



Appeal Decision

Site visit made on 7 February 2023

by **H Jones BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/E0915/W/22/3307295

Former KSS Factory Site, Constable Street, Carlisle CA2 6AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Mr Dean Montgomery (Citadel Estates Ltd) against the decision of Carlisle City Council.
- The application Ref 21/1154, dated 17 December 2021, was refused by notice dated 8 April 2022.
- The application sought planning permission for *Erection Of 44no. Dwellings, Including Formation Of Riverside Path, Landscaping And Sustainable Urban Drainage Systems (Revised Application) Without Compliance Of Condition 2 Imposed By Planning Permission 17/0232 To Reduce The Number Of Units From 44 To 43 And Revise The Layout Including Alterations To Elevations* without complying with conditions attached to planning permission Ref 18/0125, dated 4 May 2018.
- The conditions in dispute are Nos 2 and 13 which state that:
 - (2) *This development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:*
 1. *the Planning Application Form received 15th February 2018;*
 2. *the Site Location Plan received 7th February 2018 (Drawing no. 01/2014/00A Rev A);*
 3. *the Site Plan received 23rd March 2018 (Drawing no. 01/2017/05F Rev F);*
 4. *the Typical Ground Floor Plan received 23rd February 2018 (Drawing no. 01/2017/05F Rev F);*
 5. *the Proposed Front Street Elevation received 23rd February 2018 (Drawing no. 09/2017/10B Rev B);*
 6. *the Proposed Rear (Garden) Elevation received 7th February 2018 (Drawing no. 09/2017/06C Rev C);*
 7. *the Gable Elevations received 7th February 2018 (Drawing no. 01/2017/07B Rev B);*
 8. *the Flood Risk Assessment received 7th March 2018;*
 9. *the Flood Risk Assessment Addendum received 8th March 2018;*
 10. *any such variation as may subsequently be approved in writing by the Local Planning Authority.*
 - (13) *Prior to first occupation of any dwelling a suitable emergency access on to Leicester Street shall be designed and constructed to a suitable standard and in this respect further details shall be submitted to the local planning authority for written approval before work commences. No work shall be commenced until a full specification has been approved and the development shall be undertaken in accordance with the approved details. The approved works shall be complete prior to the occupation of the last dwelling.*
- The reasons given for the conditions are:
 - (2) *To define the permission.*
 - (13) *To ensure adequate access can be maintained during emergencies in accordance with Policies HO2 and SP6 of the Carlisle District Local Plan 2015-2030.*

Decision

1. The appeal is allowed and planning permission is granted for Erection Of 44no. Dwellings, Including Formation Of Riverside Path, Landscaping And Sustainable Urban Drainage Systems (Revised Application) Without Compliance Of Condition 2 Imposed By Planning Permission 17/0232 To Reduce The Number Of Units From 44 To 43 And Revise The Layout Including Alterations To Elevations at Former KSS Factory Site, Carlisle CA2 6AQ in accordance with the application Ref 21/1154 made on 17 December 2021 without compliance with condition numbers 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12 and 13 set out in planning permission Ref 18/00125 granted on 4 May 2018 by Carlisle City Council, but otherwise subject to the conditions set out in the attached Schedule of Conditions.

Applications for costs

2. An application for costs was made by Citadel Estates Ltd against Carlisle City Council. This is the subject of a separate decision.

Background and Preliminary Matters

3. Planning permission to redevelop the former KSS factory site with a development of 44 dwellings was originally granted through planning permission reference 17/0232. A separate planning permission was granted in 2018, referenced 18/0125, without compliance with condition 2 which, amongst other matters, granted planning permission for a reduction in the number of dwellings to 43. Subsequent planning applications have been determined since, which sought further planning permissions without compliance with some conditions imposed on planning permission 18/0125. Given this, it is reasonable to consider that the appellant chose to implement the 43 dwelling development. The description of that development is therefore included within the banner heading and my decision above.
4. The appellant seeks planning permission for a development of 43 dwellings without complying with conditions 2 and 13 of planning permission 18/0125. The effect of the planning permission would be to permit 20 dwellings at Carrick Square vehicular access via Leicester Street as opposed to Constable Street, which was the original development arrangement.
5. In 2018, the Council granted planning permission for vehicular access via Leicester Street but on a temporary basis only. In 2021 the Council refused an application which sought to make access via Leicester Street a permanent arrangement, and the proposal subject of this appeal was effectively a resubmission of that which was refused.
6. On the basis of the evidence before me there is no disagreement between the parties that a development of 43 dwellings has been built. The 20 dwellings at Carrick Square are built and the access via Leicester Street, previously permitted on a temporary basis or for emergency access only, is in place. Bollards are located at the opposite end of Carrick Square the effect of which prevents access through to Constable Street.
7. However, I noted that there was some discrepancy between that on site and that shown on the submitted plans. The amended layout depicts that on the bollard end of Carrick Square and between 2 tarmac sections of road, there is a

change in the hard surface material. On site this area is all tarmac. For the avoidance of doubt, I have based my decision upon the submitted plans.

Main Issue

8. The main issue is the effect that the varying of condition 2 and the removal of condition 13 would have on vehicular movements and, in turn, the effects upon the living conditions of the occupants of neighbouring properties and highway safety.

Reasons

9. The appeal site previously contained a factory which has since been redeveloped with housing. The site is located quite close to Carlisle City Centre within an area which is predominantly residential in character, albeit other land uses are also located nearby including the Robert Ferguson Primary School. The residential streets which surround the appeal site generally contain terraced properties with several streets arranged in a grid-like form. Carrick Square, the access to which is the subject matter of the appeal, lies adjacent to Leicester Street from which access can be gained to several of the neighbouring streets and residential courtyards. The terraced streets adjacent to the site, such as Blunt Street and Freer Street, are lined by parking on both sides of the road and are the subject of a Controlled Parking Zone.
10. Traffic surveys have been submitted by the appellant. Public representations challenge their validity, however, the submitted surveys analyse both morning and afternoon peak periods and I have no substantive evidence before me to conclude that those traffic surveys are inaccurate or unrepresentative of the prevailing conditions in the vicinity of the site. Denton Street is situated a little to the east of the appeal site and runs on a north/south axis providing a route to and from Carlisle City Centre. Therefore, and as presented within the submitted surveys, Denton Street is quite heavily trafficked. Other streets, more closely beside the appeal site, and which do not provide a direct or logical route toward the City Centre, perform more as side streets. Carrick Square contains a total of 20 houses, and the plans show that they would be served by a total of 26 parking spaces. In the proposal, no through route to Constable Street would be available.
11. The appeal proposal is the second occasion in which the Council have refused planning permission for a permanent vehicular access to the development via Leicester Street. I note that in the first of those, the Highway Authority, informed by the work of a consultant, raised objections. Particular concern was raised that Blunt Street is constrained by parked cars and, furthermore, that the proposed arrangement would permit vehicles from the development to travel along sections of unadopted private highway which they would not encourage. However, those objections do not represent the up-to-date views of the Highway Authority. On the appeal proposals themselves, the Highway Authority did not raise such objections.
12. I accept that with parking on both sides of the road, only a single lane for vehicular passage is available on Blunt Street and some neighbouring streets, therefore, there will be reliance upon drivers giving way to one another at times. I accept that this will also be the case with larger vehicles, such as delivery vehicles, not only cars. However, this situation will subsist irrespective of the proposal and whilst I accept that the frequency of such occurrences

would increase in the proposal, given the number of vehicles that would use Carrick Square, it would not do so significantly.

13. The nearby Robert Ferguson Primary School will generate some specific localised parking pressures during pupil drop-off and collection periods. As a result of the proposal, some additional vehicle movements within the streets around the school would occur and, therefore, could add further to any existing conflicts that may arise between motorists travelling on these roads and those seeking to pull-in and park or pull-away and leave the area. However, I note that the primary school has 2 site entrances/exits, one on Denton Street and one on East Dale Street. This arrangement will assist in the management of the drop-off and collection periods as the distribution of parking will be more spread, and not all concentrated on Denton Street. Indeed, some of the school related parking will likely take place north of the school on the likes of East Dale Street and Hope Street, some distance from Carrick Square and the likely routing of vehicles coming to and from the site. Furthermore, and again due to the volume of vehicle movements that Carrick Square would generate, only a modest number of additional movements would be introduced into the area during these drop-off and collection periods.
14. Parking levels on Blunt Street may be higher than on Constable Street and Constable Street may be a suitable access point to serve the development. However, this does not mean that the access arrangement proposed would not function well or that the modest increase in vehicles travelling along Blunt Street or neighbouring streets that would result from the development causes any unacceptable harm, either to highway safety or to the living conditions of residents.
15. The submitted road safety audit includes a plan depicting build-out features at the junction of Carrick Square and Leicester Street the effect of which is to push forward the stop-line so as to improve visibility. I have no reason to conclude that visibility at the access would be deficient.
16. I have no substantive evidence before me that demonstrates that the proposal would contribute to an increase in crime or anti-social behaviour and I note that Cumbria Constabulary raised no objections to the proposal.
17. In the proposal, the passage of vehicles on Leicester Street may involve the use of unadopted land. In turn this may raise matters in relation to rights of access across land and the responsibility for maintenance. However, these are principally private matters to be resolved by the affected parties and I have no substantive evidence before me of the particular harm to either highway safety or living conditions that would arise from the passage of vehicles across private land. Furthermore, evidence submitted indicates that this section of highway may have accrued public highway rights.
18. Public representations raise concern with vehicle speeds, the failure of motorists to give way correctly, that damage to vehicles has taken place and that the appellants' accident record submissions will not take account of near miss incidents or those which have gone unreported. Reference is also raised with the safety risks posed to pedestrians, children playing in the street and the difficulty that children may have crossing roads. Some drivers may drive without appropriate levels of care or caution. However, I have no substantive evidence before me that inappropriate or reckless driving is particularly commonplace around the appeal site or that the levels of additional vehicular

movements that would result from the development would be likely to contribute further towards these safety concerns to any significant extent. The appellant has also submitted that a school crossing patrol is utilised on Denton Street so as to assist with road crossing and, during my site visit, this was in operation.

19. The public responses reference that it was their understanding that the access via Leicester Street was to be closed once the houses were built, and questions are raised as to why enforcement action has not taken place. However, my determination is limited to the acceptability or otherwise of the effects that the varying and removal of conditions applied for would result in, and not whether the use of the access should have ceased previously.
20. It is put to me that since the housing development has taken place, parking on neighbouring streets has increased and caused some parking displacement. It is also put to me that parking takes place on back lanes beyond the dedicated parking bays and that waste collection vehicles struggle to pass parked vehicles. However, I have little evidence before me of the direct correlation between the parking issues which may subsist in the area, and the revisions to the access arrangements in this proposal. Parking of vehicles on the streets and lanes around the appeal site will be a matter which subsists irrespective of the revised access arrangements to Carrick Square.
21. Public representations raise issue with the appellants' analysis that traffic emerging from Carrick Square would disperse across several streets, deeming that this is disingenuous. Given that Blunt Street is directly opposite Carrick Square and provides the most direct route to Denton Street, I agree that it is likely most drivers would use this route. Despite this, it does not alter my finding that the number of additional vehicular movements that would occur on Blunt Street would not be significant.
22. Therefore, I accept that due to factors such as their being only single lane passage available for vehicles on Blunt Street and that the nearby primary school will likely cause some parking pressures, there are some compromised aspects of the local highway network around the appeal site. However, and in particular, I firstly find that aside from Denton Street, the prevailing traffic conditions on the streets beside the appeal site along which traffic would travel in the proposed access arrangement are characterised by light vehicular movements. Secondly, given that in the proposal Carrick Square would be a dead end, and given the number of vehicles requiring access to and egress from Carrick Square would be quite few in number, vehicular movements generated by the proposed access arrangement would also be low. The submitted traffic surveys are reflective of this.
23. The Council point to the earlier objections of the Highway Authority, informed by the work of a consultant, as being indicative of the complexity of the access related assessment involved in this proposal. Furthermore, it is submitted that the Council have carefully presided over several applications which has included the undertaking of site visits. I accept that the judgement to be exercised in this case may be quite complex but, for the reasons given above, I conclude that the effects of the varying and removal of conditions would be acceptable.
24. Consequently, I find that the effects of varying condition 2 and the removal of condition 13 upon the living conditions of the occupants of neighbouring

properties and upon highway safety would not be harmful. The proposal therefore complies with policies SP6 and IP2 of the Carlisle District Local Plan 2015-2030. Amongst other matters, these policies state that development that causes severe transport issues which cannot be mitigated will be resisted and that proposals should ensure that there is no adverse effect on the residential amenity of existing occupiers. I also find that the development would accord with guidance contained within the National Planning Policy Framework including that at paragraph 130 which states that decisions should ensure that developments function well, add to the overall quality of the area for the lifetime of the development and create safe places with a high standard of amenity for existing residents.

Other Matters

25. Public representations state that some drains may have been covered and that drainage problems have been occurring, but I have limited detail on the matter or of its particular relevance to the access arrangements proposed the subject of the appeal.

Conditions

26. When granting planning permission under section 73A, it is appropriate to reimpose those conditions which were imposed on earlier permissions that continue to have effect. The Council have confirmed that several conditions previously imposed no longer continue to have effect and they have suggested that they need not be reimposed. I have no reason to disagree.
27. Although the development of 43 dwellings has been built, I have identified some deviation from the submitted plans and based my decision on the plans. In the interests of clarity it therefore remains necessary to impose an approved plans and approved documents condition, although in the interests of precision I have made some adjustments to the wording suggested by the Council.
28. The appellant took issue with the Council suggesting a condition to the effect that the development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) including adherence to the finished floor levels contained therein. However, I have no evidence before me to suggest that there are not other elements of the submitted FRA or the associated addendum that do not require either adherence to or do not continue to have effect. I have therefore required the development to be carried out in accordance with those documents as a part of the approved plans and approved documents condition.
29. I have imposed condition 2 so as to ensure that the bollards proposed to prevent any through route to Constable Street are retained in the interests of clarity and highway safety. I have amended the wording "unless otherwise agreed in writing by..." as there are more appropriate formal methods of dealing with variations to planning conditions.
30. Finally, I have imposed condition 3 so as to ensure that recommendations within the submitted road safety audit are implemented. These recommendations are, firstly, that road markings, signage and a supplementary plate are installed at the speed hump at the junction of Carrick Square and Leicester Street. Secondly, damaged sections of the carriageway at the junction of Blunt Street and Leicester Street be repaired.

31. Given that the housing development is largely built and given that the land which the road safety audit recommendations would involve are outside of the application site and beyond the control of the appellant a particular approach to the wording of this condition is necessary. This wording has a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the road safety audit recommendations before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
32. The Council have submitted that, in the event that the road safety audit recommendations have not been implemented within 4 months from the date of this decision, that the allowance of a further 2 months for the cessation of the use of the Leicester Street access is excessive. However, I am mindful that there would not only be a requirement to stop up that access but as a consequence also provide for an alternative arrangement, for example the re-opening of the approved Constable Street access point. The further 2 month period is therefore necessary.

Conclusion

33. For the above reasons, I conclude that the appeal is allowed subject to the conditions within the attached schedule.

H Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
Site Location Plan 01/2014/00A Rev A received 7th February 2018 approved as part of application 18/0125;
Site Plan 01/2017/05G rev G received 17th December 2021
Typical Ground Floor Plan 01/2017/05F Rev F received 23rd February 2018 approved as part of application 18/0125;
Proposed Front Street Elevation 09/2017/10B Rev B received 23rd February 2018 approved as part of application 18/0125;
Proposed Rear (Garden) Elevation 09/2017/06C Rev C received 7th February 2018 approved as part of application 18/0125;
Gable Elevations 01/2017/07B Rev B received 7th February 2018 approved as part of application 18/0125;
Flood Risk Assessment received 7th March 2018 approved as part of application 18/0125;
Flood Risk Assessment Addendum received 8th March 2018 approved as part of application 18/0125; and
Stage 3 Road Safety Audit NS21/623/RSA3 including Proposed Bollards and Existing Visibility Splays SK004 received 17th December 2021
- 2) The bollards shown on the Road Safety Audit Proposed Bollards and Existing Visibility Splays drawing SK004 shall be retained and shall not be removed or altered.
- 3) Within 4 months of the date of this decision the recommendations contained within paragraphs 3.1 and 3.2 of the Stage 3 Road Safety Audit Report No. NS21/623/RSA3 shall have been implemented. If, following the passage of 4 months from the date of this decision, those Road Safety Audit recommendations have not been implemented then within 6 months of the date of this decision the use of the vehicular access via Leicester Street hereby permitted shall have ceased and the Leicester Street access shall have been stopped up via the installation of bollards which shall prevent the passage of vehicles, unless those vehicles are emergency service vehicles. Thereafter, the installed bollards shall be retained.

In the event of a legal challenge to this decision, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule