



Appeal Decisions

Site visit made on 13 June 2022

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2022

Appeal A Ref: APP/X0415/W/21/3286815

75 Lye Green Road, Chesham, Buckinghamshire, HP5 3NB

- 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 Visao Ltd against the decision of Buckinghamshire Council.
 - The application Ref PL/21/1044/VRC, dated 10 March 2021, was refused by notice dated 18 June 2021.
 - The application sought planning permission for redevelopment of site, erection of three detached houses and one four bay car port with associated parking, amenity space and landscaping (amendment to planning permission CH/2016/2230/FA) without complying with a condition attached to planning permission Ref CH/2018/0366/FA, dated 18 April 2018.
 - The condition in dispute is No 14 which states that: This permission relates to the details shown on the approved plans as listed below: Drawing No.(s): 918:1107/PL102 received on 22 February 2018, 918:1107/PL104 received on 22 February 2018, 918:1107/PL100 received on 22 February 2018, 918:1107/PL105 received on 22 February 2018, 918:1107/PL108 received on 22 February 2018, 918:1107/PL107 received on 22 February 2018, 918:1107/PL103 received on 22 February 2018, 918:1107/PL101 received on 22 February 2018, 918:1107/PL106 received on 22 February 2018, LOCATION PLAN received on 22 February 2018, and in accordance with any other conditions imposed by this planning permission.
 - The reasons given for the condition is: To ensure that the development is carried out in accordance with the details considered by the Local Planning Authority.
-

Appeal B Ref: APP/X0415/W/22/3293593

75 Lye Green Road, Chesham, Buckinghamshire, HP5 3NB

- 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 Visao Ltd against the decision of Buckinghamshire Council.
- The application Ref PL/21/4568/VRC, dated 23 November 2021, was refused by notice dated 1 February 2022.
- The application sought planning permission for redevelopment of site, erection of three detached houses and one four bay car port with associated parking, amenity space and landscaping (amendment to planning permission CH/2016/2230/FA) without complying with a condition attached to planning permission Ref CH/2018/0366/FA, dated 18 April 2018.
- The condition in dispute is No 14 which states that: This permission relates to the details shown on the approved plans as listed below: Drawing No.(s): 918:1107/PL102 received on 22 February 2018, 918:1107/PL104 received on 22 February 2018, 918:1107/PL100 received on 22 February 2018, 918:1107/PL105 received on 22 February 2018, 918:1107/PL108 received on 22 February 2018, 918:1107/PL107 received on 22 February 2018, 918:1107/PL103 received on 22 February 2018,

918:1107/PL101 received on 22 February 2018, 918:1107/PL106 received on 22 February 2018, LOCATION PLAN received on 22 February 2018, and in accordance with any other conditions imposed by this planning permission.

- The reasons given for the condition is: To ensure that the development is carried out in accordance with the details considered by the Local Planning Authority.
-

Decisions

1. Appeal A is allowed and planning permission is granted for redevelopment of site, erection of three detached houses and one four bay car port with associated parking, amenity space and landscaping (amendment to planning permission CH/2016/2230/FA) without complying with condition 14 attached to planning permission Ref CH/2018/0366/FA, dated 18 April 2018 and subject to the conditions set out in the attached schedule.
2. Appeal B is allowed and planning permission is granted for redevelopment of site, erection of three detached houses and one four bay car port with associated parking, amenity space and landscaping (amendment to planning permission CH/2016/2230/FA) without complying with a condition attached to planning permission Ref CH/2018/0366/FA, dated 18 April 2018 and subject to the conditions set out in the attached schedule.

Applications for costs

3. Applications for costs have been made by both the Council and the appellants. These applications are the subject of a separate decision.

Preliminary Matters

4. The appellant submitted amended drawings with Appeal A showing the rear garden to Plot C increased in depth by 2.5 metres. This does not accord with the Site layout & roof plan submitted with the appeal, and I cannot be certain that interested parties have seen these plans. Therefore, in accordance with the principles established in the *Wheatcroft* judgment, I have determined Appeal A based on the plans on which the Council based its decision.
5. Both appeals relate to the same proposed variation to the approved plans. I have therefore addressed both appeals as a single decision.
6. The Council has confirmed that it has no objection to the amendments to the roof of the house on Plot C which is common to both appeals. I see no reason to disagree with this conclusion.
7. The house on Plot B of the submitted drawings has been built and is numbered 2 The Limes. I shall however refer to this site as Plot B for the sake of consistency with the plans on which this decision is based.

Main Issue

8. The main issue regarding both Appeal A and Appeal B is the effect of the appeal proposal on the living conditions of the occupiers of the houses on Plots B and C.

Reasons

9. The access serves two dwellings with a total of six parking spaces at the end of the site. The associated traffic can be expected to principally comprise residents leaving or returning to their homes with occasional deliveries. This is

unlikely to amount to very many movements and there is not likely to be frequent conflict between vehicles travelling in opposite directions, necessitating one or other vehicle reversing out of the way.

10. There would be little separation between the access and the boundaries of the houses alongside it on Plots B and C. Both houses would have their main entrance opening onto the access with little separation. The rear gardens of both houses would be immediately next to the access. The Council has expressed concern that by introducing a further house immediately opposite that on Plot B there will be disturbance to the occupiers of both houses, including from reverberation between the facing fences and walls. Average noise levels, as measured in the Noise & Vibration Impact Assessment, would be low. However, the Council remains concerned that peak noise levels could be so high that unacceptable disturbance to occupiers would result.
11. However, in my experience this type of access is not an uncommon arrangement in small housing developments. There would be no windows to habitable rooms facing onto the access. The rear garden to Plot B is enclosed by a close-boarded fence, and a similar arrangement to Plot C could be secured by condition. The access is relatively short and terminates in a parking area for two houses. The speed of vehicles travelling along the access road is likely to be low and therefore their engines would be running quietly.
12. The Council have drawn my attention to an appeal decision where a similar access arrangement was found to be likely to cause unacceptable harm to neighbouring occupiers. I acknowledge my colleague's findings that proximity to sudden noise events such as car doors shutting and vehicle engines revving can cause disturbance to those living nearby. However, that decision related to a proposal to extend a gymnasium's opening hours through the night. That differs significantly from the proposal before me, in that those concerns related to disturbance during normal sleeping hours. There is nothing before me to indicate that use of the access is likely to cause significant disturbance at these times, or that sudden noise events would be likely to cause such high peak noise levels that harmful disturbance would occur. Accordingly, I attribute limited weight to this decision in determining this appeal.
13. Any disturbance arising from the use of the access would therefore be limited in duration and extent. It would not cause such disruption to the occupiers of Plots B or C that unacceptable harm to their living conditions would result. The appeal proposal would therefore accord with Policy GC3 of the Consolidated Chiltern Local Plan 1997. This policy seeks good standards of amenity for future occupiers and to protect the amenities enjoyed by the occupants of existing adjoining and neighbouring properties.

Other Matters

14. The site is within the zone of influence of the Chilterns Beechwoods Special Area of Conservation. As no new houses would result from the proposed variations it is not necessary for me to consider this matter further.
15. Neighbouring residents have raised concerns regarding the overall density of development on the wider site, whether the width of the access road would be sufficient to allow emergency access, whether there are safety issues from the proximity of the access road to the entrances to the houses on Plots B and C, the potential for damage to trees, the adequacy of parking, the adequacy of bin

storage and access for refuse vehicles, and the adequacy of drainage. I note that the Council did not refuse permission on any of these grounds, and I see no reason to find otherwise.

16. Concerns regarding the ability of the appellant to construct the dwelling on Plot C do not fall to be considered as part of this appeal.
17. Concerns regarding the compliance with conditions on earlier permissions for the wider site fall to be addressed by the Council.

Conditions

18. National Planning Practice Guidance states that conditions from the original permission should be restated when permission is granted under Section 73. Those conditions are therefore also imposed on this decision, other than the condition requiring commencement within three years of the permission as the development has already commenced. If conditions have in fact been discharged, that is a matter which can be addressed by the main parties.
19. I have amended the landscaping condition (9) to specify timings for new planting and that any trees or plants that die or are removed within five years from the completion of the development shall be replaced. I am satisfied that this does not materially alter the development that was subject to the original permission and could have been imposed on the earlier planning permission.

Conclusion

20. For the reasons set out above, Appeals A and B succeed.

M Chalk

INSPECTOR

Schedule of conditions – Appeal A

1. This permission relates to the details shown on the approved plans as listed below:
 - 1:1250 location plan
 - 918:1107/PL201 Site layout & roof plan
 - 918:1107/PL202 Ground floor plan
 - 918:1107/PL203 First floor plan
 - 918:1107/PL204 Rev A Elevations
2. Before any construction work commences, named types and samples of the materials to be used for the external construction of the development hereby permitted, including the facing materials, roofing materials and surface materials for the road and parking areas, shall be made available to and approved in writing by the Local Planning Authority. The development shall only be carried out in the approved materials.
3. Prior to the commencement of any works on site, detailed plans, including cross sections as appropriate, showing the existing ground levels and the proposed slab and finished floor levels of the dwellings hereby permitted shall be made available to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed datum point normally located outside the application site. Thereafter the development shall not be constructed other than as approved in relation to the fixed datum point.
4. Prior to the occupation of the development the modified access to Lye Green road shall be designed in accordance with the approved plans.
5. The scheme for parking, garaging and manoeuvring indicated on the submitted plans shall be laid out prior to the initial occupation of the development hereby permitted and those areas shall not thereafter be used for any other purpose.
6. No other part of the development shall begin until visibility splays have been provided on both sides of the access between a point 2.4 metres along the centre line of the access measured from the edge of the carriageway and a point 43 metres along the edge of the carriageway measured from the intersection of the centre line of the access. The area contained within the splays shall be kept free of any obstruction exceeding 0.6 metres in height above the nearside channel level of the carriageway.
7. Prior to occupation of the development space shall be laid out within the site for parking for cars, loading and manoeuvring, in accordance with the approved plans. This area shall be permanently maintained for this purpose.
8. No development shall take place until a Tree Protection Plan has been submitted to and approved in writing by the Local Planning Authority. This plan shall clearly show the trees and hedges to be retained and those to be removed, along with the positions of tree protection fencing, no-dig construction within the root protection areas of the retained trees and any other appropriate tree protection measures. Before any other site works commence on the development hereby permitted this tree protection fencing shall be erected around all the trees and hedges to be retained in accordance with both this plan

and British Standard 5837:2012. The fencing shall then be retained in these positions until the development is completed. During this period no construction work shall take place, no materials whatsoever shall be stored, no fires shall be started, no excavation shall take place and there shall be no change in ground levels within these enclosed areas.

9. Notwithstanding the submitted details, no development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping at a scale of not less than 1:500 which shall include indications of all existing trees and hedgerows on the land, with details of those to be retained, those to be felled being clearly specified, and full details of those to be planted. This shall include full details of the locations, size and species of all trees, hedgerows and shrubs to be planted, removed and retained and should include the installation of bat and/or bird bricks and/or boxes.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and 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.

10. Prior to the occupation of the development hereby permitted, full details of the proposed boundary treatments for the site shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall then be erected/constructed prior to the occupation of the dwellings hereby permitted.
11. The roof lights in the north-western side elevation of the dwelling on Plot C and the roof lights in the south-eastern elevation of the dwelling on Plot B shall be a minimum of 1.7 metres above the floor of the room in which they are installed. The windows shall be permanently retained in that condition thereafter.
12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order, with or without modification), no roof lights, windows/dormer windows other than those expressly authorised by this permission, shall be inserted or constructed at any time in the following elevations of the stated dwellings hereby permitted:
- North western elevation of the dwelling on Plot C
 - South eastern elevation of the dwelling on Plot B
 - South eastern elevation of the dwelling on Plot A.
13. Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no part of the roof of any of the dwellings hereby permitted shall be used as a balcony or roof terrace, nor shall any access be formed thereto.

Schedule of conditions – Appeal B

1. This permission relates to the details shown on the approved plans as listed below:
 - 1:1250 location plan
 - 918:1107/PL201 Site layout & roof plan
 - 918:1107/PL202 Ground floor plan
 - 918:1107/PL203 First floor plan
 - 918:1107/PL204 Rev A Elevations
2. Before any construction work commences, named types and samples of the materials to be used for the external construction of the development hereby permitted, including the facing materials, roofing materials and surface materials for the road and parking areas, shall be made available to and approved in writing by the Local Planning Authority. The development shall only be carried out in the approved materials.
3. Prior to the commencement of any works on site, detailed plans, including cross sections as appropriate, showing the existing ground levels and the proposed slab and finished floor levels of the dwellings hereby permitted shall be made available to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed datum point normally located outside the application site. Thereafter the development shall not be constructed other than as approved in relation to the fixed datum point.
4. Prior to the occupation of the development the modified access to Lye Green road shall be designed in accordance with the approved plans.
5. The scheme for parking, garaging and manoeuvring indicated on the submitted plans shall be laid out prior to the initial occupation of the development hereby permitted and those areas shall not thereafter be used for any other purpose.
6. No other part of the development shall begin until visibility splays have been provided on both sides of the access between a point 2.4 metres along the centre line of the access measured from the edge of the carriageway and a point 43 metres along the edge of the carriageway measured from the intersection of the centre line of the access. The area contained within the splays shall be kept free of any obstruction exceeding 0.6 metres in height above the nearside channel level of the carriageway.
7. Prior to occupation of the development space shall be laid out within the site for parking for cars, loading and manoeuvring, in accordance with the approved plans. This area shall be permanently maintained for this purpose.
8. No development shall take place until a Tree Protection Plan has been submitted to and approved in writing by the Local Planning Authority. This plan shall clearly show the trees and hedges to be retained and those to be removed, along with the positions of tree protection fencing, no-dig construction within the root protection areas of the retained trees and any other appropriate tree protection measures. Before any other site works commence on the development hereby permitted this tree protection fencing shall be erected around all the trees and hedges to be retained in accordance with both this plan

and British Standard 5837:2012. The fencing shall then be retained in these positions until the development is completed. During this period no construction work shall take place, no materials whatsoever shall be stored, no fires shall be started, no excavation shall take place and there shall be no change in ground levels within these enclosed areas.

9. Notwithstanding the submitted details, no development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping at a scale of not less than 1:500 which shall include indications of all existing trees and hedgerows on the land, with details of those to be retained, those to be felled being clearly specified, and full details of those to be planted. This shall include full details of the locations, size and species of all trees, hedgerows and shrubs to be planted, removed and retained and should include the installation of bat and/or bird bricks and/or boxes.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and 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.

10. Prior to the occupation of the development hereby permitted, full details of the proposed boundary treatments for the site shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall then be erected/constructed prior to the occupation of the dwellings hereby permitted.
11. The roof lights in the north-western side elevation of the dwelling on Plot C and the roof lights in the south-eastern elevation of the dwelling on Plot B shall be a minimum of 1.7 metres above the floor of the room in which they are installed. The windows shall be permanently retained in that condition thereafter.
12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order, with or without modification), no roof lights, windows/dormer windows other than those expressly authorised by this permission, shall be inserted or constructed at any time in the following elevations of the stated dwellings hereby permitted:
- North western elevation of the dwelling on Plot C
 - South eastern elevation of the dwelling on Plot B
 - South eastern elevation of the dwelling on Plot A.
13. Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no part of the roof of any of the dwellings hereby permitted shall be used as a balcony or roof terrace, nor shall any access be formed thereto.