



Appeal Decision

Site visit made on 22 May 2020

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th June 2020

Appeal Ref: APP/R1038/W/19/3242827

Land to the rear of 14-22 Green Lane and 4-16 Park Avenue, Dronfield, Derbyshire S18 2LQ

- 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 Mark Woods of Wood and Sons Developments Ltd against the decision of North East Derbyshire District Council.
- The application Ref 19/00809/FL, dated 12 August 2019, was refused by notice dated 5 November 2019.
- The application sought planning permission for construction of 6 No detached houses with integral garages (revised scheme of 13/01146/FL)(Amended Plans) without complying with conditions attached to planning permission Ref 14/00901/FL, dated 28 January 2015.
- The conditions in dispute are Nos 5 and 7 which state that:
Condition 5: No development shall take place until a construction traffic management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for: • Parking of vehicles of site operatives and visitors. • Routes and access for construction traffic via the Park Avenue access only (no construction traffic of any kind should use this access off Green Lane). • Siting of construction compound, materials storage and site accommodation. • Hours of operations. • Pedestrian protection • Arrangements for turning vehicles.
Condition 7: Notwithstanding the submitted details, no development shall be commenced until design and construction details, including a timetable for implementation for the works to the Green Lane access, incorporating widening of the driveway, raised table and construction of the footpath have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full in accordance with the approved timetable and retained as such thereafter.
- The reasons given for the conditions are:
Condition 5: In the interest of highway safety and in accordance with policies T2, T9 and H12 of the North East Derbyshire Local Plan.
Condition 7: In the interest of highway safety and in accordance with policies T2, T9 and H12 of the North East Derbyshire Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for construction of 6 No detached houses with integral garage (revised scheme of 13/01146/FL)(Amended Plans) at Land to the rear of 14-22 Green Lane (B6158) and 4-16 Park Avenue, Dronfield, Derbyshire S18 2LQ in accordance

with the application Ref 19/00809/FL dated 12 August 2019, without compliance with condition numbers 5 and 7 previously imposed on planning permission Ref 14/00901/FL dated 28 January 2015 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Wood and Sons Developments Ltd against North East Derbyshire District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The original planning permission was for six detached dwellings located in a paddock to the south of housing on Park Avenue and east of that on Green Lane. Vehicular access for four of the dwellings is intended to be taken from Park Avenue. Two of the dwellings would take their access from Green Lane via an existing track. The track already provides vehicular and pedestrian access for Cliffe Park and school playing fields associated with the Henry Fanshawe School.
4. The original permission imposes conditions requiring the improvement of this access track and its junction with Green Lane. The conditions also restrict all construction traffic from using the Green Lane access. This was deemed necessary in the interests of highway and pedestrian safety and the efficient operation of the highway network. Consequently, all construction traffic must use the Park Avenue access.
5. The conditions in dispute are numbers 5 and 7. These have previously been discharged. However, the appellant is now seeking amendments that would allow construction traffic to use the Green Lane access. This would be in relation to works to upgrade the track and access only. The appellant contends that allowing limited and temporary access from Green Lane would not lead to unacceptable safety issues. The appellant has submitted suggested conditions and supporting information which seek to address the existing requirements of conditions 5 and 7, including a construction management plan, details of the works to be undertaken and a timetable for the works. My understanding is that the Council's objection is to the use of the access only. I have considered the appeal on this basis.
6. Having regard to the above, the main issue is whether the disputed conditions are necessary to ensure highway and pedestrian safety and the efficient operation of the local highway network.

Reasons

7. The scope of this appeal is limited to the disputed conditions only. Whatever my decision, the existing permission is not at risk and the principle of the development is not in question. This includes the requirement to upgrade the track and its long term use as the main vehicular access for plots 1 and 2.
8. The narrow vehicle track is located centrally between 12 and 14 Green Lane. There are knee-high stone walls on either side of the access. On one side, this has created a small platform on which sits a park bench. The other side contains planting. There are fairly wide verges either side of the track, which is relatively long and straight.

9. The uses fronting Green Lane in the vicinity of the site are predominantly residential on one side of the road, with the school on the other. The dwellings are mainly detached or semi-detached with individual private drives. A residential care home is located a short distance to the south of the site. The school has two vehicular accesses and a pedestrian entrance which is adjacent to a traffic light controlled crossing to the north of the track. The access is within a 20 mph zone.
10. The entrance to the track is narrow. Due to the position of the low walls, access and egress will require a tight turn. The boundary treatments and planting on either side of the access, and the lamppost, signage and litter bin on the side of No 12 also serve to limit visibility in either direction. Accordingly, in order to see clearly in both directions, it is likely that vehicles would need to edge out at least onto the pavement. This represents something of a risk to passing pedestrians or those seeking to use the track. The school was closed at the time of my visit, and my observations can only represent a snapshot of normal conditions. However, the track was still being well used by people visiting the park.
11. My attention has been drawn to evidence which suggests longer vehicles may need to enter the opposite carriageway, and into on-coming traffic, when turning left in order to clear the junction. Furthermore, the access is not wide enough to accommodate two vehicles passing each other. There is concern therefore, that if two vehicles should meet at the entrance, or on the track itself, then this would require additional and unsafe manoeuvres that would put pedestrians at risk.
12. Based on these observations, it is clear that the access is not without some limitations. This is presumably why the original permission required improvements to be implemented prior to its permanent use. However, in determining whether the proposal would result in unacceptable safety risks, or other highway issues, it is necessary to consider the overall context.
13. The use of the access by construction vehicles would be limited to works related to the track only. This would both limit the amount of time the access would be in use and the likely number of vehicular movements. The proposed timetable suggests works would take place for around a week during school holidays. While the track, and Green Lane, would clearly be used by other pedestrians during this time, this measure should still serve to reduce the potential risks. This is both in terms of the use of the track and any traffic associated with the school.
14. The appellant has also suggested the works would generate only six trips in total. While this is not corroborated and would not be controlled, it would nevertheless be reasonable to assume that the scale, nature and extent of the works proposed would not generate a significant number of trips or instances when the access would be used. Even if the appellant's estimates are low, the actual likelihood of conflict occurring between pedestrians or other road users is unlikely to be high.
15. There are also other factors that would serve to mitigate and minimise the risk. The access is located within a 20 mph zone. The speed of passing traffic should therefore be relatively low. There are also a number of existing accesses along this part of Green Lane. Some would have similar visibility issues as the access before me and thus there may already be instances of vehicles edging out onto

the pavement. Regular users of the road and pedestrians will therefore already be aware of this potential and will take appropriate care. Furthermore, the track can already be used by works vehicles associated with the park and playing fields. While this may not occur frequently, there are no restrictions on this use and the potential still exists. Local residents will be aware of this. The short term use of the access is therefore unlikely to raise materially different risks to the ones that may already exist.

16. As the works are intended to take place when the school is closed, any perceived risks associated with the school entrances would also be significantly reduced. However, these are sufficiently distant from the appeal site to not present an unacceptable risk in any event. Similarly, the siting of the pedestrian crossing should not have any particular bearing on the safety of the proposal. This is far enough away not to be directly affected. It may also help the situation, as the signals could help to create gaps in traffic which in turn could help facilitate safe access and egress.
17. Visibility along this stretch of Green Lane is reasonably good. The bend in the road below the site does not have a significant impact, either for vehicles exiting the site or approaching it. In conjunction with the speed limit, this should help to ensure there would be good visibility of vehicles waiting to enter or exit the site. The need to edge out would clearly not be ideal. However, once in this position visibility in either direction would be good. Double yellow lines control off-street parking below and across the front of the site and neighbouring residential drives should ensure vehicles would not be parked immediately adjacent to the access. In these circumstances, waiting for, and seeing safe gaps in relatively slow moving passing traffic would not be problematic. This would also be the case at peak times, though it is unlikely that all trips associated with the works would be in these periods.
18. In terms of conflict with pedestrians on the track itself, the gap between dwellings is far wider than the current access. It is also long and straight. There would therefore be good visibility of any vehicles slowing to turn into the track. It would also be reasonable to assume that access from Green Lane would only be sought when works were underway. Therefore, users would be more generally aware of potential construction activity around the entrance, including the possibility of vehicles wishing to enter or exit the site. Notwithstanding the safety measures proposed, the verges on either side of the track provide ample space for pedestrians to avoid vehicles entering the site or travelling along it.
19. It is also important to differentiate between the use of the access by construction vehicles and their likely presence on the track during the works. Wherever access is taken, construction vehicles would have to use the track to facilitate the upgrading works. This is not precluded by the original conditions and would have been understood when permission was granted. The submitted plans indicate the phasing of the works and where safety fencing would be installed during the different phases. These all appear to be sensible and appropriate measures. Clearly, there would be some potential for disruption and inconvenience for users of the track during this period. However, this would be the case in any event and is not unusual during construction works of any kind. Such disruption and inconvenience would also only be for a short period.

20. The Council has provided no substantive evidence relating to current or previous levels of traffic, whether or not there has been a material change in circumstance since the original permission was granted, the extent to which the road or nearby junctions are at capacity or how the temporary use of this access would result in severe problems. It is difficult to see how the proposal would result in unacceptable congestion when the only way to access Park Avenue is along Green Lane itself. As such, wherever access is taken, the same number of vehicles would be using the road. Even accounting for any minor differences resulting from the nature and operation of each access, it is unlikely there would be any material difference in traffic flows.
21. In conclusion, the use of this access for construction traffic associated with upgrading works only would not result in unacceptable safety risks or impede the efficient operation of the local highway network. In coming to this conclusion, I have had regard to the comments put to me by interested parties, including photographic evidence. However, this does not alter my view that when the overall context of the proposal is considered, including the nature of any risks, the timescales involved, the likely number of vehicular movements and what would already be allowed under the original permission, the proposal would not result in an unacceptable risk to other road users or pedestrians. I have also had regard to the lack of objection from the Highway Authority, which I consider to be a material consideration of significant importance.
22. Accordingly, there would be no conflict with North East Derbyshire Local Plan (2005) Policy T2 which seeks to ensure development would be served by a safe access. There would also be no conflict with paragraphs 109 or 110 of the National Planning Policy Framework which seek, amongst other things, to resist development that would have severe impacts on the road network or an unacceptable impact on highway safety.
23. Although not referred to in the decision notice, there would be no conflict with Policy HOU1 of the Dronfield Neighbourhood Plan, which seeks to ensure residential windfall development does not result in severe impacts on road and pedestrian safety. The emerging North East Derbyshire Local Plan is currently at examination and does not carry the full weight of the development plan. Nevertheless, the proposal would not conflict with Policy ID3 which states that permission will only be granted where it would be served by a safe access.

Other Matters

24. It has been put to me that the Park Avenue access would remain a safer alternative. However, I have found that the use of the Green Lane access for the purposes stated would not result in unacceptable safety or highway network impacts. Therefore, whether or not the Park Avenue access is a safer alternative is not determinative.
25. Concerns have also been raised suggesting that varying the condition would set a precedent to allow use of the access for all construction traffic. However, this would require a new application to 'vary' the conditions, which would need to be assessed on its own merits. My decision is based on current conditions, the length of time the access is anticipated to be in use, the timing of that use and the likely number of vehicular movements. Such factors would need to be reassessed should a new application be made. As such, my decision sets no precedent for any future proposals of a different kind.

26. My attention has been drawn to an earlier application to vary the conditions which was refused by the Council. I understand objections to this were made by the Highway Authority. From the evidence before me it appears that this application was for the uncontrolled use of the access for construction work. This is different to what is before me, where there are clear limitations on the scope of the use proposed. Importantly, the Highway Authority has not objected to the proposal before me. Having considered this proposal on its own merits, the earlier refusal does not alter my decision.
27. There are unlikely to be any direct issues relating to noise or disturbance through the use of the access and any effects would be short lived in any event. Issues relating to noise or operating hours from the development as a whole were considered and addressed through the original permission. As noted above, any concerns relating to the principle of development on this site, or the permanent use of the track as an access for two of the dwellings, are outside the scope of this appeal and have had no bearing on my decision.

Conditions

28. I have considered the suggested conditions in accordance with the Planning Practice Guidance (PPG). The suggested replacement for condition 5 is explicit in stating that all construction traffic, save for that associated with upgrading the private drive, would be taken from Park Avenue. The circumstances of this case justify limiting access to the upgrading works only. I am satisfied that the particulars of the construction management plan are also satisfactory.
29. The suggested replacement for condition 7 seeks to address the requirements of the original condition by establishing the details of the works to the access and driveway. This also establishes a timetable of works that would take place during a suitable school holiday period. This is an acceptable approach. I am also satisfied that the works identified on the submitted plans are acceptable. I have therefore imposed both conditions in the interests of highway and pedestrian safety.
30. The PPG makes it clear that for purposes of clarity, decisions for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. I do however have the power to remove, modify or impose new conditions, provided that this does not materially alter the development. The Council's suggested conditions reflect those originally imposed, but also that a number have already been discharged. In these cases, the suggested conditions provide a cross reference to the agreed details. This is an appropriate approach that will ensure certainty.
31. The Council omitted original conditions 31 and 32 from their submissions. I queried this and they have confirmed this was done in error. The parties agree that both conditions remain necessary, but condition 31 should be amended to reflect the submitted plans. I agree with this and have made the necessary amendments.
32. I also queried with the parties whether original condition 8 would be contradictory or prejudicial to what has been proposed. They have put it to me that this condition would no longer be necessary as the nature and implementation of the access would be undertaken in accordance with the

detailed plans. I agree with this conclusion. I have not therefore sort to reimpose this condition as it is not necessary.

33. As the Council consider the development to have started, there is no need to restate the standard condition on timescales. The condition setting out the approved plans has also been amended to reflect the information submitted in support of the application. This is a necessary amendment in the interests of certainty. Other than these amendments, I have imposed or restated all other conditions as suggested by the Council.

Conclusion

34. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

- 1999-112-C Driveway widening detail
- 1999-110-A Construction Plan
- 1999-115 Green lane Access Works Programme
- 1999-114 Private Drive Works

Plans approved under NED/14/00901/FL

- 1999-101-G Site Plan
 - 1999-106-B Site Sections
 - 1999-106-A House Type D
 - 1999-107 House Type A variant
 - 1999-102-A House Type A
 - 1999-103-B House Type B
 - 1999-104-A House Type C
- 2) The landscaping scheme shall be carried out in accordance with the details approved under NED/17/00989/DISCON dated 16 January 2018.
- 3) All planting, seeding or turfing in the approved scheme of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 4) The boundary treatments shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be completed before the first occupation of any dwelling; and shall be retained as approved thereafter.
- 5) Development to be undertaken in accordance with the submitted details shown on drawing 1999-110-A Construction Plan. The plan shall be adhered to throughout the construction period and with the exception of the upgrading of the private drive off Green Lane, all construction traffic shall be via the Park Avenue access only.
- 6) Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.
- 7) Work to the Green Lane access, incorporating widening of the driveway, raised table and construction of the footpath are to be undertaken in full

accordance with the submitted details shown on drawing 1999-112-C, 1999-114 and the Green Lane access works programme Ref: 1999-115. The approved scheme shall be implemented in full in accordance with the approved timetable and retained as such thereafter.

- 8) Prior to the first occupation of either Plot 1 or Plot 2 the "vehicular turning area" shown on drawing No 1999/101E shall be constructed in full and retained as such thereafter free of any impediment to its designated use.
- 9) Prior to the occupation of any of Plots 3 - 6 the vehicle turning space shown on drawing No 1999/101 E shall be constructed in full and retained as such thereafter free of any impediment to its designated use.
- 10) Prior to the occupation of either Plot 1 or Plot 2 the "bin collection area" shown on drawing No 1999/101 E, shall be constructed and retained as such thereafter free of any impediment to its designated use.
- 11) The approved garaging and car parking spaces shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and/or re- enacting that Order) the garage/car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging and parking of private motor vehicles associated with the residential occupation of the property.
- 12) Before the dwellings are first brought into use, the area shown on the approved plans as reserved for the parking, garaging, circulation and standing of vehicles, shall be provided in accordance with the approved details. Thereafter the area shall be used for those purposes only.
- 13) The roofing and walling materials shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full; and shall be retained as approved thereafter.
- 14) The finished floor levels of the dwellings and finished ground levels of the site shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full and shall be retained as approved thereafter.
- 15) Construction works on site and deliveries to the site shall be undertaken only between the hours of 7.30am to 6pm Monday to Friday and 7.30am to 12pm on Saturday. There shall be no work undertaken on site or deliveries to the site undertaken on Sundays or public holidays.
- 16) There shall be no building or other obstruction located over or within 3.0 metres either side of the centre line of the 450mm sewer which crosses the site.
- 17) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 18) The surface water drainage site shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.

- 19) The foul drainage site shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 20) The Mitigation strategy for amphibians and reptiles shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 21) The construction environmental management plan shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 22) The permanent wildlife corridor shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 23) No site clearance works associated with the development of this site including removal of trees, hedgerows or other vegetation shall take place during bird breeding season (March to August) unless otherwise agreed in writing by the Local Planning Authority following the submission of detailed surveys and method statements.
- 24) The external lighting shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 25) The bat and bird mitigation for trees to be felled shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 26) The mitigation measures timetable shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 27) The biodiversity enhancement scheme shall be implemented in accordance with details approved under NED/17/00989/DISCON dated 16 January 2018. The approved scheme shall be implemented in full prior to the first occupation of the dwellings and shall be retained as approved thereafter.
- 28) If during construction works associated with the development hereby approved, any areas suspected of being contaminated are discovered, all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority. The assessment shall take the form of a Phase I contaminated land assessment (desk-study) and shall detail the site investigation strategy required to deal with the contamination identified. Any investigation required shall be undertaken

in accordance with the scheme submitted and shall comply with current Government Guidance. The local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination.

Upon completion of the remediation works carried out in accordance with the site investigation strategy; a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.

- 29) The footway to the south of Plots 1 and 2 as shown on drawing 1999-112-C shall be implemented in full prior to the first occupation of either plot 1 or 2 and shall be retained thereafter.
- 30) From the commencement of the development hereby approved, vehicular access to plots 3, 4, 5 and 6 shall be via Park Avenue only and no vehicular access to these plots shall be via the site's southern boundary and the track/lane off Green Lane.