



Appeal Decision

Site visit made on 12 October 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/Q1153/W/22/3291673

Land at Cross Roads Farm, Lewdown EX20 4DP

- 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 Mr John Mulley of Viburnum SW Limited against the decision of West Devon Borough Council.
 - The application Ref 2808/21/VAR, dated 15 July 2021, was refused by notice dated 17 January 2022.
 - The application sought planning permission for 14 no. dwellings with associated access road and parking without complying with a condition attached to planning permission Ref 2161/19/VAR, dated 26 March 2020.
 - The condition in dispute is number 2 which states that: The development hereby approved shall in all respects accord strictly with drawing number(s) 1139 [S] 01 Rev B Site Location Plan; 1844 [PL-] 01 Rev C Proposed site layout plan, received by the local planning authority on 4/12/19; 1139 [PL-] 11 Rev A Proposed plans and elevations units 1-9, received by the local planning authority on 17/10/19; 1844 [PL-] 03 Rev A proposed plans and elevations units 10 - 14, received by the local planning authority on 01/08/19 received by the local planning authority on 28 January 2016.
 - The reason given for the condition is: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 14 no. dwellings with associated access road and parking on Land at Cross Roads Farm, Lewdown EX20 4DP in accordance with application Ref: 2808/21/VAR without compliance with condition number 2 previously imposed on planning permission Ref: 2161/19/VAR, dated 26 March 2020, but otherwise subject to the conditions in the attached Schedule.

Preliminary Matters

2. The address given on the application form varies from the site address on the decision notice. For the sake of consistency, I have used the same address given on the preceding Decision Notices relating to the appeal site.

Background and Main Issue

3. The Planning Practice Guidance states that permission granted under section 73 of the Act¹ takes effect as a new, standalone permission to carry out the

¹ The Town and Country Planning Act 1990

- same development as previously permitted subject to new or amended conditions.
4. Outline planning permission (Ref: 0035/16/OPA) and subsequent reserved matters consents (Ref: 2099/19/ARM and 3800/19/VAR) have been granted for the development of the appeal site.
 5. An application was subsequently submitted seeking to vary the approved plans set out in Condition 2 of the outline planning permission. The Council approved the application and in doing so, a standalone second outline permission was created (ref: 2161/19/VAR).
 6. The appeal before me is in relation to the Council's refusal to grant consent made under application ref: 2808/21/VAR to substitute one of the approved plans² set out in Condition 2 of the second outline permission with a revised plan³.
 7. I have sought the views of Council and the appellant with regards to the complex planning history of the appeal site. There is no dispute between the main parties that the effect of allowing the appeal before me would be to grant a further third outline planning permission at the site. As such, the parties have provided me with a suggested list of conditions and a Planning Obligation, in the event that the appeal is allowed. I will refer to these later in the Decision.
 8. However, this is a highly unusual situation whereby the Council have entertained and subsequently refused a retrospective outline planning permission for a development where building works on site are well advanced.
 9. In addition, the application the subject of this appeal relates to the submission of plans showing the finished level of the car park. The approved layout plan (referred to in footnote 2) does not include any levels details for the car park. The Council state in their Supplementary Statement that specific levels for the finished level of the car park had not been provided on any of the plans in the earlier permissions referred to above, and that what was subsequently provided on site 'was contrary to the expectations' of the Council. The Council's suggestion therefore that the car park has been constructed with a finished level which is between one and two metres higher than the approved finished level appears to be unsubstantiated.
 10. However, by their own admission, the appellant states that the application was made to address concerns regarding the apparent disparity between the approved levels and what has been built. It seems to me that the matter of levels could have been more appropriately dealt with via an application to discharge the requirement of Condition 3 (b) of the second outline planning permission.
 11. However, I must deal with the appeal before me. Appearance, layout, access and scale are all matters which have previously been considered as indicated by Condition 1 and the approved drawings set out in Condition 2 of the second outline planning permission. Given that Condition 14 of the second outline planning permission confirms that landscaping details were submitted as part of the first outline planning permission and subsequently withdrawn, I have

² Drawing Number: 1884 [PL-] 01 Rev C Proposed Site Layout Plan, received by the local planning authority on 4 December 2019

³ Drawing Number: 1884 [PL-] 01 Rev D Proposed Site Layout Plan

determined this appeal on the basis that it relates to an outline application with only landscaping reserved for future consideration.

12. I have therefore determined this appeal with reference to the detail on the plans submitted as part of this appeal. Whilst I observed that the works had largely been carried out on site and vehicles were parked in the car park at the time of my visit, I saw that the final finish to the car park had not been laid and have taken this into account when considering the effects of the proposal.
13. Therefore, the main issue in this appeal is the effect of the proposed development, with Condition 2 varied, on the character and appearance of the area and the living conditions of the neighbouring occupier.

Reasons

14. The appeal site slopes gently down from north to south. The car park, located in the south east corner of the appeal site, also slopes gently from north to south. The finished level of the car park would be higher than the finished floor level (FFL) of the houses to the west but below the FFL of the houses to the north. The location, layout and size of the car park is unchanged from that shown on the approved drawing.
15. There is only a slight incline to access the car park from the internal access road. This, together with the gentle slope of the car park from north to south means that it does not appear incongruous or at odds with the levels of the surrounding development on the appeal site.
16. The car park is located on the site frontage and elevated above the adjacent highway. The finished level of the car park is approximately level with the top of the new retaining wall and original hedgebank which form the boundary with the highway. As such, vehicles parked in the car park are elevated above the adjacent highway, retaining wall and hedgebank and are therefore visible from the road outside the site.
17. However, there is a mature tree located between the car park and the highway and new planting has been provided on top of and along the hedgebank and retaining wall. This provides a good level of screening for the parked vehicles, particularly when viewed from the south and east. The new planting also helps to soften the visual impact of parked vehicles when approaching from a northerly direction. From here, parked vehicles are also seen in the context of the neighbouring property to the south, the development of houses on the appeal site and the parked vehicles on the highway outside. As such, they do not appear unduly incongruous in the street scene.
18. The appeal site is located within a rural landscape but the car park is contained within a development of 14 dwellings. The parking for plots 1, 12, 13 and 14 to the north and west of the car park, is provided to the front of each plot such that parked cars are a dominant feature in the streetscene. In this more urban context, the car park appropriately assimilates into its setting and the general character and appearance of the area is conserved.
19. The car park is set above the level of the neighbouring property to the south, such that there would be a degree of disturbance to its occupiers, at certain times of the year, from the headlights of vehicles manoeuvring in the car park. However, the erection of a fence to a height of one metre along the boundary with the neighbouring property would appropriately mitigate the harm which

would arise. I observed at my site visit that such a fence had been erected along the western side of the car park and in this respect, a similar fence along the southern boundary of the car park would not appear at odds with the surrounding development.

20. As a result, I find no conflict with Policies DEV20 and DEV23 of the Plymouth and South West Devon Joint Local Plan 2014-2034, adopted March 2019 which seek to conserve visual quality and avoid adverse visual impacts. I also find no conflict with Paragraphs 130 and 174 of the National Planning Policy Framework which require that developments are visually attractive as a result of appropriate and effective landscaping and contribute to the local environment.

Planning Obligation

21. The original and second outline planning permissions was supported by a planning obligation. There is no dispute between the parties that the original obligations are still necessary to provide the appropriate level of affordable housing, to mitigate the pressure on education provision and school transport and to ensure that the parking spaces in the car park are made available for the nearby Lewtrenchard Primary School. Thus, a new obligation has been completed to ensure that the new standalone planning permission created by me allowing this appeal is bound by the previous obligations.

Other Matters

22. Interested parties have raised concerns about the proposed drainage arrangements for the site. The Lead Local Flood Authority have indicated⁴ that, once installed, the scheme submitted by the appellant⁵ would adequately deal with surface water drainage from the appeal site. The Council state in the Officers Report that the revised surface water drainage scheme for the site is now acceptable. There is no robust evidence before me which would lead me to conclude otherwise.
23. Interested parties have also raised concerns that the development was not carried out in accordance with the approved plans. The application the subject of this appeal sought the removal of the condition specifying the approved plans and its replacement with a condition specifying the plans that reflect the amended detail. This type of application is possible under Section 73 of the Act and Section 73A of the Act allows for the submission of 'retrospective' applications.
24. In addition, interested parties also refer to the appeal proposal resulting in the loss of a dedicated pedestrian access from the car park to the highway. However, the Council have confirmed such an access was not indicated on the approved site layout plan⁶ set out in Condition 2 of the second outline planning permission⁷. Allowing this appeal therefore, would not result in the loss of that provision.
25. The appeal site is located approximately 7.5km away from the Dartmoor Special Area of Conservation (SAC) and 2km away from the Coryton Quarry

⁴ In their consultation response dated 10 December 2021

⁵ Indicated on drawing number J1366 3005 Rev E Overland Flow Routing

⁶ 1844 [PL-] 01 Rev C

⁷ LPA ref: 2161/19/VAR

Site of Special Scientific Interest (SSSi). Given that planning permission has already been granted and implemented for the development of fourteen dwellings on the site, there is no evidence that the appeal scheme, relating principally to a revised finished level for the car park, would result in a likely significant effect on the designated features of the SAC. As such, I am satisfied that an appropriate assessment under Regulation 63 of the Habitats Regulations 2017 in terms of the impact of the proposal on the SAC is not required.

Conditions

26. The Council have provided a list of eight suggested conditions within their appeal statement. The Council and the appellant were subsequently asked to provide a list of conditions, on the basis that if I were to allow the appeal, a third standalone outline planning permission would be created. Whilst I have had regard to the submissions in this respect, the conditions suggested by the Council and the appellant do not reflect that the permission granted would be in outline.
27. The guidance in the Planning Practice Guidance makes it clear that decisions under Section 73 of the Act should set out all the conditions imposed on the new permission (in this case a re-worded Condition No. 2) and restate the conditions imposed on earlier permissions that continue to have effect.
28. I understand that an application was made⁸ to discharge some of the conditions on the second outline application but neither the Council nor the appellant have advised me of the outcome of this. For these reasons, and given that the planning history is complex, I have reimposed the conditions on the second outline planning permission with notable amendments set out below. In the event that any of the conditions have in fact been discharged, that is a matter which can be addressed by the parties.
29. It is clear from the conditions suggested by the Council and the appellant, that a landscaping scheme needs to be submitted and agreed. As this is a reserved matter which has not yet been agreed, it is necessary for me to impose Condition 1 to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is 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 landscaping before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
30. I have imposed Condition 2 requiring compliance with the approved drawings, those being the ones submitted with this appeal and those on the latest reserved matters approval (3800/19/VAR) which reflect the drawings listed by the Council in their suggested list of conditions.
31. For the reasons set out above, I have reimposed Conditions 3 – 12, with the exception of Condition 6. This relates to the car park remaining available for the use of the school but is unnecessary as this is controlled by the s106 Planning Obligation. I have not re-imposed Conditions 13 and 14 as the requirements of these conditions are covered by my Condition 1.

⁸ LPA ref: 1452/21/ARC

32. The Council's Officer Report refers to the need for a condition to ensure that a fence is erected between the appeal site and the adjacent property. This was not set out on the list of conditions provided by the Council and the appellant. However, the appellant refers to the Council's suggestion in their appeal statement⁹. Therefore, its imposition will not come as a surprise but is necessary to protect the living conditions of the adjacent occupier and I have imposed this as Condition 13. As with Condition 1, the wording reflects the retrospective nature of the permission granted and will ensure that the development can be enforced against if the requirements are not met.

Conclusion

33. The proposed development, with Condition 2 varied, would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is allowed.

Alison Fish

INSPECTOR

Schedule of Conditions

1. Within 4 months of the date of this decision a scheme and timetable for the landscaping of the site, together with the means of establishment, protection and maintenance, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable. Any trees or plants that, within five years after planting, are removed, die or become seriously damaged or defective shall be replaced with other species, size and number as originally approved, unless written consent of the local planning authority is given to any variation.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1844/(S-) 01 Site Location Plan; 1844 (PL-) 01 D Site Layout Plan; J-1366 3005 Rev E Overland flow routing and; J-1366 3001 Rev J Proposed South West Water foul and surface water sewer S104 drainage plan, together with the plans approved under application number 3800/19/VAR as follows: 1139 (PL-) 11 Proposed plans and elevations to units 1-9; 1139 (PL-) 12 proposed plans and elevations to units 10-14 and; 1139 (PL-) 13 proposed site sections.
3. The development hereby authorised shall be carried out in accordance with detailed drawings which shall previously have been submitted to and approved by the Local Planning Authority. These detailed drawings shall show the following: (a) the design and external appearance of the proposed buildings; (b) existing (and proposed) (i) site levels (together with proposed (ii) slab levels); (c) the materials for their construction (d) the arrangements for the disposal of foul and surface water; (e) all other works including walls fences means of enclosure screening. (f) the location, extent and layout of open space(s) (g) the design, levels, gradients, materials, drainage, lighting

⁹ Paragraph 2.2 of the Appeal Statement by EJFP Planning

and method of construction of all new roads and connection with existing roads.

4. Notwithstanding the submitted details, the development hereby permitted shall not be commenced until:
 - i) Percolation testing in accordance with BRE digest 365 will be required to support the use of soakaways. The report should include the trial logs and calculate the infiltration rate.
 - ii) SuDS to be designed for a 1:100 year event plus 30% for climate change. The drainage should, if necessary, follow best practice and employ low maintenance surface features such as swales and ponds.
 - iii) If the local planning authority concludes that the method of drainage approved as part of this permission is undermined by the results of the percolation tests, a mitigating drainage alternative shall be agreed with the local planning authority.
 - iv) A management and maintenance plan has been submitted and approved. Details to include Management Company and properties with private or shared soakaways.
 - v) The drainage scheme shall be installed in strict accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development.
5. The parking facilities for motor vehicles shall be provided for each dwelling and sited in accordance with the details shown on the approved layout plan 1844 [PL-] 01 D, and no dwelling shall be occupied until such provision and vehicular access thereto have been provided. These facilities shall be kept permanently available for the parking of motor vehicles.
6. No other part of the development hereby approved shall be commenced until:
 - A) The access road has been laid out, kerbed, drained and constructed up to base course level for the first 10 metres back from its junction with the public highway;
 - B) The ironwork has been set to base course level and the visibility splays required by this permission have been laid out;
 - C) The footway and dropped kerb crossing points on the public highway frontage required by this permission has been constructed up to base course level;
 - D) A site compound and car park have been constructed to the written satisfaction of the local planning authority.
7. The occupation of any dwelling shall not take place until the following works have been carried out to the written satisfaction of the local planning authority:
 - A) The cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;

- B) The cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
C) The cul-de-sac visibility splays have been laid out to their final level;
8. When once constructed and provided in accordance with condition 7 above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular traffic and pedestrians.
9. Notwithstanding details submitted with the application, prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the Local planning authority. Details shall include: details of delivery hours taking into account the adjacent Primary School, how building materials will be brought to the site and where they will be stored; details of vehicle movements associated with the development including heavy good vehicles and how traffic impact will be mitigated; details of dust suppression measures; details of wheel washing facilities, and hours of operation of works on the site. The work shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the Local planning authority.
10. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the Local planning authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.
11. Notwithstanding the provisions of Article 3 of the Town and Country Planning General Permitted Development Order, 2015 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken relating to units numbered 1, 2, 3, 4, 10, 11, 12, 13, 14 as shown on approved layout plan 1844 [PL-] 01 D without the express consent in writing of the local planning authority other than those expressly authorised by this permission:
- (a) Part 1, Class B (roof enlargements)
- Notwithstanding the provisions of Article 3 of the Town and Country Planning General Permitted Development Order, 2015 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the local planning authority other than those expressly authorised by this permission:

(b) Part 2, Class A (means of enclosure).

12. Within six months of the date of this decision, a fence shall be erected along the southern boundary of the car park, in accordance with details which shall have been first submitted to and approved in writing by the local planning authority. Once erected, the fence shall be retained for the lifetime of the development.

End of Schedule