



Appeal Decision

Site visit made on 24 November 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Appeal Ref: APP/C4235/W/20/3257002

41 Werneth Road, Woodley, Stockport, SK6 1HP

- 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 details required by a condition of an outline planning permission.
 - The appeal is made by Mr Simon Broster (on behalf of Cube Homes Ltd) against Stockport Metropolitan Borough Council.
 - The application Ref DC/075064, is dated 21 October 2019, and sought approval of details pursuant to condition No 2 of an outline planning permission Ref DC/066661, granted on 6 August 2018.
 - The development proposed is reserved matters pursuant to outline permission for the demolition of existing buildings and erection of up to 7 dwellings with associated works.
 - The details for which approval is sought are: appearance, landscaping, layout and scale.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely details of appearance, landscaping, layout and scale submitted in pursuance of condition No.2 of outline planning permission Ref DC/066661 granted on 6 August 2018, subject to the conditions set out in the Annex attached to this decision.

Application for costs

2. An application for costs was made by Cube Homes Ltd against Stockport Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The appeal site is broadly rectangular in shape and occupies approximately 0.5 hectares. At the time of my site visit, the land was significantly overgrown and accommodated a large disused predominantly two-storey building in which was located a former care home. The existing access to the site is taken from Werneth Road to the south, with residential properties bounding the site to the east and west, and on Westfield Drive to the north. A significant number of mature trees are located on the appeal site, including some which are covered by Tree Preservation Orders (TPOs).
4. Outline planning permission (*LPA Ref: DC/066661*) for up to 7 dwellings was granted on 6 August 2018. The permission explicitly considered matters related to access with all other matters, namely appearance, landscaping, layout and scale, reserved for later consideration.

5. It is indicated that an application for the approval of reserved matters was submitted by the appellant on 21 October 2019, with a letter invalidating the application issued by the Council on 27 November 2019. Further to a disagreement between the appellant and the Council over the definition of "access" and "layout" in relation to reserved matters according to the regulations, the appellant has exercised their right to appeal due to the failure of the Council to determine the application within the prescribed period.
6. In light of the cited area of disagreement, the main issue is whether the submission of details for the proposed development conflicts with the details of the approved access submitted in connection with the outline planning permission.

Reasons

7. The Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended, sets out in Article 2(1) definitions of "access" and "layout" in relation to reserved matters.
8. "Access" is described in the Order as meaning *the accessibility to and within the site, for vehicles, cycles, and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network*. Where reference is made to "site", it means *the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made*. Meanwhile, "layout" is described as being *the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development*.
9. Article 5(3) of the Order provides further clarity in that *where access is a reserved matter, the application for outline planning permission must state the area or areas where access points to the development proposed will be situated*.
10. In refusing to validate the application for reserved matters, the Council contended that there were significant material differences between the details of "access" as approved at the outline stage and those that have been provided in connection with "layout" as part of the reserved matters submission.
11. Whilst there is no suggestion that the access point to the development from Werneth Road is not in accordance with the outline permission, in citing caselaw in *Heron Corp Ltd v Manchester City Council*, [1978] 1 W.L.R. 937 (1978), we are reminded that when approving a reserved matter, it must be within the ambit of the outline permission and not modified, or depart from it in any significant respect. Further reference is made to *R. v Hammersmith and Fulham London Borough Council and Another* (1986) 51 P. & C.R. 120 and *R. v Bolsover District Council* (1995) 70 P, where it was held that this is a matter of fact and degree for the planning authority to determine based on its own judgement.
12. In this regard, the Council has highlighted and listed 7 specific changes between the approved and submitted drawings encompassing changes to the siting and alignment of the carriageway within the site, variation of the shape of the cul-de-sac turning head, amendments to the siting of the eastern

footpath, and a series of alterations to access points to various plots. Albeit that no substantive assessment of the significance of the changes and alterations has been provided, the Council has concluded that as a matter of fact and degree, that the submitted reserved matters have gone beyond the scope of the original outline approval.

13. I agree on the basis of the approved and submitted plans that there are certain variations in the aspects of the proposed development as described. However, I find that having regard to the Article 2(1) definitions of "access" and "layout", there must inevitably be a certain degree of overlap between the consideration of the two reserved matters, particularly with regards the assessment of *circulation routes* as required by "access", and *routes* as required by "layout".
14. The Council has ventured that circulation routes must also include internal access to and from relevant plots in addition to that established to the highway network, and on the basis of the definition I would not disagree with that. However, if such an approach was taken and "access" within the site was set as rigidly as indicated, then this would for all intents and purposes remove the ability to fully consider "layout" in accordance with the definition set out in Article 2(1), and also any flexibility that may be required in the approval of the other reserved matters.
15. Furthermore, I note that in this particular instance that a rigid approach would also have inadvertently had the effect of restricting the operative part of the outline planning permission, as granted. With a quantum of up to 7 dwellings allowed rather than a fixed quantum, amendments to the approved access would inevitably have had to have occurred if less than 7 dwellings had ultimately been pursued at reserved matters, thus emphasising the need for flexibility in considering the reserved matters.
16. Nevertheless, and irrespective of the interpretation of the definitions above, the Council drew my attention to caselaw as holding it to be a matter of fact and degree, and one of judgement, to determine whether the reserved matters fall within the ambit of the outline planning permission.
17. In this regard, I am satisfied that the general arrangement of the access, even allowing for the 2 metre change in the alignment and siting of the access in relation to the adjoining property at No. 39 Werneth Road and the evolved design of the turning head, would not be materially different in the overall context of the proposed development.
18. The other elements of the scheme which have been amended from the indicative arrangement shown on the approved Site Plan, have been required due to the confirmation of the other reserved matters, with the siting and positioning of development within the site in connection with "layout" clearly impacting on the positioning of the proposed access points to plots. However, along with the realignment of the footpath on the western side of the access road which would be in accordance with consideration of "Layout" as a reserved matter, the principle of footpaths and access points remains in accordance with what has already been approved and within the ambit of the outline planning permission.
19. In reaching my conclusions, I have also been mindful of the caselaw reference made by the parties in respect of *R (on the application of Pearl) v Maldon District Council [2018] EWHC 212 (Admin)*, which also considered the case of

Chalgray v Secretary of State for the Environment (1976) 33 P. & C.R. 10). However, whilst I recognise that the question of assessing whether there has been a material departure as a legal position was reaffirmed in *Pearl*, the circumstances of *Chalgray* do not appear consistent with those of this appeal, and do not therefore take the deliberations any further forward.

20. For these reasons, I conclude that the submitted reserved matters do not conflict with the ambit of the outline planning permission which has been granted, having considered matters of access.

Other Matters

21. Further to the main issue identified above, the Council has indicated within their Statement of Case that there are no objections raised on other substantive issues. It is indicated that issues related to the reserved matters of "Layout", "Appearance", and "Scale" have all been addressed to the satisfaction of the Council, and despite the need for further detail to be submitted to address "Landscaping", which can be adequately secured by condition, the Council has concluded there to be no conflict with the policies of the Development Plan. However, in reaching my decision, I have had regard to the submissions of interested parties.
22. Further to the Council undertaking a notification of the appeal with interested parties, the additional submissions have been limited to two representations from neighbouring occupiers. Particular concerns have been raised regarding the drainage of the appeal site and also the impact of the loss of protected trees and impact on biodiversity, as well as impacts on living conditions having regard to light, noise and outlook.
23. The issue of drainage of the site was addressed at the outline planning stage, and I note that Condition 19 of the Outline Planning Permission addresses the need for the submission of a surface water drainage scheme, which will help to alleviate any existing and future issues related to the drainage of the site. The approval of such a scheme should also assist in mitigating any actual impact from the loss of trees from the site, albeit that I note that replacement tree planting is a requirement of the reserved matters approval, and would form part of any finalised and agreed landscaping scheme as secured by Conditions 3 & 4 of this decision.
24. I have also carefully considered the impact of the proposed development on the living conditions of neighbouring occupiers, and in particular the relationship with properties on Westfield Drive.
25. It is evident that the existing outlook and amenity relationship to the rear of some of the properties on Westfield Drive will change, and undoubtedly the introduction of a flank wall from the new dwellings as proposed along with new boundary treatment would alter the existing backdrop and outlook from trees and mature planting on the appeal site. However, whilst there would undoubtedly be a reduction in the existing level of residential amenity available by virtue of the impact on outlook from the rear of adjoining properties on Westfield Drive, I am not persuaded that the impact would be so significant as to result in unacceptable living conditions for neighbouring occupiers. This would be at least in part because of the separation distance of the proposed development away from the boundary, which adheres to the guidance within

the Council's Design of Residential Development Supplementary Planning Document.

26. In noting the objections which have been raised regarding an impact on biodiversity due to the felling of proposed trees and removal of other planting, I am mindful that the Council's own Nature Development and Arboricultural Officers have not expressed any objections to the principle of the layout or scale of development and consequent impacts on ecology or protected trees. I am also satisfied that from reviewing the evidence, that these are matters which can be satisfactorily addressed and mitigation secured through the use of the conditions as incorporated within the decision.
27. Representations have been made to the effect that Mr & Mrs D Greenhalghs' (the occupiers of No. 23 Westfield Drive) human rights would be violated were the appeal to be allowed, given a lack of consultation on the reserved matters development. Whilst not specified in the representation, it is likely that reference would have been intended to human rights under Article 8 of the Human Rights Act 1998 related to respect for private and family life, their home and their correspondence.
28. I have considered the representation, but I do not consider it to be well-founded. Due to the specific circumstances of this case, the reserved matters application was not registered by the Council due to their contention regarding its invalidity, and as a consequence no notification of neighbouring occupiers could be carried out at this stage. The appellant subsequently opted to exercise their right to appeal against the failure of the Council to determine the application for reserved matters within the prescribed time period for determination of the application. Upon receipt of the appeal, the Council notified neighbouring occupiers on 3 September 2020, including Mr & Mrs D Greenhalgh.
29. I find that procedurally the notification of neighbouring occupiers was undertaken at the first opportunity during the process of assessing the reserved matters scheme, and that this presented the opportunity for Mr & Mrs D Greenhalgh to have the opportunity to make their representations, as indeed they have. As a result, I am therefore satisfied that there has been no violation of Mr & Mrs D Greenhalghs' human rights.
30. I have noted that the appellant sort to produce amended plans in order to try and address the minor issues which had been raised by the Council following receipt of a formal pre-application response, received after the appeal had been submitted. However, because of my conclusions on the main issue and noting the conditions which have been suggested in the appellant's Grounds of Appeal including a plans condition referring to the originally submitted plans, I have not needed to formally consider these amended plans which have not therefore had any bearing on my decision-making.

Conditions

31. The Council has suggested a suite of conditions in the event that the approval of reserved matters was to be granted, and the appellant has indicated their acceptance of the majority of these conditions.
32. A condition identifying the various approved plans provides certainty for all parties. Conditions requiring the approval of a schedule of external materials, a

scheme of landscaping, and elevational details of proposed car ports at Plots 1 & 2 would be necessary in the interests of the appearance of the development, whilst a further condition addressing the timing of the landscaping provision would be reasonable and necessary to secure its provision. A condition ensuring the development is undertaken in accordance with details of all boundary treatments and means of enclosure would be both necessary and reasonable in the interests of the character and appearance of the development and the living conditions of future and neighbouring occupiers.

33. The provision of charging points for electric vehicles would be necessary to address climate change as well as according with policies on highways and parking, with a condition securing details and the provision of refuse storage facilities reasonable and necessary in the interest of amenity for occupiers. The provision of bat and bird boxes would be reasonable and necessary in the ecological interests of the site.
34. I have carefully considered whether a replacement condition for Condition 9 of the Outline Planning Permission Ref: DC/066661 would be required, as suggested by the Council. However, and having regard to my overall conclusions within the Main Issue, it is evident that the wording of Condition 9 of the Outline Planning Permission clearly envisages that further detailed drawings addressing the access, access road and paths, along with a general arrangement and layout, would be required to be submitted for approval, prior to the construction of these elements taking place. I therefore find the suggested revised condition to be unnecessary and I have omitted it from the decision.

Conclusion

35. For the reasons set out above, and subject to the conditions listed in the Annex, the appeal should be allowed.

M Seaton

INSPECTOR

Annex

Conditions

- 1) The development hereby approved shall be carried out in accordance with the approved drawings numbered, unless otherwise specified in connection with the conditions attached to this planning permission:
Proposed Site Plan (Ref 19025 (PL) 050)
Proposed House Type A (Ref 19025 (PL) 100)
Proposed House Type B (Ref 19025 (PL) 101)
Proposed House Type C (Ref 19025 (PL) 102)
Proposed House Type D (Ref 19025 (PL) 103)
Proposed Roof Plans (Ref 19025 (PL) 104)
Proposed Site Section / Streetscene (Ref 19025 (PL) 300)
Landscape Layout Plan (Ref 3474-101)
Planting Plan (Ref 3474-201)
Planting Plan (Ref 3474-202)
- 2) The development shall not be carried out other than in accordance with a schedule of all the materials of external construction which has first been submitted to and approved in writing by the local planning authority. The development shall not be occupied until it has been completed in accordance with the approved schedule and materials.
- 3) Notwithstanding the submitted plans the development shall not be carried out other than in accordance with a scheme of landscaping which has first been submitted to and approved in writing by the local planning authority. The scheme shall indicate the size, species and spacing of planting, the areas to be grassed and the materials to be used on the hard surfaced areas.
- 4) The approved landscaping scheme shall be carried out within 6 months of the date of occupation of the building or substantial completion of the development whichever is the sooner. Any trees, plants or grassed areas which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size, species and quality unless the local planning authority gives written approval to any variation.
- 5) The development shall not be carried out other than in accordance with details of all screen and boundary walls, fences or other means of enclosure which have first been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the enclosures have been erected in accordance with the approved details.
- 6) The development shall not be carried out other than in accordance with elevational details of the proposed car ports to plots 1 and 2, have first been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the car ports to each plot have been erected in accordance with the approved details.

- 7) Charging points for the charging of electric vehicles shall be provided for each of the approved dwellings. Prior to their provision, details of the charging points shall be submitted to and approved in writing by the Local Planning Authority. Each dwelling within the development shall not be occupied until the charging point for that dwelling has been provided in accordance with the approved details and is available for use. The charging points shall thereafter be retained (unless they are replaced with an upgraded charging point in which case that should be retained)..
- 8) No dwelling shall be occupied until refuse storage facilities have been provided in accordance with a scheme to be first submitted to and approved in writing by the local planning authority.
- 9) A scheme detailing the provision of bat and bird boxes to each dwelling hereby approved shall be submitted to and approved in writing by the local planning authority. Such details shall include the position and design of the bat and bird boxes within the development and the approved scheme shall be implemented in full before first occupation of the development.