The Planning Inspectorate

Appeal Decision

Site visit made on 23 March 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal A Appeal Ref: APP/W3710/W/20/3260427
Site 31A003 - Rear Whitehouse Farm, Higham Lane, Nuneaton

- 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 Redrow Homes (Midlands) against the decision of Nuneaton & Bedworth Borough Council.
- The application Ref 036970, dated 22 January 2020, was refused by notice dated 10 June 2020.
- The application sought approval of reserved matters for layout, scale, appearance and landscaping following outline planning approval, Ref 035338 for 200 dwellings (corner of Higham Lane and Watling Street) without complying with a condition attached to Reserved Matter approval, Ref 036261, dated 8 November 2019.
- The condition in dispute is No 4 which states that: *Details of the 1.8m high vertical bar metal fencing and noise attenuation bund along the A5 must be submitted within three months of this consent for Reserved Matters. No dwelling shall be occupied until the agreed fence and bund has been carried out in accordance with the approved details and maintained in perpetuity*.

Appeal B Appeal Ref: APP/W3710/W/20/3260429
Site 31A003 - Rear Whitehouse Farm, Higham Lane, Nuneaton

- 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 Redrow Homes (Midlands) against the decision of Nuneaton & Bedworth Borough Council.
- The application Ref 036971, dated 22 January 2020, was refused by notice dated 10 June 2020.
- The application sought outline planning permission with all matters reserved other than access for up to 200 residential dwellings with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (corner of Higham Lane and Watling Street without complying with a condition attached to planning permission Ref 035338, dated 22 November 2018.
- The condition in dispute is No 31 which states that: *No development shall commence until full details of the boundary treatments for that phase, including new walls, fences, retaining walls, and the provision of 1.8m high vertical bar metal fencing along the A5 have been submitted to and approved in writing by the Council. No dwelling shall be occupied until the agreed boundary treatment has been carried out in accordance with the approved details*.
- The reason given for the condition is: *In the interest of visual amenity and safety for the users of the open space adjacent to the A5*.

Decisions

1. Appeal A is allowed and the reserved matters approval is varied for layout, scale, appearance and landscaping following outline planning approval ref 035338 for 200 dwellings (corner of Higham Lane and Watling Street) at Site 31A003 – Rear Whitehouse Farm, Higham Lane, Nuneaton in accordance with the terms of the application, Ref 036970, dated 22 January 2020 by deleting condition No 4 and substituting it for the following condition:

    1) Details of the 750mm high post and rail fence and noise attenuation bund along the A5 must be submitted to the local planning authority within 3 months of the date of this decision. The fence and bund shall be fully installed within 12 months of the date of this decision in accordance with the details submitted to and agreed in writing by the local planning authority and maintained for the lifetime of the development.

2. Appeal B is dismissed.

Background

3. In November 2018 outline planning permission was granted for up to 200 dwellings with all matters reserved save for access. The outline permission included a condition requiring the installation of a 1.8m high fence between the site and the A5. In November 2019 reserved matters were approved in respect of a number of matters, and in doing so the Council imposed a further condition for details of a 1.8m high metal fencing and a noise attenuation bund along the A5 to be submitted. The appellant sought to vary these conditions.

Procedural Matters

4. As set out above there are two appeals on this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two proposals together, except where otherwise indicated.

5. With regard to Appeal B the appellant is proposing to vary the existing planning obligation linked to the outline planning permission and has submitted a Deed of Variation, albeit it is not signed by all interested parties. I return to this matter later on.

Main Issue

6. The main issue is whether the conditions are necessary and reasonable having regard to the safety of users of the development and the highway.

Reasons

7. The appeal site is a new housing development currently under construction. The A5 extends along its northern edge and within the site and running alongside the road is a swathe of green open space that once completed will comprise public open space and include green spaces, equipped play areas and a 'kick around area'. Along its boundary are long stretches of hedgerow and new landscaping, including a noticeable ditch and bund with newly planted trees on top of it. At the time of the site visit there were some gaps in the existing hedgerow. However, it is evident that these gaps will be plugged with new sections of hedge.

8. Despite it being a major and well used road through the borough the A5 has the appearance of a rural road largely defined by long stretches of hedgerows and fields either side of the road.

9. The combination of existing and proposed landscaping features, including the ditch and bund, and post and rail fencing would result in a robust and satisfactory visual and physical barrier providing a safe environment for future users of the open space and minimising risk. Notwithstanding the Council's desire for a tall metal fence I am satisfied that the appellant has made reasonable endeavours to prevent people, animals or objects from ending up on the road.

10. Having considered the contents of the submitted Boundary Safety Review and having regard to the evidence before me I am satisfied that the wide grass verge, ditch, hedging, height of the bund and fencing between the development's green space and the A5 would deter undesired access.

11. Highways England who are responsible for managing and maintaining the A5 have not raised an objection to the appellant's proposals. Therefore, there is no credible evidence before me to indicate that the proposal would pose a traffic hazard on the A5.

12. I acknowledge that the proposal is in part reliant on the integrity of the hedge. However, the Landscape Management Plan indicates that regular inspections would take place for at least a 5-year period. In my view, this would be satisfactory to prevent and mitigate any potential vandalism or deterioration of the fencing.

13. Whilst I appreciate the Council have concerns in respect of enforcement of the condition, the developer and management company would be well aware of their responsibility to manage and maintain the site as well as their responsibilities to residents in the short and long term. There is no reason to suggest that they would not monitor or maintain the proposed fencing and landscaping.

14. I have paid regard to the Council's case in respect of the Building for Life standard, but for the reasons set out above, it does not lead me to a different overall conclusion.

15. Consequently, I conclude that the existing condition is not necessary or reasonable. Its variation would not conflict with Policies DS1 and BE3 of the Nuneaton and Bedworth Borough Plan (2019) which, amongst other things, require development proposals to be designed to a high standard. It would also not result in conflict with paragraphs 91, 110, 117 and 127 of the National Planning Policy Framework which, amongst other things, seek high quality spaces which encourage active and continued use of public areas; the creation of places that are safe, secure and attractive; safe and healthy living conditions and developments that function well and add to the overall quality of the area.

Other Matters

16. The Council's preferred fence due to its height and position would be very evident from within the development and when travelling along the A5, despite the proposed planting. It would appear as an unduly urban and incongruous feature completely out of keeping with the character and appearance of the area, which has a rural feel, despite the presence of new housing development.

17. Whilst the Council indicate that similar conditions have been imposed on neighbouring housing sites I have not been furnished with any substantive information. In any event, it is incumbent upon me to assess the merits of the proposal before me, as I have done. As such, I have given this matter limited weight in coming to my decision.

18. In respect of Appeal B the submitted deed of variation has not been signed by all parties and therefore is not legally binding in relation to the requirements of Section 106 of the Town and Country Planning Act (1990).

19. Whilst the application seeks to vary a condition on an extant outline permission, the effect of allowing the appeal would be to create a new standalone permission. As the existing planning obligation refers only to the extant consent and the deed of variation before me is incomplete, the proposal in respect of Appeal B would fail to deliver the planning obligations to make the development acceptable in planning terms.

Conditions

20. Condition 4 is worded to ensure that the fencing and noise attenuation bund are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because the permission has been implemented and so it is not possible to use a negatively worded condition to secure the approval and implementation of the fencing and noise attenuation bund before the development takes place.

21. I note that the Council contend that the specification for the fence should be included within the revised condition. However, it is not for me, as part of consideration of this appeal, to come to a view on the exact specification of the proposals. This is a matter that falls outside of what I consider as part of this appeal and thus I have not taken this matter into account in its determination.

22. With regard to Appeal A the guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. In the interests of clarity, I have imposed conditions on the reserved matter approval that I consider remain relevant.

Conclusion

23. For the reasons set out above Appeal A is allowed and the reserved matters approval is varied as set out above.

24. In respect of Appeal B the variation of the disputed condition would not unduly affect the character and appearance of the area or adversely affect the safety of users or highway safety. However, this would not outweigh the lack of a mechanism by which to secure adequate planning obligations in accordance with local and national guidance. As such, Appeal B is dismissed.

B Thandi

INSPECTOR

Appeal A - Schedule of conditions

1) The development shall not be carried out other than in accordance with the approved plans contained in the following schedule:

   Location Plan 1634-08-02-120 1 received 3 February 2019

   Site Plan - Sheet 1 of 2 1634-08-02-101 Rev N received 30 October 2019

   Site Plan - Sheet 2 of 2 1634-08-02-102 Rev N received 30 October 2019

   Materials Plan - Sheet 1 of 2 1643-08-02-111 Rev N received 30 October 2019

   Materials Plan - Sheet 2 of 2 1634-08-02-112 Rev N received 30 October 2019

   Enclosures Plan 1 of 2 1634-08-02-121 Rev N received 30 October 2019

   Enclosures Plan 2 of 2 1634-08-02-122 Rev N received 30 October 2019

   Proposed FFL's Sheet 1 of 2 1634-08-02-123 Rev J received 30 October 2019

   Proposed FFL's Sheet 2 of 2 1634-08-02-124 Rev J received 30 October 2019

   Phasing Plan 1634-08-02-142 received 9 September 2019

   Landscape Masterplan D7452.001E received 2 October 2019

   The Amberley - Plans & Elevations (brick) received 9 July 2019

   The Amberley - Plans & Elevations (render) received 9 July 2019

   The Avon 4 block – Plans received 9 July 2019

   The Avon 4 block – Elevations received 9 July 2019

   The Cambridge - Plans & Elevations (brick) received 9 July 2019

   The Cambridge - Plans & Elevations (render) received 9 July 2019

   The Cambridge – Plans & Elevations plots 37 & 53 received 11 October 2019

   The Canterbury – Plans received 9 July 2019

   The Canterbury – Elevations received 9 July 2019

   The Dart – Elevations received 9 July 2019

   The Dart – Plans received 9 July 2019

   Leamington Lifestyle - Plans & Elevations M4(2) Rev A received 20 August 2019

   The Ludlow Lifestyle - Plans received 9 July 2019

   The Ludlow Lifestyle - Elevations (brick) received 9 July 2019

   The Ludlow Lifestyle - Elevations (render) received 9 July 2019

Maisonettes – Plans 9 received July 2019

Maisonettes - Front & Rear Elevations (brick) received 9 July 2019

Maisonettes – Side Elevations (brick) received 9 July 2019

Oxford Lifestyle – Plans and Elevations M4(2) received 9 July 2019

The Shaftesbury – Plans received 9 July 2019

The Shaftesbury – Elevations (brick) received 9 July 2019

The Shrewsbury Lifestyle – Plans & Elevations (brick) received 9 July 2019

The Shrewsbury Lifestyle – Plans & Elevations (render) received 9 July 2019

The SP2 – Plans received 9 July 2019

The SP2 - Elevations (brick) received 9 July 2019

The Stratford - Plans & Elevations (brick) received 9 July 2019

The Stratford - Plans & Elevations (render) received 9 July 2019

The Tavy – Plans received 9 July 2019

The Tavy – Elevations received 9 July 2019

The Tweed - Plans & Elevations (brick) received 9 July 2019

The Warwick Lifestyle – Plans & Elevations (brick) received 9 July 2019

The Warwick Lifestyle – Plans & Elevations (render) received 9 July 2019

The Warwick Lifestyle – Plans & Elevations, plots 52,154,175,180, and 200 received 11 October 2019

Single Garage Type 2 Rev A received 8 July 2019

Twin Garage Type 4 received 8 July 2019

Banners Gate Ltd - Technical Note– 18203 10 July 2019 received 11 July 2019

Biodiversity Assessment Update 858258 Feb. 2019 Rev 00 received 8 September 2019

BWB –Technical Note BMW2639/TN/Le/JN/RO received 2 August 2019

Road Safety Audit Stage 1 15068B 10 July 2019 received 10 July 2019

2) Drainage details for the disposal of surface water and foul sewage must be submitted to the Council within three months of this consent for Reserved Matters. The scheme shall be implemented in accordance with the approved details before the development is first 4 brought into use. Due to the size of this development a sewer modelling study may be required to determine the impact this development will have on the existing system and if flows can be accommodated. Severn Trent may need to undertake a more comprehensive study of the catchment to determine if capital improvements are required. If Severn Trent needs to undertake capital improvements, a reasonable amount of time will need to be determined to allow these works to be

completed before any additional flows are connected. Planning Practice Guidance and section H of the Building Regulations 2010 detail surface water disposal hierarchy. The disposal of surface water by means of soakaways should be considered as the primary method. If this is not practical and there is no watercourse is available as an alternative other sustainable methods should also be explored. If these are found unsuitable, satisfactory evidence will need to be submitted, before a discharge to the public sewerage system is considered.

3) Details of a surface water drainage scheme for the site, based on sustainable drainage principles, the approved FRA, and an assessment of the hydrological and hydrogeological context of the development, must be submitted within three months of this consent for Reserved Matters in consultation with the LLFA. The scheme to be submitted shall:

    - Demonstrate that the surface water drainage system(s) are designed in accordance with 'The SuDS Manual', CIRIA Report C753.
    - Demonstrate that appropriate maintenance easements are included in the design of any sustainable drainage feature.
    - Provide plans and details showing the allowance for exceedance flow and overland flow routing, overland flow routing should look to reduce the impact of an exceedance event. The approved scheme shall be implemented in full.

4) The development shall be laid out in general accordance with drawing no. Drawing no. 1634-08-02-101 Rev N and 1634-08-02-102Rev N both received on the 30th October 2019.

5) The construction of the estate roads serving the development including footways, verges and footpaths shall not be other than in accordance with the standard specification of the Highway Authority.