themselves or visitors. Even if a mechanism were in place to prevent such additional use it would give rise to the potential for construction-related parking to be unacceptably displaced onto highways in the vicinity.
12. Inconvenience to residents of Ryrie Court would consequently be likely to occur for the duration of the development, with minimal assurance that daily construction vehicle movements would not be significant. Indeed, the AR proposes the use of a "Stop" sign to delay oncoming traffic whilst some vehicles are manoeuvred along Ryrie Court. Delays to those accessing the Ryrie Court parking are therefore envisaged. However, the appeal does not confirm the likely frequency and duration of such delays, and bearing in mind the potential for multiple vehicular trips to the site per day I am not convinced that the delays experienced would be at an acceptable level.
13. Such delays within the Ryrie Court access would also carry the potential to harm the safety of residents through the delay of the attendance of emergency service or medical staff. These visits are likely to be particularly necessary at Ryrie Court because it is sheltered housing and has residents with long-term medical conditions.
14. The appellant includes a deed of easement with his evidence. This grants a right to pass through the Ryrie Court area. The appellant submits that it prohibits the causing of any nuisance to residents by users of the easement. It is contended that this provides a remedy should any such issues arise. However, I have some concerns about the document and thus whether it could

be relied upon, as it is unsigned by one of the parties. Thus, I attach only minimal weight to the potential of the deed to provide a remedy in the case of issues such as those identified above.

15. The appellant considers that a conditioned Construction Method Statement ("CMS"), which would be submitted to the Council for approval, would reduce the impact and disturbance of construction vehicles. Whilst the CMS would be intended to provide for parking, loading and unloading arrangements, these aspects of the development are central to my above concerns. I am unconvinced by the appeal evidence that these aspects can be sufficiently provided for and I have not been provided with details of suitable alternative arrangements. Therefore I cannot be confident that the production of a CMS would adequately alleviate my concerns.
16. Thus, the condition is necessary and reasonable having regard to the safety and convenience of users of the Ryrie Court access and parking. The variation of the condition would conflict with Policy DM2 of the Norwich Local Plan Development Management Policies Plan (2014) ("DMP"), which states that development will be permitted where it would not result in an unacceptable impact on the amenity of the area. Further conflict would exist with Policy DM30 of the DMP, which sets out that accesses will be acceptable where those onto local access routes can provide for access and egress in a forward gear. Additional conflict would exist with the transport and design aims of the National Planning Policy Framework (2019) ("the Framework").

Living conditions

17. Domestic traffic associated with the finished development would use the access, and would consequently generate greater noise levels than are currently experienced by the residents of Ryrie Court. Nevertheless, construction traffic would generate more noise and disturbance than this throughout the day on weekdays due to its generally larger size.
18. The separation of the access and the dwellings at Ryrie Court by parking, a path and lawns may serve to reduce noise and disturbance experienced by residents by a minimal degree. However, construction vehicles would still pass close to the houses and there is nothing to suggest that the frequency and duration of such trips would be so low as to be acceptable.
19. Furthermore, the area is currently relatively quiet, which will facilitate periods of rest during the day for those residents of the sheltered housing who have medical needs which necessitate this. Additional noise and disturbance due to construction traffic are likely to unreasonably affect these residents.
20. I note the suggested condition to limit larger vehicle trips to the site, however my concerns in this regard relate mainly to the frequency and duration of use of the area by all construction-related vehicles. As a result, I do not consider that the imposition of this condition would serve to sufficiently mitigate the likely noise levels. Therefore I attach only minimal weight to the ability of such a condition to render the proposal's effect on this issue acceptable.
21. Thus, the disputed condition is necessary and reasonable having regard to the living conditions of the residents of Ryrie Court with regard to noise and disturbance. As a result, the variation of the condition would conflict with Policy DM11 of the DMP, which states that in determining individual proposals

for uses which may increase noise exposure, account will be taken of the character and function of the area and the levels of neighbourhood noise which might be reasonably expected. Further conflict would exist with the social objective set out at paragraph 8 of the Framework.

Other Matters

22. There is minimal evidence before me to suggest that any alternative solutions would be unduly costly for the appellant. Therefore I do not concur with the submission that the disputed condition unreasonably affects the viability of the development.
23. I acknowledge that the Council's Transportation and Public Protection departments did not object to the proposal. However, I am not bound by their lack of objection to find the development's effect acceptable in light of all other available evidence.
24. I note the contention that the Council, as the owner of Ryrie Court, did not object to the appeal proposal. Nevertheless, I find this to be incorrect as the response of its housing services department to consultation on the matter indicates an objection. Therefore I disagree with the submission that the department's stance shows support for the proposal.
25. The appellant has questioned whether the proposed development without complying with part of a condition requires planning permission, due to the existence of the deed of easement. However, I have outlined above my concerns regarding the deed. Furthermore, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990.
26. I note the appellant's concerns regarding the Council's approach, and comments which have been submitted regarding the legitimacy or otherwise of tree management works at the site. However, these are not matters for this appeal, which I have determined on its planning merits.

Planning Balance and Conclusion

27. Any benefits derived from potential improvements to the road surface of Ryrie Court and from the provision of housing in an accessible location would not be sufficient to justify a deviation from local plan policy in this case.
28. Thus, for the reasons given above, I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR