



Appeal Decision

Site visit made on 8 November 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Appeal Ref: APP/N1730/W/22/3290378

Land adjacent to Hollybush House, Hawley Green, Blackwater

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Tim Ellis against the decision of Hart District Council.
 - The application Ref 21/01632/AMCON, dated 12 June 2021, was approved on 5 August 2021 and planning permission was granted subject to conditions.
 - The development permitted is Minor Material Amendment (S73 application) of planning permission (ref: 15/02998/FUL) granted on 14.07.2016 for the construction of a two-storey building for F1 use (previously D1) as a Community Nursery with new access and associated parking and landscaping.
 - The condition in dispute is No 8 which states that: *"The scheme for traffic management and safety engineering initiatives associated with the development hereby permitted, shall be fully implemented in accordance with details approved under discharge of condition approvals ref: 15/02998/CON and 19/02006/CON. The use of the development hereby approved shall not be commenced until the approved scheme has been completed to the satisfaction of Hampshire County Council in their capacity of Local Highway Authority"*.
 - The reason given for the condition is *"in the interest to achieve a safe pedestrian route for users of the development and highway safety to satisfy policy INF3 of the adopted Hart Local Plan and Sites 2016-2032, saved local policy GEN1 and the NPPF 2021"*.
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Decision

1. The appeal is allowed and planning permission Ref 21/01632/AMCON for Minor Material Amendment (S73 application) of planning permission (ref: 15/02998/FUL) granted on 14.07.2016 for the construction of a two-storey building for F1 use (previously D1) as a Community Nursery with new access and associated car parking and landscaping at Land adjacent to Hollybush House, Hawley Green, Blackwater granted on 5 August 2021 by Hart District Council is varied by deleting conditions 8 and 13 and substituting them for the following conditions:
 - 8) The scheme for traffic management and safety engineering initiatives associated with the development hereby permitted, shall, subject to any reasonable or necessary alterations, be fully implemented in accordance with General Arrangement Drawing (D1361-100). The use of the development hereby approved shall not be commenced until the approved scheme has been completed to the satisfaction of Hampshire County Council in their capacity of Local Highway Authority.
 - 13) Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, the land shall only be used as a Nursery (Land Use Class E) and for no other purpose or use falling within the same land use class.

Applications for Costs

2. An application for costs has been submitted by Tim Ellis against Hart District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Planning permission 21/01632/AMCON varied the original consent for the development, which was first permitted under reference 15/02998/FUL on 14 July 2016. Planning permission 21/01632/AMCON is therefore the extant planning permission (Extant Permission).
4. Condition 13 of the Extant Permission refers to use class F1 to describe the authorised use of the development. The parties agree that this is inaccurate, and that the permitted use of the nursery should be Use Class E. I have therefore modified this condition to remedy the error, so that it now refers to the correct Use Class.

Main Issue

5. The main issue is whether condition 8 is necessary and reasonable, having regard to the safety of pedestrian users of the development.

Reasons

Background

6. Condition no. 8 of the Extant Permission requires delivery of a number of traffic management solutions and safety engineering initiatives in connection with the development. The Council imposed this condition to secure a safe means of pedestrian access to the day care nursery. Specifically, the condition seeks to procure a safe pedestrian route, including road crossing, for users travelling to the nursery from Green Lane to the north of Hawley Road (B3272). Green Lane sits directly opposite the "T" junction where Hawley Green meets Hawley Road, which is a busy through road connecting the A30 to the north, with the M3 to the south.

Necessity and Reasonableness

7. During consultation for the Original Permission, the Council's Highways Officer said that *"a safe pedestrian route should be set out by the Applicant directly from Hawley Road onto Hawley Green, in the vicinity of Green [Lane]. Pedestrian flows may be high from this direction and a safe crossing point should be considered"*. The Highways Officer went on to conclude that the likely trip generation arising from the development would warrant the payment of infrastructure contributions, to be used for *"traffic management and safety engineering measures along Hawley Lane and in close proximity to the Hawley Green junction, to highlight the presence of the junction and provide a crossing facility to enable parents to access the site from the north of Hawley Road and the district centre of Blackwater, potentially via Green Lane"*. Although infrastructure contributions have not ultimately been sought in this regard (as direct delivery of the safety measures was preferred by the Council), these consultation responses demonstrate the Highway Officer's view, that a safe means for pedestrians to cross Hawley Road in the vicinity of the Hawley Green junction was needed in connection with the day nursery.

8. Notwithstanding the Highway Officer's comments, the appellant contends that the incremental pedestrian trip generation arising from the development, particularly from the direction of Green Lane, would be low, and would not justify a need for the highway safety measures sought by the Council. Yet this position appears to be at odds with the content of the appellant's approved travel plan, which states: *"The use of Green Lane is preferred as it is a quick route and also a safe, quiet residential road [...] It is expected this will be an important route local and multi modal travel access to the Nursery Site"*.
9. The appellant's modelling of the pedestrian origination area for users of the nursery attributes just 12.3% of local households to the area North/North-West of the nursery, who would access the nursery via the Hawley Green uncontrolled crossing. However, this data does not account for users of the nursery who may travel from further afield. It is likely that at least a proportion of those travelling from outside of the locality would see Green Lane as an attractive "drop off" location, given its close proximity to the nursery, its relative safety as a residential cul-de-sac, and the availability of on-street parking. These users would also need to cross Hawley Road (on foot) at or near to the Hawley Green junction. On this basis, and reflecting the assumptions in the travel plan, I therefore consider that the nursery will lead to a meaningful increase in pedestrian movements from this direction.
10. The accident data submitted by the appellant shows there have been five reported accidents in the last 20 years within 250m of the Hawley Green junction. Whilst this figure is not intrinsically high, it does still demonstrate an accident risk in this location. From my own observations, the natural crossing point from Green Lane sits atop both a dip and a slight bend in the road. These factors mean that visibility of the crossing point, specifically for drivers travelling in a westerly direction along Hawley Road, is somewhat compromised. Irrespective of any impact with regard to vehicle movements, this poses a particular risk to any pedestrians seeking to cross Hawley Road to access the nursery, when arriving from Green Lane. Given the nature of the development, this risk is particularly acute given the likely presence of young children at the crossing point.
11. Given the likely increase in pedestrian footfall arising from the nursery at this location, I therefore consider it necessary, and entirely reasonable, for the Council to seek a safe crossing point, to help mitigate any potential risk of collision. On this basis, I am satisfied that the overarching purpose of condition no. 8 would meet the tests of necessity and reasonableness. Given that the increase in pedestrian footfall will invariably occur as soon as the nursery is in operation, it is also appropriate for the condition to require compliance prior to first operational use of the nursery.

Other Statutory Tests

12. As worded under the Extant Permission, the pedestrian safety measures must be implemented in accordance with details approved under discharge of condition approvals, referenced 15/02998/CON and 19/02006/CON. However, the details approved under these approvals do not reflect the works which were agreed between the appellant and the Council's Technical and Environment Services team (which were subsequently sent to Hampshire County Council for s278 technical approval). These works, which include dropped kerbs, tactile

paving, high visibility warning signage, and SLOW road markings are shown on General Arrangement Drawing (GA) D1361-100 (GA Drawing).

13. As currently drafted, condition no. 8 therefore lacks sufficient precision, as it references outdated approvals. As the works approved under the discharge notices will ultimately not be brought forward, the condition would also be difficult to enforce. I have therefore modified condition no. 8 to refer to the approved GA Drawing. Subject to these modifications, the condition would meet the tests of precision and enforceability.
14. Given that condition no. 8 was imposed to help ensure the satisfactory road safety of all future users of the nursery, the condition is also directly relevant to the planning merits of the proposal, as well as the future operation of the development.

Conclusion

15. For these reasons, condition no. 8, as modified, meets all the tests for imposition of planning conditions set out in paragraph 56 of the National Planning Policy Framework, as further set out in the Planning Practice Guidance. The condition also helps meet the objectives of Policy INF3 of the Hart Local Plan (Strategy and Sites) 2032 and saved Policy GEN1 of the Hart District Local Plan (Replacement) (1996 – 2006), which seek to ensure new development provides a safe, suitable and convenient access for all potential users.

Other Matters

16. Whilst I sympathise with the appellant in terms of the delays with achieving the necessary technical approval of the highway safety measures and the associated s278 agreement, such delays would not justify a removal of the requirement to provide these measures altogether.
17. Any comments or arguments pertaining to the Thames Basin Heaths Special Protection Area are not directly relevant to the need for the highway safety measures secured under condition no. 8. I have therefore not commented on these points any further.

Conclusion

18. Condition 8, as varied, would meet the statutory tests set out in the Framework and the PPG. Whilst the appeal should therefore be allowed, the effect of this is to modify condition 8 in order to ensure consistency with the approved drawing, as opposed to removal of the condition completely.

James Blackwell

INSPECTOR