
Appeal Decision

Hearing Held on 8 March 2023

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/Z4718/W/22/3310052

Land at Edgerton Road, Huddersfield HD3 3AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition attached to a grant of planning permission
 - The appeal is made by Prospect Estates Ltd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/1025, dated 27 March 2019, sought approval of details pursuant to condition Nos 4,6,7,8,9,11,13,14,16,19,21,22, and 23 of outline planning permission 2017/70/91916/W granted on 1 September 2017.
 - The application was refused by notice dated 21 September 2022.
 - The development proposed is variation of condition 23 (highway works) on previous permission 201493014 (APP/Z4718/W/3002523) for outline application for residential development comprising 41 No new dwellings plus associated works (within a conservation area.
 - The details for which approval is sought are details of the proposed estate road (condition 21).
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Decision

1. The appeal is allowed and the details of the proposed estate road submitted pursuant to condition No 21 attached to planning permission 2017/70/91916/W, granted on 1 September 2017, in accordance with the application ref 2019/91025 dated 27 March 2019, the plans submitted with it, and those contained within the attached schedule A, are approved.

Preliminary matters

2. Given the nature of the appeal it was agreed at the Hearing that a site visit was unnecessary.
3. Whilst the application was for approval of details pursuant to the conditions detailed in the header to this decision, it was made clear within the Statement of Common Ground and also confirmed by both main parties at the Hearing that the details pursuant to all conditions have been agreed by the Council apart from those pursuant to condition No 21. In essence, the Council consider that the information presented regarding the proposed highway should be at the standard required for an adoption under Section 38 of the Highways Act 1980. The appellant considers this to be at a far higher standard than that actually specified under the condition. It follows that the main issue is as shown below.

Main Issue

4. Whether or not the details supplied by the appellant are sufficient to comply with condition No 21.

Reasons

5. Condition 21 states that: *Notwithstanding previously submitted plans, no development shall take place until details of the proposed estate road have been submitted to and approved in writing by the local planning authority. The details shall include full sections with suitable gradients and vertical curves, traffic calming, drainage works, street lighting, lining, surface finishes, together with an independent Road Safety Audit covering all aspects of the works. Development shall be carried out in accordance with the approved details and prior to the occupation of any of the dwellings hereby permitted.*
6. The reason given for the condition is: *In the interests of highway safety and to accord with policy T10 of the Kirklees Unitary Development Plan (UDP).*
7. However, the UDP was replaced by the Kirklees Local Plan (LP) in February 2019, and the relevant policy is now policy 21 of the LP. This policy has several limbs but the most relevant in respect of this appeal are: *that proposals should ensure the safe and efficient flow of traffic within the development and on the surrounding highway network; that proposals should take into account changes in site levels and topography to ensure the development can be accessed easily and safely; and that proposals should, where needed, provide new infrastructure or improvements on or off site to ensure safe access from the highway network for pedestrians, cyclists, public transport users and private vehicles.*
8. The interaction between the Council and appellant regarding highway details in this case has been protracted and complicated, with further details and drawings being provided on a number of occasions. In essence the Council wish to keep a tight control over what is built, and to an extent I understand this. To do so they consider that the details provided to comply with pre-commencement condition 21 should be at a level commensurate with those required for formal adoption.
9. However, the appellant considers this too onerous when it effectively prevents any start on site. They have nonetheless provided various iterations of drawings at the behest of the Council up to January 2023, notwithstanding that the Council stated on 14 September 2022 that they would not accept further information.
10. The Council's letter of 21 September 2022 contained a series of sub-headings under which the Council outlined their concerns regarding what in their view was the lack of information or in some cases incorrect information that had been supplied by the appellant. I will consider the majority of these in turn in this decision, although several will be grouped together.
11. Firstly, the Council state that no satisfactory detailed design sewer drawings have been provided. However, the original planning permission contained several conditions that pertained to drainage. These were: condition 6 that required details of surface water discharge; condition 7 that required details of foul and surface water drainage; condition 8 that required an assessment of the effects of 1 in 100 year storm event on drainage infrastructure and

- condition 9 that required details of temporary surface water drainage during construction. All of these conditions were discharged by the Council in its decision letter dated 12 June 2020.
12. I also note that the appellant changed the design of the drainage attenuation system, removing it from underneath the proposed carriageway and re-siting it where a dwelling had previously been proposed. This was at the request of the Council who do not allow attenuation systems under adopted roads, even though the details were intended to discharge the conditions rather than comply with adoption rules. Whilst I acknowledge that condition 21 does mention drainage details, I nonetheless consider that the details already provided adequately cover this. It seems to me therefore that the appellant has provided sufficient drainage details to comply with the condition.
 13. Secondly the Council state that no revised comprehensive flood risk assessment and drainage strategy reports have been provided. They also take issue with what in their view is a lack of drainage and sewer construction details and a Section 104 sewer plan. However, once again these requirements pertain to the drainage conditions that were previously approved by the Council, and I note that the submitted drawings contain one entitled *drainage strategy (43628/001D)* which clearly shows the foul and storm drainage and road layout on the one drawing. Furthermore, there is a further drawing that details the gully catchment areas (300741-SK001).
 14. Further drawings were supplied by the appellant on January 19, 2023, including a highway drainage drawing (300741-500-001). Unfortunately, these were not copied to the Council. Notwithstanding this however, as I have previously mentioned, the Council had already declared that it would not countenance further information by virtue of its email to the developer dated 14 September 2022.
 15. The Council also note that the appellant has not provided external works drawings and detailed drawings showing shared private drive and individual driveway gradients and direction of fall. However, it seems to me that such information is required to prevent surface water from private areas running onto adopted highways/footways. As, at this juncture, the appellant has not indicated that he will necessarily enter into a Section 38 agreement, such information would seem to be superfluous. If at a future date, during the construction process, the appellant decides to enter into a Section 38 agreement then any alterations he has to make to comply with the Council's requirements would be at his risk.
 16. As I have previously noted, drawing 300741-SK001 clearly show the positions of gullies. It is not therefore correct to say that no gully positions are shown on the submitted drawings. Whilst the Council have commented that there is too great a distance between gullies at the end of road 1 (and this has subsequently been rectified by the appellant) I am not persuaded that such a level of detail should be required for pre-commencement conditions. I will return to this issue in my conclusions section below.
 17. The Council also require long section, cross sections, contours, and construction details of adoptable new footpaths. However, as the appellant has yet to decide if the footpaths are to be adopted this request from the Council once again seems superfluous.

18. The appellant originally gave details of long sections on drawings 10827-100-102 and 103. I acknowledge that these drawings as shown as 'preliminary' but both also state that 'all highway works are to be constructed in accordance with Kirklees Council design guide and construction specification'. Contours are shown on drawing 300741-100-001A and the cross-section drawings (300741-100-002B and 300741-100-006A) show levels at 10m intervals. All of these drawings were issued on 26 July 2022. Furthermore, details of the proposed footway construction are shown on various drawings including 300741-700-001B.
19. The Council also consider that no satisfactory stage 1 or Stage 2 Road Safety Audits (RSA) have been provided. However, there was a combined Stage 1 and Stage 2 RSA prepared by Sanderson Associates in 2019 and I have been provided with a further a further Stage 2 RSA prepared by the same company, dated January 2023. This latter RSA takes into account the findings of the previous RSAs, the various amendments made to the drawings in the interim period and the audit team's comments, and makes recommendations in light of these factors. There is nothing within the RSA that indicates that the proposed roads and footways would be an impediment to highway safety.
20. Whilst I accept that there may be minor errors and in some cases inconsistencies in some of the drawings, these drawings have been submitted to comply with a pre-commencement condition that seeks to ensure highway safety and not to gain adoption approval. As the appellant explained at the Hearing, it is customary in nearly every construction project for the drawings to be updated as problems arise, and for a comprehensive set of construction drawings to be issued at a later date.

Conclusion

21. I consider that the information provided, particularly taking into account the Stage 2 RSA, whilst not necessarily immediately suitable for construction purposes, is sufficient to show that the proposed roads and footways would not be unsafe and would be usable. It follows that the information provided is sufficient to comply with condition 21 and accord with policy 21 of the LP. It follows therefore that the appeal should be allowed.
22. Whilst it would be neat and convenient if all the information provided under condition 21 was sufficient to comply with the requirements for formal adoption, such a procedure is separate from planning and considerably more onerous. If, further down the line, the roads turn out to be outside of the Council's requirements for adoption, then that is the risk taken by the appellant. In arriving at this conclusion I am also conscious of the general principle that conditions which require compliance with other regulatory regimes do not meet the test of necessity.
23. Therefore, for the above reasons, and having taken into account all other matters raised, the appeal is allowed.

John Wilde

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Lee Gordon
Mr Peter Maurice
Ms Karen Smith
Mr Rob Cooke
Mr Roger Lee

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Hinchcliffe
Mr David Wordsworth
Mr Chris Dows
Mr Richard Riggs

DOCUMENTS

- 1 Updated version of the appellant's appendix 19.
- 2 Excel spreadsheet provided by the appellant giving a breakdown of information provided to comply with condition No 21.
- 3 List of up to date plans for approval.

SCHEDULE A PLANS

- A 300741-001C Access Arrangement and Swept Path Analysis
- B 300741-100-001C Proposed Contours and long sections
- C 300741-100-002B Proposed Cross Sections (Sheet 1 of 2)
- D 300741- 100-003B General arrangement – internal
- E 300741-100-004A General arrangement-site access
- F 300741-100-005A Potential S38 adoption plan
- G 300741-100-006A Proposed cross sections (sheet 2 of 2)
- H 300741-200-001 Site clearance – Queens Drive access
- I 300741-500-001 Drainage design
- J 300741-700-001C Pavements – internal
- K 300741-700-002B Standard details (sheet 2 of 2)
- L 300741-700-003B Pavement – access
- M 300741-700-004A Standard details (sheet 2 of 2)
- N 300741-100-001A Kerbing
- O 300741-SK001 Gully catchment area
- P 1414-101JJ Site plan
- Q 3998A Topographical survey
- R 6736 Proposed street lighting
- S 43628-001D Drainage appraisal
- T 43628-003A Long section