
Appeal Decision

Site visit made on 5 July 2022

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 21st July 2022

Appeal Ref: APP/P1940/W/21/3287315

The Limes, Land at the Rear, Eastbury Avenue, Northwood HA6 3LD

- 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 Sibtain Allibhai against the decision of Three Rivers District Council.
 - The application Ref 21/2043/FUL, dated 18 August 2021, was refused by notice dated 4 November 2021.
 - The application sought planning permission for Variation of Condition 3 (Construction Management Plan) of planning permission 21/0705/FUL to allow works to be carried out with the submitted Construction Management Plan.
 - The condition in dispute is No. 3 which states that: The development shall not begin until full details of all proposed vehicle access, movements, parking arrangements and wheel washing facilities proposed during the construction period have been submitted to and approved in writing by the Local Planning Authority. Details should be submitted in the form of a Construction Management Plan and this should confirm that the existing vehicular access from Eastbury Avenue will be utilized for the large majority of construction vehicle movements to and from the highway. The approved Construction Management Plan shall be adhered to throughout the construction period.
 - The reason given for the condition is: This is a pre-commencement condition in order to minimise danger, obstruction and inconvenience to users of the highway in accordance with Policies CP1 and CP10 of the Core Strategy (adopted October 2011).
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appeal seeks to vary condition No. 3 of planning permission 21/0705/FUL. Whilst I do not have detailed evidence of the planning history of the appeal site in terms of copies of Decision Notices, the Council suggest that planning permission 21/0705/FUL was a variation of condition No. 2 of planning permission 19/0455/FUL for the demolition of garages and erection of two detached dwellings with associated access and parking. A previous planning application, 17/0047/FUL, also provided for the demolition of the garages and the erection of two detached houses but also included the addition of two flats to the top floor of the existing flat block and therefore incorporated development at 'The Limes'. Whilst the evidence of both parties suggests that the planning history of the site is relatively complex, I have determined the appeal predominantly on the basis of the history outlined above.

3. The Council suggest that planning permission 19/0455/FUL expired on 24 June 2022 and hence after the date of my site visit. The Council indicates that it is not aware that any lawful material commencement of the development has occurred. At my site visit I was unable to verify the extent, if any, to which any material commencement had occurred. However, I have determined the appeal on the basis of the evidence provided relevant to the main issues that I have identified below.

Main Issues

4. The main issues are:
- The effect that varying the condition would have on highway safety and the free flow of traffic.
 - The effect that varying the condition would have on the living conditions of the occupants of nearby properties with particular regard to noise and disturbance.

Reasons

Highway safety and the free flow of traffic

5. The appeal site comprises an area of land located immediately to the north of 'The Limes', which is a flatted block, and includes an area of adopted highway that is partly used for car parking with approximately four spaces. The northern boundary of the site adjoins the junction of Eastglade and Holbein Gate which are relatively narrow residential streets comprising of predominantly two storey detached dwellings. Holbein Gate is a cul-de-sac.
6. The proposal seeks the variation of Condition No.3 (Construction Management Plan) of planning permission 21/0705/FUL (variation of Condition No.2 pursuant to planning permission 19/0455/FUL). It proposes the removal of the wording in the condition relating to the Construction Management Plan that requires this to confirm that the existing vehicular access from Eastbury Avenue will be utilised for the majority of construction vehicle movements to and from the public highway.
7. The consequence of the proposed change would be that construction traffic would access the site via Eastglade and the access off Eastbury Avenue to the west of the Limes would not be used. The use of the four car parking spaces on Eastglade would be temporarily suspended during the construction period. The appellant indicates that the access road via 'The Limes' is no longer within the same ownership of the appellant nor are there any access rights that would permit access to the appeal site off Eastbury Avenue.
8. I observed at my site visit that Eastglade is a relatively narrow road that is subject to on-street car parking on one side of the road in the proximity of the junction with Eastbury Avenue. As a consequence, stretches of Eastglade appear to be periodically reduced to single carriageway width. In addition, the section of Eastglade in the vicinity of the appeal site and Holbein Gate have limited opportunity for on-street parking due to the presence of access driveways. Any on-street parking that does occur also has the effect of narrowing the highway to effectively single carriageway width.

9. The appellant has identified a series of measures to reduce impacts during the construction phase as part of a Construction Management Plan (CMP) which includes, amongst other things, works schedules, provisions for no contractor parking on Eastglade and Holbein Gate and the management of deliveries. The CMP identifies that there would be no provision for on-site parking within the site boundary and that operatives and visitors will need to use local public car parks. However, I am not convinced that this would be the case and I consider that there is a likelihood that some operatives and visitors would have a desire to obtain on-street parking in the vicinity of the site.
10. The proposed development would temporarily displace the parking offered by the four spaces to the north of the site thereby requiring any current usage to park on the street. Furthermore, I am not convinced that contractors vehicles would not park in the vicinity of the appeal site. In my view, there is a likelihood that contractors would seek to park near the site for at least temporary periods due to the need to off-load and load tools and equipment. This would further add to the pressure for on-street parking and the subsequent narrowing of available carriageway width.
11. Irrespective of the measures proposed by the appellant in the CMP, the narrow nature of Eastglade and associated on-street parking, particularly in the vicinity of the junction with Eastbury Avenue, effectively restricts its use to single lane width for a significant part of its length. Whilst I accept that on occupation of the two properties there would likely require delivery vehicles to access the properties via Eastglade, such vehicular movements would be much less frequent than those associated with the construction works.
12. The CMP also identifies that vehicles loading and off-loading materials would enter the site via the temporary suspended car parking bays to a designated set-down area. Owing to the constrained nature of the site area, such vehicles would be unable to turn on the site. A swept path analysis provided in the CMP indicates that reversing manoeuvres would need to occur in the junction of Eastglade with Holbein Gate. I recognise that a 'banksman' would be employed to supervise such movements. Nonetheless, during such manoeuvres the junction would effectively be blocked to any other traffic.
13. Furthermore, as construction work on the site progresses the space available within the site for delivery vehicles to off-load would become more constrained, particularly as the submitted plans suggest the dwelling footprints would occupy part of the designated set-down area. The consequence of this is that vehicles would not be fully able to enter the site.
14. Although I recognise the intentions to control delivery schedules, these are not wholly in the control of the appellant. The prospect of delivery vehicles having to wait on the public highway to off load in circumstances where another vehicle is already off-loading on the site cannot be ruled out. Furthermore, the potential for a vehicle bringing deliveries to the site encountering a vehicle leaving the site on Eastglade cannot be ruled out either.
15. The consequence of this would be that Eastglade would effectively be blocked until a suitable passing place was found which may involve reversing movements occurring on the highway. Such movements would be detrimental to highway safety and the free flow of traffic. In addition, any vehicles that have to wait in the vicinity of the junction of Eastglade and Holbein Gate would

cause some degree of obstruction to the operation of the narrow junction and restrict the free flow of traffic.

16. I have taken into account the views of the highway authority in respect of the proposed variation to condition No. 3. However, for the above reasons, I do not share the view that Eastglade provides a safe and adequate access to the appeal site for vehicles associated with the construction of the development. Whilst I also note the enforcement powers of the highway authority in terms of vehicular obstructions, such actions are undertaken retrospectively after the obstruction has already occurred. Therefore, a degree of inconvenience and on-street parking that narrows the carriageway could occur until any enforcement was actioned.
17. Taking the above factors into account, the proposed variation to the condition would be detrimental to highway safety and the free flow of traffic on Eastglade contrary to Policy CP10 of the Three Rivers District Council Core Strategy (2011) (Core Strategy). This policy, amongst other things, requires development proposals to provide a safe and adequate means of access.

Living conditions

18. The Council accepts that with all construction work there will be an impact in the form of noise and disturbance. I observed at my site visit that properties on Eastglade and Holbein Gate are positioned relatively close to the highway and currently enjoy a quiet environment.
19. Notwithstanding the measures proposed by the appellant in the CMP, in my view, during the construction of the development there will be a likelihood that contractor vehicles could seek to temporarily park close to the appeal site for loading and off-loading of tools, materials and equipment. In addition, the prospect of delivery vehicles having to wait on the public highway to off load in circumstances where another vehicle is already off-loading on the site cannot be ruled out either.
20. I have taken into account the intentions of the appellant to schedule material deliveries. However, I also recognise that such measures are often difficult to comply with as these are not wholly in the control of the appellant. As a consequence of the foregoing, I am not convinced that the measures proposed in the CMP are capable of being strictly adhered to at all times.
21. Given the narrow nature of the roads on Eastglade and Holbein Close, the close proximity of existing properties to them and the juxtaposition of existing development to the appeal site, I consider that the proposed variation of the condition would cause unacceptable levels of noise and disturbance to the occupants of existing properties in the vicinity. This would be as a consequence of the comings and goings of vehicles and manoeuvres on the highway during the construction phase.
22. In my view, the locational factors in this appeal suggest that the proposed change to the condition to enable construction traffic to access the site via Eastglade would cause a degree of localised noise and disturbance beyond that which the Council recognises can occur as a consequence of construction work. This would be detrimental to the living conditions of the occupants of existing properties in proximity of the appeal site and would be particularly noticeable

in the vicinity of the junction of Eastglade with Holbein Gate where relatively frequent reversing movements would occur.

23. In coming to the above view, I have taken into account the appellant's contention that Eastglade is already used for refuse vehicles and would also be used for delivery vehicles. As such, it is contended that there is little difference between material deliveries associated with the construction of the development and those associated with the occupation of the completed dwellings. However, I disagree with this view. Vehicle movements associated with the construction of the development are likely to occur with a degree of considerable frequency over the duration of the construction period. Table 2 of the CMP suggests that the development would require up to a 52-week construction period. Table 4 suggests that this would involve an average of 12 vehicular movements per week associated with the construction of the sub-structure over a 5-week period, 32 vehicle movements per week over a 24-week period associated with the construction of the super-structure and 35 movements per week associated with fit out and commissioning over a 22-week period.
24. During the above periods there is the potential for unacceptable noise and disturbance associated with the use of the proposed access to occur. Such noise and disturbance would be particularly experienced by the occupants of those properties in the vicinity of the site access. By contrast, vehicular movements associated with the delivery of goods following occupation are likely to be significantly less frequent and, overall, are likely to be smaller sized vehicles than those associated with the construction.
25. I therefore conclude that the proposal to not comply with part of a condition attached to planning permission Ref 21/0705/FUL would have an unacceptable impact on the living conditions of the occupants of nearby properties on Eastglade and Holbein Gate with particular regard to noise and disturbance. Consequently, the proposal would be contrary to Policy DM9 of the Development Management Policies Local Development Document (2013). This policy, amongst other things, sets out that the Council will refuse planning permission for development which would or could give rise to polluting emissions by reason of disturbance and noise.

Other matters

26. The Council's Decision Notice refers to a conflict with Policy CP1 of the Core Strategy. This policy is identified as an 'Overarching Policy on Sustainable Development' requiring development to contribute to the sustainability of the District. However, I have no evidence to indicate which part(s) of this policy, if any, that the proposed variation to the condition may be in conflict with. I have therefore not taken the identified conflict with Policy CP1 into account in considering the issues identified above.
27. I have also taken into account the fact that the appellant no longer has access to 'The Limes' and the view that, on this basis, a requirement for construction traffic to access the site via 'The Limes' is unreasonable and that the continued imposition of this requirement would prevent the approved development from being implemented. The Council indicate that the clause relating to the majority of traffic movements to be via Eastbury Avenue was considered acceptable when 'The Limes' and the land to the rear, comprising the appeal site, were in a single ownership. In particular, the CMP clause (as originally

imposed under planning permissions 17/0047/FUL then 19/0455/FUL and 21/0705/FUL) was in place and known to all parties during the legal process when the land was separated into two titles.

28. I accept the Council's view that planning permission runs with the land and given the land ownership change it should not be the case that the condition must be changed accordingly. In these circumstances the onus is on the appellant to ensure that access can be achieved. I recognise that this may have a detrimental effect on the ability of the original planning permission to be implemented. However, I have found that varying the condition as proposed in the application would be detrimental to the interests of highway safety and the free flow of traffic and would adversely and unacceptably affect the living condition of the occupants of nearby properties. Consequently, for the reasons identified above, I do not consider the Council's decision to refuse the application to be unreasonable.

Conclusion

29. For the above reasons, taking into account the development plan as a whole and based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR