



Appeal Decision

Site visit made on 31 August 2022

by **A. Price BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/P0240/W/21/3289242

Unit 3, 5 and 7 Ivel Road, Shefford SG17 5JU

- 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 Mrs Nohra Currie of Monogram Technologies Ltd against the decision of Central Bedfordshire Council.
- The application Ref CB/21/01286/VOC, dated 18 August 2021, was refused by notice dated 26 October 2021.
- The application sought planning permission for the demolition of 2 no. existing industrial units and proposed construction of 9 no. dwellings with 26 parking bays and the regeneration of existing unit without complying with conditions attached to planning permission Ref APP/P0240/W/20/3260426, dated 10 February 2021.
- The conditions in dispute are Nos 2 and 12 which state that: (Condition 2) "*The development hereby permitted shall be carried out in accordance with the following approved plans: 8856-01 Rev B, 8856-02 (Proposed site views and dance studio elevations 20.12.19), 8856-03, 8856-04, 8856-05 (Existing industrial units to be demolished and site photos 09.01.20), 8856-06 Rev A, 191.0001.001 (Proposed Access Arrangement), CBC-002 (Tree Protection (demolition)), CBC-003 (Tree Constraints (as surveyed)), and CBC-004 (Tree Protection (construction))*" and (Condition 12) "*No development above proposed ground level shall take place until the 1.5m wide footway at the north side of the access as indicated on approved plan no. 191.0001.001 has been constructed in accordance with the approved details. The footway shall thereafter be permanently retained for the use of pedestrians.*"
- The reasons given for the conditions are: (Condition 2) "*For the avoidance of doubt and in the interest of certainty*" and (Condition 12) "*In the interests of highway and pedestrian safety.*"

Decision

1. The appeal is allowed and planning permission is granted for the demolition of 2 no. existing industrial units and proposed construction of 9 no. dwellings with 26 parking bays and the regeneration of existing unit at Unit 3, 5 and 7 Ivel Road, Shefford SG17 5JU, in accordance with the application Ref CB/21/01286/VOC dated 18 August 2021, without compliance with condition numbers 2, 12 and 13 previously imposed on planning permission Ref APP/P0240/W/20/3260426 dated 10 February 2021 and subject to the conditions appended to this decision.

Applications for costs

2. An application for costs was made by Lisa Skinner of Phase 2 Planning against Central Bedfordshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. Whilst the appellant has applied to vary 3 conditions, including Condition 13, as shown on the application form, the Council refer only to Conditions 2 and 12 in its decision notice. I consider this matter further below.

Background and Main Issue

4. Planning permission was granted for the construction of 9 new dwellings under CB/19/04226/FULL, subject to conditions.
5. The conditions in dispute are 2 (approved drawings) and 12 (location of footpath). Condition 12 ensures that pedestrian access is provided to and from the approved development via Ivel Road. Condition 2 relates to the approved drawings. The appellant wishes to vary Condition 12 so that pedestrian access can be provided via Oakwood Road and vary Condition 2 to ensure that the approved plans reflect the above changes.
6. The appellant also applied to vary Condition 13 to ensure that it reflects the above changes. This condition relates to visibility splays.
7. The main issue is therefore the effect that varying the conditions would have on the safety of pedestrians.

Reasons

8. The site is currently accessed from Ivel Road along a private, gated vehicular road. There is a short stretch of dedicated pedestrian footway along this access. However, this is narrow, features obstacles and does not connect to adopted footways outside the site. The existing vehicular access is shared with separate sites fronting Ivel Road.
9. The approved scheme would provide a fully connected pedestrian access from the appeal site along the existing vehicular access to Ivel Road. This would comprise a 1.5 metre wide footway. However, it would be atypical, with no kerb. Instead, it would be demarcated in different coloured materials to the vehicular access, with studs separating it.
10. The appellant now wishes to pursue an alternative pedestrian route, which would connect the new dwellings to Ivel Road via Oakwood Road, an established residential development to the south of the site. An existing, adopted, footway already exists within Oakwood Road. This alternative proposal would avoid the need for pedestrians to use the footway along the existing vehicular access. That access is used by HGVs accessing the neighbouring commercial site. Evidence has been provided to demonstrate that those vehicles have the potential to overrun into the footway, thereby raising concerns of pedestrian safety.
11. There is no substantive evidence before me to demonstrate that pedestrians would always use the proposed access via Oakwood Road in place of the retained vehicular access from the site to Ivel Road. However, that alternative route would nevertheless provide a safe and convenient route to the town's amenities and nearby bus stops, of a comparable walking time. Pedestrians would, in all likelihood, opt for the route via Oakwood Close which would be well integrated to the appeal site and which would not impede pedestrian or traffic flow. Moreover, I have no substantive evidence before me to conclude

that the use of the Ivel Road access by some pedestrians, where that choice remained, would result in any harm to pedestrian safety.

12. Consequently, I conclude that the amendments would have an acceptable impact on highway, particularly pedestrian, safety, in accordance with the relevant provisions of Policy T2 of the Central Bedfordshire Local Plan (2021) which in summary seeks to prevent new development from having a detrimental effect on highway safety and patterns of movement.

Conditions

13. Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. This is for the purpose of clarity.
14. 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 parties.
15. In respect of Conditions 2 and 12, these have been re-imposed with the inclusion of updated plans and wording respectively, illustrating the change of pedestrian access. This is for the purpose of clarity and in the interests of highway safety and pedestrian movement.
16. In respect of Condition 13, although the Council's decision notice does not make direct reference to this in its refusal, the appellant clearly sets out the connected nature of this condition with Condition 12. As the pedestrian access would be relocated to Oakwood Road, wording in respect of visibility splays which are interconnected with that previously approved access is not required. The condition has been re-imposed with the inclusion of updated wording. This is in the interests of highway safety.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by amending the disputed conditions.

A. Price

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of the original decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 8856-01 Rev B, 8856-02 (Proposed site views and dance studio elevations 20.12.19), 8856-03, 8856-04, 8856-05 (Existing industrial units to be demolished and site photos 09.01.20), 8856-06 Rev A, 191.0001.004 Rev B (Proposed Access Arrangement), 8856 100 (Site Plan) May 2021, CBC-002 (Tree Protection (demolition)), CBC-003 (Tree Constraints (as surveyed)), and CBC-004 (Tree Protection (construction)).
- 3) No development shall take place until an Ecological Design Strategy (EDS) addressing enhancement has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include:
 - i) a review of the site potential and constraints;
 - ii) detailed working methods to achieve stated objectives which may include locations of hedgehog holes in fences and integrated bird boxes to be erected in accordance with RSPB guidelines on appropriate scale plans;
 - iii) type and source of materials to be used where appropriate, e.g. native species of local provenance;
 - iv) a timetable for implementation demonstrating that works are aligned with proposed phasing of development; and
 - v) details of persons responsible for implementing the works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 4) No development shall take place until a Phase 2 site investigation has been undertaken and a detailed report of the findings, in accordance with the recommendations of the Phase 1 Site Investigation report prepared by Wesson Environmental and dated February 2020 (Ref: 001MOTEP1), has been submitted to and approved in writing by the Local Planning Authority. Where found to be necessary by the Phase 2 report, a remediation strategy to deal with the risks associated with contamination of the site shall also be submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall include an options appraisal giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete, and arrangements for contingency action.
- 5) Where remediation works are found to be necessary by the Phase 2 Site Investigation pursuant to condition 4, a validation report shall be submitted and approved in writing by the Local Planning Authority to demonstrate the effectiveness of any agreed remediation strategy prior to first occupation of any dwelling hereby permitted. The validation report shall include responses to any unexpected contamination discovered during works.

- 6) Notwithstanding the details shown on the approved plans, no development resulting in alteration to the existing ground level shall take place until details of the existing and final ground and slab levels of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Such details shall include sections through both the site and the adjoining properties, the location of which shall first be agreed in writing with the Local Planning Authority. Thereafter the site shall be developed in full accordance with the approved details.
- 7) Notwithstanding the details shown on the approved plans, no development above proposed ground level shall take place until details of the materials to be used for the external walls and roofs of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) No development above proposed ground level shall take place until a landscaping scheme to include details of all hard and soft landscaping works and a scheme for landscape maintenance for a period of five years following the implementation of the landscaping scheme have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained in accordance with the approved landscape maintenance scheme, and any which die or are destroyed within five years following the implementation of the landscaping scheme shall be replaced during the next planting season.
- 9) Before any dwelling hereby permitted is first occupied, details of a refuse collection point at the site frontage and outside of the public highway and any visibility splays shall be submitted to and approved by the Local Planning Authority. The scheme shall be fully implemented prior to occupation of any dwelling, and shall be retained thereafter.
- 10) Before the development is first occupied, a scheme indicating the positions, design, materials and type of boundary treatment to be erected and including any gates to the site shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved scheme before the development is first occupied, and shall be thereafter retained.
- 11) Before the development is first occupied, the junction of the site access with the residential development shall be constructed in accordance with details which have first been submitted to and approved by the Local Planning Authority, and shall be retained thereafter.
- 12) No development above proposed ground level shall take place until the proposed footway connecting the site to Oakwood Road, as indicated on approved plan no. 191.0001.004 Rev B, has been constructed in accordance with the approved details. The footway shall thereafter be permanently retained for the use of pedestrians.

- 13) Visibility splays as indicated on approved plan nos. 8856-06 Rev A and 191.0001.005 Rev B shall be implemented prior to the development being brought into use. The required visibility splays shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the adjoining footway level.
- 14) Before the development is first occupied, parking shall be provided and vehicular areas surfaced in accordance with details indicated on approved plan no. 8856-01 Rev B, and shall be retained as such thereafter for those purposes.
- 15) Prior to construction of the vehicular parking areas associated with the dwellings hereby permitted, a scheme for the charging of electric vehicles shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before any part of the development is first occupied and shall be retained as such thereafter.
- 16) Before the development is first occupied, secure and covered parking for cycles on the site shall be provided in accordance with details which have first been submitted to and approved by the Local Planning Authority, and shall be retained as such thereafter for those purposes.
- 17) The development hereby permitted shall be undertaken in full accordance with the Council's adopted 'Construction Code of Practice for Developers and Contractors'
- 18) Before the dance studio hereby permitted is first brought into use, a scheme to protect occupiers of the proposed dwellings and neighbouring occupiers from noise associated with its operation and use shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall take into account recommendations identified within the updated Measurement of Environmental Noise report prepared by E2 Consultants (Ref: 10277-1). All works which form part of the approved scheme shall be completed before the dance studio is first brought into use and shall be retained thereafter.
- 19) The dance studio use of the building known as Unit 7 hereby permitted shall only take place between the following hours: 0700 to 2100 hours, Mondays to Fridays and 0900 to 1400 hours on Saturdays, and shall not take place at any times on Sundays.

END OF SCHEDULE