



Appeal Decision

Site visit made on 7 December 2021

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 5th January 2022

Appeal Ref: APP/Y0435/W/21/3276692

Stockwell Lane Farm, Stockwell Lane, Wavendon, Milton Keynes MK17 8AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Cheshire of SPC Carpentry Ltd against Milton Keynes Council.
 - The application Ref 21/00731/FULMMA is dated 10 March 2021.
 - The application sought planning permission for erection of 3 dwellings and associated works following the demolition of the existing redundant farm buildings without complying with a condition attached to planning permission Ref 19/01159/FULMMA, dated 2 August 2019.
 - The condition in dispute is No 3 which states that: prior to the occupation of the development hereby permitted the access and highway works shown on plan 1838-05 shall be sited and constructed in accordance with details to be submitted and approved in writing by the local planning authority. The works so laid out shall be retained thereafter.
 - The reason given for the condition is: for the safety and convenience of users of the highway and the access.
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Decision

1. The appeal is allowed and the planning permission is granted for the erection of 3 dwellings and associated works following the demolition of the existing redundant farm buildings, at Stockwell Lane Farm, Stockwell Lane, Wavendon, Milton Keynes MK17 8AB in accordance with the application Ref 19/01159/FULMMA without compliance with Condition 3 previously imposed on planning permission 17/03007/FUL dated 12 February 2018, but subject to the conditions listed in the attached Schedule of Conditions.

Procedural Matter

2. While I note the description of development stated on the application form, in the interests of clarity I have referred to the original planning permission granting permission for three dwellings in the header and my decision above.

Applications for costs

3. An application for costs was made by Milton Keynes Council against Mr Cheshire of SPC Carpentry Ltd. An application for costs was also made by Mr Cheshire of SPC Carpentry Ltd against Milton Keynes Council. These applications are the subject of separate Decisions.

Main Issue

4. The main issue is whether the condition is necessary having regard to highway safety and, if not, whether any alternative condition would be necessary.

Background and Reasons

5. A development consisting of three dwellings was granted planning permission by the Council in February 2018 subject to a number of conditions including Condition 3. The same condition was attached to subsequent permissions altering other conditions in October 2018 and August 2019. Condition 3 states, 'Prior to the occupation of the development hereby permitted the access and highway works shown on plan 1838-05 shall be sited and constructed in accordance with details to be submitted and approved in writing by the Local Planning Authority. The works so laid out shall be retained thereafter.'
6. Works shown on the approved plan include the provision of a footpath alongside the highway starting at the site access and extending south to the junction with Walton Road, a section of widened highway and section of highway with a priority flow.
7. However, the evidence indicates that, subsequent to these decisions, highway works were approved as part of another scheme which include a footpath that starts at the site access and extends some distance to the north of the site. Other works include new passing laybys. The works appeared to have been largely carried out at the time of my site visit. As such, given the improvements to the highway proposed as part of another scheme, I agree with the main parties that the works required by Condition 3 are no longer necessary or reasonable.
8. Nonetheless, the Appellant has proposed a condition extending the speed limit of 20mph to a location further north of the access to mitigate the effect of the additional trips generated by three dwellings, on the highway network. The Council has suggested an alternative condition requiring a scheme of vertical traffic calming measures.
9. The relocation of the speed limit sign as proposed by the Appellant would not be enforceable or relevant to planning as a legal change to the speed limit would be subject to a traffic regulation order. However, a condition requiring the submission, approval and implementation of a scheme of traffic calming measures would be likely to reduce the speed of vehicles and could be enforceable. I acknowledge the Appellant's suggestion that such a condition should require the provision of speed humps to the north and south of the access. However, there is limited evidence before me to demonstrate that this particular traffic calming measure would be the most appropriate method of traffic calming.
10. The visibility splay to the north allows motorists exiting the site to see vehicles approaching from a significant distance to the north. While visibility to the south is somewhat restricted by the adjacent fence, the evidence indicates that the speed limit along Stockwell Road has been reduced to 30mph as part of the works for the other scheme. I also observed a 30mph speed limit sign to the south of the access for vehicles travelling north towards the access, during my site visit.

11. In addition, the evidence indicates that the width of the highway to the south of the site access is wide enough for single lane traffic and pedestrians to pass side by side and the average vehicle speed past the site access is around 25mph. Furthermore, the scheme is likely to result in one additional pedestrian movement per day. Therefore, given the speed limit along the road, and the width of the highway as well as the limited number of trips generated by the development of three dwellings, traffic calming measures such as speed humps have not been shown to be necessary for highway or pedestrian safety.
12. Consequently, condition 3 is not necessary having regard to highway safety. In addition, it has not been demonstrated that an alternative condition requiring traffic calming measures would be necessary.

Other Matters

13. I note the costs application relating to a case in London. However, since the condition subject of that application and as attached to the original permission was found not to meet the tests set out in paragraph 56 of the National Planning Policy Framework in the first instance, it is not directly comparable to this appeal.

Conditions

14. 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. There is no evidence before me to indicate that the other conditions attached to planning permission Ref 19/01159/FULMMA are not necessary or reasonable. As I have no information before me about the status of the other conditions, I shall impose all of them apart from the condition regarding the time limit for commencement as the evidence indicates that development has commenced. In the event that some conditions have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed but only in respect of removing condition 3 of planning permission Ref 19/01159/FULMMA.

R Sabu

INSPECTOR

Schedule of conditions

- 1) The approved development shall be carried out in accordance with the following drawings/details:
Received on 20/07/2018:
18-10-06-P1
18-10-010 -P-1
18-10-011-P1
Received on 01/05/2019:
Site Investigation Report Ref. 5286-GE001 26 September 2018
Drawing No. 5286-1007 Revision P2
Drawing No. 5286-1008 Revision P1
Drawing No. 18-10-100-T1, Date June 2018, Proposed Site Plan
Drawing No. 18-10-1-401 T-2, Date Oct 2018, Section AA
Drawing No. 18-10-1-402 T-2, Date Oct 2018, Section BB
Drawing No. 18-10-1-403 T-2, Date Oct 2018, Section CC
Received on 17/07/2019:
Surface Water Calculations Report, Ref: 5286-DR001, Revision 1, 17 July 2019
- 2) Condition not necessary
- 3) Condition deleted
- 4) Prior to the occupation of the development hereby permitted the car parking area shown on the approved drawings shall be constructed, surfaced and permanently marked out. The car parking area so provided shall be maintained as a permanent ancillary to the development and shall be used for no other purpose thereafter.
- 5) Prior to the first occupation of the development hereby permitted details of bicycle parking shall be submitted to and approved in writing by the local planning authority and the scheme approved shall be provided and be retained thereafter.
- 6) Notwithstanding the approved details, no development shall take place above slab level until details of the proposed boundary treatments have been submitted to and approved in writing by the local planning authority. The details shall include a boundary treatment plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatment and annotated or accompanied by a schedule specifying the type, height, composition, appearance and installation method of boundary treatment throughout the site. The development shall be carried out in accordance with the approved details prior to the occupation of any part of the development and shall thereafter be retained in that form.
- 7) Notwithstanding the approved drawings, no development shall take place above slab level until full details of both hard and soft landscape works

have been submitted to and approved in writing by the local planning authority. These details shall include existing trees and/or hedgerows to be retained and/or removed accurately shown with root protection areas; areas of hard surfacing materials. The plan at a minimum scale of 1:200 shall include/ show the numbers, types and sizes of trees, shrubs and plants to be planted and their location in relation to proposed buildings, roads, footpaths, hard surfacing and services (including those underground). The hard and soft landscaping shall be carried out in accordance with the approved details. If within a period of two years from the date of the planting of any tree or shrub, that tree or shrub, or any tree and shrub planted in replacement for it, is removed, uprooted or destroyed, dies, becomes severely damaged or diseased, shall be replaced in the next planting season with trees and shrubs of equivalent size, species and quantity.

All hard and soft landscape works shall be carried out prior to the occupation of the building(s) or the completion of the development whichever is the sooner or in accordance with a programme agreed in writing with the local planning authority.

- 8) 1) The developer shall carry out the proposed development in full accordance with the strategy for remedial action deemed necessary to bring the site to a condition suitable for its intended use, which is outlined within the submitted 'Site Investigation Report Ref. 5286-GE001 26 September 2018.'
- 2) Remedial works shall be carried out in accordance with the above approved strategy and validated by submission of an appropriate verification report prior to first occupation of the development.
- 3) Should any unforeseen contamination be encountered the local planning authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination will also be carried out to the written satisfaction of the local planning authority.
- 9) A) The means of surface water disposal for the approved development shall be carried out in full accordance with the details contained within the following approved plans and documents:
- Drawing No. 5286-1007 Revision P2, received on 01 May 2019.
- Drawing No. 5286-1008 Revision P1, received on 01 May 2019.
- Surface Water Calculations Report, Ref: 5286-DR001, Revision 1, 17 July 2019, received on 17 July 2019.
- B) The development shall not be occupied until a foul water drainage scheme, based on sustainable drainage principles for the site is submitted to and approved in writing by the local planning authority. The approved drainage scheme shall subsequently be implemented in accordance with the approved detailed design prior to occupation of the development and be retained thereafter.
- 10) The development shall be constructed of external materials in accordance with samples or details to be submitted to and approved in writing by the local planning authority prior to any work above ground level.

- 11) Prior to the occupation of the development, the proposed mitigation and enhancement measures outlined in section 6 of the Preliminary Ecological Appraisal (dated October 2016) shall be implemented and maintained thereafter.
- 12) The development shall be carried out in accordance with the approved site and floor levels specified on the following approved plans:
Drawing No. 18-10-100-T1, Date June 2018, Proposed Site Plan, received on 01 May 2019.
Drawing No. 18-10-1-401 T-2, Date Oct 2018, Section AA, received on 01 May 2019.
Drawing No. 18-10-1-402 T-2, Date Oct 2018, Section BB, received on 01 May 2019.
Drawing No. 18-10-1-403 T-2, Date Oct 2018, Section CC, received on 01 May 2019.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no development covered by Class A, B, C, D, E & F; of Part 1 to Schedule 2 to that Order shall be carried out without the specific grant of planning permission from the local planning authority.

END OF SCHEDULE