
Appeal Decision

Site visit made on 1 August 2022

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal Ref: APP/C3810/W/22/3293621

Pound Place, Roundstone Lane, Angmering BN16 4AL

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Savista Developments against the decision of Arun District Council.
 - The application Ref A/112/21/PL, dated 21 May 2021, was refused by notice dated 2 September 2021.
 - The application sought planning permission for the erection of a 74-bed care home (C2 residential institution) with car parking, landscaped gardens and access from Roundstone Lane without complying with a condition attached to planning permission Ref A/3/21/PL, dated 9 April 2021.
 - The condition in dispute is No 14 which states that: prior to occupation the applicant shall provide a footpath along the site frontage with Roundstone Lane in accordance with details to be submitted to and approved by the Local Planning Authority. The footpath shall remain in place as per the agreed details in perpetuity.
 - The reason given for the condition is: to ensure that the site is satisfactorily linked with adjacent sites in accordance with the original masterplan for the area and policies DDM1(10) of the Arun Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 74-bed care home (C2 residential institution) with car parking, landscaped gardens and access from Roundstone Lane in accordance with the application A/112/21/PL, dated 21 May 2021, without compliance with condition number 14 previously imposed on planning permission Ref A/3/21/PL dated 9 April 2021, and subject to the conditions set out in the attached schedule.

Main Issues

2. Planning permission has been granted for a care home, which is under construction. The appeal seeks permission to occupy that development without complying with a condition requiring the provision of a footpath along the site frontage with Roundstone Lane. The issue is whether provision of a footpath is necessary to ensure the safety of pedestrians.

Reasons

3. The National Planning Policy Framework (the 'Framework') says that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

4. The care home is surrounded to the north, south and east by recently built housing estates forming part of the Angmering South and East Strategic Allocation. The footpath is intended to provide a link between the site and these estates on the eastern side of Roundstone Lane. It would form part of wider network of footpaths in the area.
5. While the intent of the condition is laudable, when assessed against the tests set out in the Framework, it is flawed in two respects.
6. Firstly, a footpath adjacent to Roundstone Lane would lie outside the appeal site edged in red on the submitted location plan. I have no evidence that the appellant owns the land in question and therefore it is unlikely that the condition could be enforced.
7. Secondly, there is no footpath continuation adjacent to Roundstone Lane to the north of the site. This area forms a grassed bank to the lane containing small trees and understorey. Even were a footpath to be built adjacent to the lane across the front of the site, it would not link up with a similar path to the north and pedestrians would still have to cross the carriageway to use the footpath on its western side. It would not achieve the linkage intended and would therefore be unnecessary.
8. These shortcomings were noted by the Inspector determining an appeal on a previous scheme on the site¹. The Inspector commented: *'However, a footpath across the frontage would sit outside the red line site. In addition, it would not connect to another footpath to the north of the site. As such whilst it would be desirable, I do not consider that this requirement is necessary for this scheme to go ahead'*. This reinforces the conclusions I have reached above.
9. The Council argues that were a footpath to be provided along the lane frontage, the grass verge could be utilised by pedestrians and over time this might become a permissive path. I consider that unlikely as the bank is sloped with undergrowth that would deter such use. It is more likely that pedestrians would walk on the carriageway in preference to the bank, which would be unsafe and should not therefore be encouraged.
10. The Council says that the footpath is a requirement of the original masterplan for the area. However, no footpath is shown on the site layout drawing displayed on the Angmering (South and East) Masterplan webpage², nor is one shown on the extract from the Angmering Visioning Brief Master Plan Figure included in the appellant's covering letter on the application³. I have been provided with no contrary evidence by the Council and therefore conclude that while the masterplan may encourage a network of footpaths in general terms, the footpath subject of the condition is not specifically included as a requirement.
11. Angmering Parish Council note that the new housing estate to the north of the site has a footpath running along the top of the embankment on the eastern side of Roundstone Lane, and that this footpath has a spur running south ending at the boundary of Pound Place. The Parish Council consider that a new footpath should be constructed from this point to link up with the footpath to the south of Pound Place.

¹ APP/C3810/W/19/3220233

² A/9/19/PL Layout Plan – Pound Place

³ Woolf Bond Planning, letter dated 21 May 2021

12. While this suggestion has merit, it is apparent from the case report and submissions on previous applications that is not what was intended by the Council or how it has interpreted the requirement of the condition subject of this appeal. Such a footpath would also appear to require removal of one or more of the trees along the northern site boundary. That would be in conflict with a tree preservation order, which is in place to ensure their retention. Having regard to these factors, I am unable to give this suggestion weight.
13. While a continuous footpath on the eastern side of Roundstone Lane would be desirable, not only for users of the appeal site but also occupants of the neighbouring housing estates, there are other pedestrian routes available, including the footpath on the western side of Roundstone Lane. The absence of a footpath link across the site would not therefore preclude pedestrian access between these areas, notwithstanding that it may require pedestrians to cross Roundstone Lane. The Highway Authority in its consultation response to the application did not require the footpath to be provided, and has not objected to the submitted scheme on the grounds of a lack of highway safety.
14. I conclude that the condition fails two of the tests set out in the Framework in that it would be unenforceable, and would not provide a link to a footpath to the north and would therefore be unnecessary. As noted by the previous Inspector, it would also not be necessary to enable a scheme for a care home to go ahead on the site. Overall, it would not be necessary to ensure the safety of pedestrians and therefore would not conflict with Policies D DM1, HWB SP1 and TSP 1 of the Arun Local Plan 2011-2031 (adopted July 2018), and Policies TM1 and TM2 of the Angmering Neighbourhood Plan 2014-2029 which support and encourage the provision of integrated footpath and cycleway networks that promote health and wellbeing. While being supportive these conditions are not prescriptive in individual cases, which must be determined on their own merits.

Conditions

15. 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the main parties.

Conclusion

16. I conclude that the appeal should be allowed.

Guy Davies

INSPECTOR

Schedule of conditions

1. The development hereby approved shall be carried out in accordance with the following approved plans:
 - 1388 000A Location plan
 - 1388 P-001 Site layout general arrangement plan
 - 1388 P-002 Site block plan
 - 1388 004F Bin store plan and elevations Proposed covered cycle stand
 - 1388 P-131 Ground floor plan
 - 1388 P-102 First floor plan
 - 1388 P-133C Second floor plan
 - 1388 P-134 Roof plan
 - 1388 201F Elevations
 - 1388 P-231 South and West elevations
 - 1388 232A North and East elevations
 - 1338 P-233 Section elevations
 - South Elevation
 - Proposed Elevations 230A
 - Figure D Impacts Pla (rev4) revA
 - PP-ISS-XX-XX-DR-C-3004 Drainage Construction Notes C03
 - PP-ISS-XX-XX-DR-C-3005 Infiltration Testing Locations
 - PP-ISS-XX-XX-DR-C-3010 Proposed Drainage Layout 64Bed Overall C04
 - PP-ISS-XX-XX-DR-C-3011 Proposed Drainage Layout 64Bed Sheet 1 C06
 - PP-ISS-XX-XX-DR-C-3012 Proposed Drainage Layout 64Bed Sheet 2 C07
 - PP-ISS-XX-XX-DR-C-3013 Proposed Drainage Layout 64Bed Sheet 3 C07
 - PP-ISS-XX-XX-DR-C-3015 S104 Drainage Plan & Details 64Bed P08
 - PP-ISS-XX-XX-DR-C-3100 Surface Water Manhole Schedule C05
 - PP-ISS-XX-XX-DR-C-3101 Foul Water Manhole Schedule C05
 - PP-ISS-XX-XX-DR-C-3201 Drainage Details (Sheet 1) C03
 - PP-ISS-XX-XX-DR-C-3202 Drainage Details (Sheet 2) C03
 - PP-ISS-XX-XX-DR-C-3400 External Works Layout Overall C02
 - PP-ISS-XX-XX-DR-C-3401 External Works Layout 1 of 3 C02
 - PP-ISS-XX-XX-DR-C-3402 External Works Layout 2 of 3 C02
 - PP-ISS-XX-XX-DR-C-3403 External Works Layout 3 of 3 C02
 - PP-ISS-XX-XX-DR-C-3410 Proposed Ground Levels Sheet 1 C02
 - PP-ISS-XX-XX-DR-C-3411 Proposed Ground Levels Sheet 2 C02
 - PP-ISS-XX-XX-DR-C-3412 Proposed Ground Levels Sheet 3 C01
 - PP-ISS-XX-XX-DR-C-3420 Proposed Coordinates Plan Sheet 1 C02
 - PP-ISS-XX-XX-DR-C-3421 Proposed Coordinates Plan Sheet 2 C02
 - PP-ISS-XX-XX-DR-C-3500 Proposed Impermeable Areas Sheet 1 P03
 - PP-ISS-XX-XX-DR-C-3501 Proposed Impermeable Areas Sheet 2 P03
 - PP-ISS-XX-XX-DR-C-3601 Typical External Works Construction Details C03 PP-ISS-XX-XX-DR-C-3650 S278 Existing & Proposed General Layout & Levels P05
 - PP-ISS-XX-XX-DR-C-3651 S278 Highway Agreement Drawing P03
 - PP-ISS-XX-XX-DR-C-3652 S278 Road Markings & Highway Authority Detail References P03
 - PP-ISS-XX-XX-DR-C-3654 S278 Construction Details P01
 - PP-ISS-XX-XX-DR-C-3655 S278 Sections P03
 - PP-ISS-XX-XX-DR-C-3656 S278 Existing & Proposed Road Catchment Areas P05
 - PP-ISS-XX-XX-DR-C-5100 Swept Path Analysis Refuse Vehicle Tracking
 - PP-ISS-XX-XX-DR-C-7100 Site Location Plan P04
 - PP-ISS-XX-XX-DR-C-3649 S278 Existing & Proposed Site Layout P02

Formal Garden- Pond Construction Cross Section Details - J180649-GC-L-DR-3-006 RevA

Soft Landscaping Proposals Plan Sheet 2 of 2 - J180649-GC-L-DR-3-003 RevB

Soft Landscape Proposals Plan Sheet 1 of 2 - J180649-GC-L-DR-3-003 Rev B

Landscape General Arrangement Plan - J180649-GL-L-DR-3-001 Rev B Rev 2 dated 08/01/2015 REV1 Tree protection plan

2. Prior to occupation of the home, a scheme for the provision of facilities to enable the charging of electric vehicles to serve the approved care home shall be submitted to the local planning authority for approval and thereafter implemented in accordance with the approved details and the charge points shall thereafter be retained and maintained in good working condition.
3. If during development, any visible contaminated or odorous material, (for example, asbestos containing material, stained soil, petrol / diesel / solvent odour, underground tanks or associated pipework) not previously identified, is found to be present at the site, no further development (unless otherwise expressly agreed in writing with the Local Planning Authority) shall be carried out until it has been fully investigated using suitably qualified independent consultant(s). The Local Planning Authority must be informed immediately of the nature and degree of the contamination present and a method statement detailing how the unsuspected contamination shall be dealt with must be prepared and submitted to the Local Planning Authority for approval in writing before being implemented. If no such contaminated material is identified during the development, a statement to this effect must be submitted in writing to the Local Planning Authority.
4. No external lighting shall be installed until details have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. This submission shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles). The approved scheme shall be installed, fully assessed by a competent individual when operational to ensure no light creep / bleed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation.
5. All planting, seeding or turfing comprised in the approved details 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.
6. Immediately following implementation of the approved surface water drainage system and prior to occupation of any part of the development, the developer/applicant shall provide the local planning authority with as-built drawings of the implemented scheme together with a completion report prepared by an independent engineer that confirms that the scheme was built in accordance with the approved drawing/s and is fit for purpose. The scheme shall thereafter be maintained in perpetuity.

7. The development shall proceed in accordance with the approved Construction and Environmental Management Plan revision 2 - January 2020 by Savista and the working hours during that period confirmed in the agent's e-mail dated 07-05-2020 within A/64/20/DOC.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015,(or any order revoking or re-enacting that Order) no fence/wall or other means of enclosure shall be positioned on the eastern boundary unless permission is granted by the Local Planning Authority on an application in that behalf.
9. Surface Water Drainage shall be constructed in accordance with the following plans:
Proposed Drainage Layout 64 Bed Sheet 1 3011 C06
Proposed Drainage Layout 64 Bed Sheet 2 3012 C07
Proposed Drainage Layout 64 Bed Sheet 3 3013 C07
Proposed Impermeable Areas Sheet 1 3500 P03
Proposed Impermeable Areas Sheet 2 3501 P03
Proposed Foul Water Manhole Schedule 3100 C05
and the following previously approved surface water drainage details: Drainage Construction Notes 3004 C03 S104
Drainage Plan & Details 64 Bed 3015 P08
Drainage Details (Sheet 1) 3201 C03 Drainage Details (Sheet 2) 3202 C03
10. Development shall take place in accordance with the mitigation detailed in the Bat Emergence Survey (Jan 2019).
11. Before the development is occupied the proposed vehicular access to Roundstone Lane shall be constructed and provided with visibility zones, in accordance with the approved plans all to be permanently maintained and the visibility zones shall be kept permanently clear of any obstruction higher than 600mm.
12. No part of the development shall be used until the approved covered and secure cycle parking spaces have been provided. The approved cycle storage/parking spaces shall thereafter be permanently retained in good working order.
13. The development shall proceed in accordance with the materials and finishes for external walls and roofs of the proposed buildings approved under references A/64/20/DOC and A/3/20/DOC.
14. The use of any land for car parking shall not be commenced until it has been laid out, surfaced and drained and such land shall not be used thereafter for any purpose other than the parking of vehicles.
15. The building shall be occupied until boundary treatments have been erected in accordance with boundary treatments plan 002 Rev C.
16. Prior to first occupation the hatched area indicated on drawing Site Layout General Arrangement 1388/001 K shall be laid to be an open grassed area and shall remain, at all times, available for public use.

***** End of conditions*****