



Appeal Decision

Site visit made on 4 October 2022

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/X0360/W/22/3297923

Land Adjacent to Lane End House, Shinfield Road, Shinfield RG2 9BB

- 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 an application for planning permission
 - The appeal is made by Mr R Mellett of Nova Developments (Reading) Ltd against Wokingham Borough Council.
 - The application Ref 213681 is dated 27 October 2021.
 - The development proposed is 6no dwellings with associated landscaping and access.
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Decision

1. The appeal is dismissed and planning permission for 6no dwellings with associated landscaping and access is refused.

Preliminary Matters

2. The Council is in the process of undertaking a Local Plan Update. Although the appeal site has been put forward in the 'call for sites' process, as the update is at an early stage, it carries limited weight at this time.

Background and Main Issues

3. The appeal was submitted following the Council's failure to give notice of its decision within the prescribed period. Within its statement of case, the Council confirmed that, had they made a decision, the planning application would have been refused due to the lack of a planning obligation which would secure affordable housing and a range of infrastructure contributions.
4. During the course of the appeal, the appellant submitted a signed Unilateral Undertaking (UU), pursuant to Section 106 of the Town and Country Planning Act 1990, dated 12 October 2022. Amongst other things, this would provide for a combination of on-site affordable housing units plus a financial contribution, and contributions for the Council's My Journey Initiative and the M4 public transport strategy.
5. Following a review of the UU, the Council have confirmed that the provisions relating to affordable housing contained within the planning obligation are acceptable. The Council have also confirmed that the provisions for securing infrastructure contributions required for the South of the M4 Strategic Development Location (SDL) are acceptable.
6. However, a dispute between the main parties remains in respect of the management of the site access road. Accordingly, the main issue of this appeal

is whether the appeal scheme makes appropriate provision to ensure the safety and accessibility of users of the proposed site access road.

Reasons

7. The appeal site is accessed via Brookers Hill, a private cul-de-sac. As Brookers Hill is not an adopted highway, the Council have stipulated that the proposed site access road would also need to be private. Consequently, the Council consider that a planning obligation is required to secure the following, in accordance with the WBC Highways Design Guide¹:
 - an Advance Payment Code (APC) which is defined as 'a mechanism for ensuring the payment of the costs of street works in private street fronting buildings in the event that the builder cannot complete them';
 - an inspection fee to enable the Highway Authority to check the detailed design of the works, and then inspect it at specific times during construction to ensure it is constructed to adoptable standards; and
 - a management company to look after the maintenance of the site access road.
8. The UU submitted with the appeal does not include any provisions relating to the proposed management of the site access road. In accordance with paragraph 57 of the National Planning Policy Framework (the Framework), I have considered this obligation against the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
9. The APC is secured in the form of a bond and is paid prior to the commencement of development. It is designed to relieve house buyers of road charge liabilities should the developer default. Covered by legislation set out in the Highways Act 1980, the APC bond and inspection fee would usually be covered via the signing of a Section 38 Agreement. However, based on the evidence before me, this type of agreement would not be the appropriate mechanism for securing the above obligations given the proposed site access road connects to an unadopted road and would therefore also be unadopted. Similarly, given that a Section 278 Agreement would be used where alterations or improvements to a public highway (an adopted road) were sought, it would not be an appropriate agreement in this situation. Instead, the WBC Highways Design Guide stipulates the use of a Section 106 Agreement containing clauses to indemnify the Council and establish access rights.
10. In respect of private roads, maintenance falls outside the remit of the Highways Authority. Therefore, a management company would be required to maintain the proposed site access road in perpetuity. This would be secured through a planning obligation.
11. Based on the evidence before me, without a planning obligation, no mechanism would be in place requiring the appellant to commit to the APC bond or allow the Council to leverage the inspection fee. Additionally, no party would be legally responsible for the ongoing maintenance of the site access road. Without these provisions there is no certainty that the proposed site access road would be completed, constructed to adoptable standards or adequately

¹ Wokingham Borough Council Living Streets – A Highways Design Guide for Developers in Wokingham (2019) (WBC Highways Design Guide)

maintained. Consequently, there is a risk that a poor road and pavement surface standard would be the only means of access for residents and visitors to the proposed development. Despite being well located to the built up area boundary, with good access to a range of services and public transport connections, a poorly constructed and maintained surface would discourage walking and cycling. It also has the potential to endanger road users or cause damage to vehicles.

12. Therefore, I am satisfied that the provisions in respect of the management of the site access road are necessary to make the development acceptable in planning terms and are fairly and reasonably related in scale to the development. As such, the obligation outlined above meets the appropriate tests.
13. Given the omission of this obligation from the UU, I conclude that the appeal scheme would not make the appropriate provision to ensure the safety and accessibility of users of the proposed site access road, and I attribute considerable harm to this. It would be contrary to Policy CP4 of the Core Strategy² which stipulates that planning permission will not be granted unless appropriate arrangements for the provision of infrastructure for the development are agreed. It would also conflict with the guidance set out the Infrastructure Delivery and Contributions Supplementary Planning Document for the Strategic Development Locations (2011) in respect of planning obligations.
14. I also find conflict with Chapter 9 of the Framework which requires new development to provide safe and suitable access to a site for all users, and cost effectively mitigate impacts on highway safety.
15. On the decision notice, the Council refers to policies CP10 and CP19 of the Core Strategy, and the South of the M4 Strategic Development Location Supplementary Planning Document (2011) (the SPD). As these policies and the SPD relate to the delivery of, and improvements to, strategic infrastructure, and the overall requirements of the SDL, they are not determinative in the appeal.

Other Matters

16. My attention has been drawn to another planning application³ on the appeal site for a similar development. Although this application was supported by the Council's planning committee, a formal decision is yet to be issued whilst a Section 106 Agreement is completed. I understand that the agreement, once finalised, will include obligations in respect of the management of the site access road, and therefore would not give rise to the concerns I have identified in this appeal.
17. Even if I were to consider that the proposed development would not cause harm to the living conditions of neighbouring and future occupiers, this would be a neutral matter.

² Wokingham Borough Local Development Framework – Adopted Core Strategy Development Plan Document (2010) (the Core Strategy)

³ Planning application Ref 222304

18. Any concerns regarding due process during the processing of the planning application or the conduct of the Council fall outside of the remit of this decision.

Planning Balance

19. Although the appeal site is located within the boundary of the designated SDL, it lies outside the defined development limits of the built up area of Shinfield. In sites adjacent to the development limits, Policy 1 of the Shinfield Parish Neighbourhood Plan (2017) will only support development where the benefits of the development outweigh the adverse impact.
20. I have concluded that the proposed development is contrary to Policy CP4. I find that this policy is consistent with Chapter 9 of the Framework where it states that specific applications for development should ensure that 'safe and suitable access to the site can be achieved for all users'. Consequently, the proposed development conflicts with the development plan when read as a whole. I apportion considerable weight to this conflict and the associated harm to users of the proposed site access road in respect of highway safety and accessibility.
21. There is no disagreement between the main parties that the Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 74 of the Framework. As such, paragraph 11dii of the Framework applies. The appeal scheme would have social and economic benefits from the construction of six additional dwellings, including affordable housing units, in support of the Framework's objective of significantly boosting the supply of homes. Nevertheless, even acknowledging the Council's marginal housing land supply shortfall, six additional units would make a limited contribution. As such, I attach moderate weight to the benefits that would be brought about by additional housing. The contribution the proposed development would make to the area in respect of affordable housing also attracts moderate weight.
22. Therefore, the adverse impacts of the development significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development, as set out in the Framework, does not apply. The proposed development conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

23. For the above reasons, the appeal is dismissed.

Juliet Rogers

INSPECTOR