



Appeal Decision

Site visit made on 18 April 2023

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Appeal Ref: APP/J3720/W/22/3308144

Land at Stratford Business Park, Banbury Road, Stratford-upon-Avon, Warwickshire CV37 7GY

- 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 Persimmon Homes and The Bird Group against the decision of Stratford-on-Avon District Council.
 - The application Ref 22/01685/VARY, dated 1 June 2022, was refused by notice dated 5 September 2022.
 - The application sought planning permission for 'erection of 62 no. dwellings (Use Class C3) with means of site access from Stratford Business and Technology Park onto Banbury Road including amenity space and all other necessary ancillary and enabling works' without complying with a condition attached to planning permission Ref 20/02665/FUL, dated 23 September 2020.
 - The condition in dispute is No 2 which states that: "This permission relates to the following approved plans: Access Junction Plan Dwg No. 05118-DR0100 Rev P01".
 - The reason given for the condition is: "a condition specifying the relevant plans as this provides certainty."
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Decision

1. The appeal is allowed and planning permission is granted for 'erection of 62 no. dwellings (Use Class C3) with means of site access from Stratford Business and Technology Park onto Banbury Road including amenity space and all other necessary ancillary and enabling works' at Land at Stratford Business Park, Banbury Road, Stratford-upon-Avon, Warwickshire CV37 7GY in accordance with application Ref 22/01685/VARY, dated 1 June 2022, without compliance with condition number 2 previously imposed on planning permission Ref 20/02665/FUL, dated 23 September 2020.

Preliminary Matters

2. The appeal site has been subject to a previous appeal decision (APP/J3720/W/21/3272934), which forms the original planning permission. The appeal was allowed on 18 February 2022 and imposed condition 2, which is the subject of this current appeal.
3. The appellant has submitted a planning obligation by way of a Unilateral Undertaking, dated 7 February 2023. The Council were given the opportunity to comment on this during the appeal. The UU is required to bind the development to the obligations considered necessary when the previous appeal was allowed. I am therefore satisfied that this obligation is directly related to

the development and fairly related in scale and kind. It therefore meets the relevant tests and complies with the CIL Regulations.

Main Issue

4. The main issue is whether varying condition 2 would be acceptable, having particular regard to the proposed removal of the bus turning facility and whether its removal would be unacceptable in terms of access by public transport.

Reasons

5. The appeal site is located along Banbury Road and is part of a wider site that forms the Stratford Business and Technology Park, with commercial units and associated parking areas. At the time of my site visit, the construction of residential dwellings on the site had commenced. The surrounding area is countryside.
6. The proposal seeks permission for amendments to the approved access junction plan off Banbury Road, as originally imposed by condition 2. Specifically, the proposal would remove the bus only turning area and create instead a simple priority junction entry to serve the development.
7. It is clear from the evidence before me that the bus turning facility was required for bus service number 4, which was to be re-routed to serve the development. Nevertheless, the only bus service improvements for the original planning permission were those secured through the S106 Agreement (S106), dated 14 December 2021, which described it as the 'Bus Diversion Contribution'. This is defined as £60,000, to be used for purposes specified in schedule 1 of the S106. Schedule 1 of the S106 states "*the bus diversion contribution is to be paid to the County Council for the purposes of funding increases in the frequency of bus services to existing route numbers 75 and 76 to enable access to the new development for a period of 5 years from first occupation of the development.*"
8. It is also noted that Schedule 4, paragraph 1.1 of the S106 states that "*where any contribution referred to in the agreement is stated to be payable for a particular purpose the County Council shall not use it otherwise than towards that purpose.*"
9. Although I acknowledge the Council's intentions to have a dedicated bus service to service the site using the bus turning facility, the S106 refers to a financial contribution for the existing bus route numbers 75 and 76 that run along Banbury Road, with no mention of other bus services. Therefore, the site would be served by these two existing bus services (numbers 75 and 76) from bus stops located on Banbury Road, and the financial contribution would be used to increase the peak time frequency of these services. Combined with a new northbound bus stop and improvements to pedestrian and cycleways, the development would be accessible by bus, as well as other non-car modes.
10. Both parties agree that the number 4 bus service was withdrawn during the Covid-19 pandemic due to reduced patronage. The Council indicates that the number 4 bus service was reinstated from 23 July 2022. However, bus service number 4 has not been re-routed to serve the site. WCC has confirmed that additional funding would be required for service no 4 to be able to serve the site and currently no such funding exists. In addition, there is no provision in

the S106 which would secure a financial contribution towards bus service number 4.

11. Consequently, there is insufficient evidence before me to demonstrate that bus service number 4 would serve the site in the future. Indeed, there is also no substantial evidence before me to indicate that another bus service would require the bus turning facility.
12. Therefore, I find that it would not be reasonable to stipulate that a turning facility be provided on the site in the off chance that at some point in the future funding may become available that would make it possible for a bus service to service the site as was initially anticipated.
13. The Council refers to the National Planning Policy Framework (Framework), paragraphs 104c), 106c), 110a), and 135. Nevertheless, although the turning facility had been identified its use had not been pursued through the means of securing funding for a re-routed bus service in the S106. The site would benefit from a new bus stop on Banbury Road and would be served by existing bus routes running along Banbury Road with increased frequency. Consequently, the quality of the approved development would not be materially diminished by the removal of the bus turning facility which would still benefit from an improved bus service and infrastructure, thereby promoting public transport and widening transport choice.
14. For the reasons given, the proposal would comply with Policy CS.1 of the Stratford-on-Avon District Core Strategy 2011 to 2031 (2016) (Core Strategy). Amongst other things, this policy seeks to secure sustainable forms of development. The proposal would also comply with Policy CS.26 of the Core Strategy, which amongst other things requires the provision of transport infrastructure. In addition, the proposal would also accord with the sustainability objectives of the Framework.

Other Matters

15. The Council refers to condition 19 of the original permission. However, this condition makes no reference to the bus turning facility, which was secured by condition 2. Therefore, this does not alter my decision.
16. Stratford-upon-Avon Town Council has raised highway safety concerns relating to a bus stop and uncontrolled crossing on Banbury Road. However, I also note that the Council's Highway Officer did not raise any highway safety issues in this regard. Therefore, this does not change my finding on the proposal before me.

Conditions

17. I have deleted the disputed condition 2 as indicated above and replaced it with an amended one which specifies the new plan as Dwg No. 05118-DR-0100 rev P03.
18. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.

19. The main parties have informed me that the pre-commencement conditions 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 16, 18, 22 and 24 of the original permission have been discharged. Therefore, these conditions have been amended as necessary, following comments from both parties.
20. With the exception of the standard time limit, which is no longer required as the development permitted has already commenced, I have no information before me to suggest that any of the other conditions are no longer necessary or relevant. I have therefore imposed all the other conditions attached to the original permission (20/02665/FUL).

Conclusion

21. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal is allowed.

H Smith

INSPECTOR

Schedule of Conditions

- 1) This permission relates to the following approved plans:

Location Plan Dwg. No. LP-01 Rev. B
Site Layout Dwg. No. 7635-P-01 Rev. B
External Works Layout Dwg. No 7635-P-02 Rev. B
Landscape Strategy Dwg. No 7635-P-03 Rev. A
Arden Semi-Detached Plans Dwg. No. 7635-P-04
Arden Semi-Detached Elevations Dwg. No. 7635-P-05
Arden Terraced Plans Dwg. No. 7635-P-06
Arden Terraced Elevations Dwg. No. 7635-P-07
Alnmouth Semi-Detached Plans Dwg. No. 7635-P-08
Alnmouth Semi-Detached Elevations Dwg. No. 7635-P-09
Alnmouth Terraced Plans Dwg. No. 7635-P-10
Alnmouth Terraced Elevations Dwg. No. 7635-P-11
Danbury Semi-Detached Plans Dwg. No. 7635-P-12
Danbury Semi-Detached Elevations Dwg. No. 7635-P-13
Charnwood Detached Plans and Elevations Dwg. No. 7635-P-14
Charnwood Cr Detached Plans and Elevations Dwg. No. 7635-P-15
Whinfell Semi-Detached Plans Dwg. No. 7635-P-16
Whinfell Semi-Detached Elevations Dwg. No. 7635-P-17
Greenwood Detached Plans Dwg. No. 7635-P-18
Greenwood Detached Elevations Dwg. No. 7635-P-19
Whiteleaf Detached Plans Dwg. No. 7635-P-20
Whiteleaf Detached Elevations Dwg. No. 7635-P-21
HQI 50 Maisonette Plans Dwg. No. 7635-P-22
HQI 50 Maisonette Elevations Dwg. No. 7635-P-23
HQI 65 Semi-Detached Plans Dwg. No. 7635-P-24
HQI 65 Semi-Detached Elevations Dwg. No. 7635-P-25
HQI 65-65-79 Terraced Plans Dwg. No. 7635-P-26
HQI 65-65-79 Terraced Elevations Dwg. No. 7635-P-27
HQI 73 Semi-Detached Plans Dwg. No. 7635-P-28
HQI 73 Semi-Detached Elevations Dwg. No. 7635-P-29
HQI 83 Semi-Detached Plans Dwg. No. 7635-P-30
HQI 83 Semi-Detached Elevations Dwg. No. 7635-P-31
HQI 83 Terraced Plans Dwg. No. 7635-P-32
HQI 83 Terraced Elevations Dwg. No. 7635-P-33
HQI 102 Semi-Detached Plans Dwg. No. 7635-P-34
HQI 102 Semi-Detached Elevations Dwg. No. 7635-P-35
Garages 1 Plan and Elevations Dwg. No. 7635-P-36
Garages 1 Plan and Elevations Dwg. No. 7635-P-37
Swept Path Analysis Dwg. No. 05118-DR-0111 Rev. P02
Access Junction General Arrangement Dwg. No. 05118-DR-0100 Rev. P03

- 2) The development shall be carried out in accordance with the details for tree protection provided in the following documents and plans as approved by the local planning authority (Ref: DISCN/0038/22) dated 22 November 2022:

Arboricultural Method Statement (J4342 AMS 01 Rev A)
Arboricultural Impact Assessment (J4342)
Tree Constraints Plan (J4342 TCP 01)
Tree Protection Plan (L4342 TPP 01 Rev A)

Tree Removal Plan (J4342 TRP 01)

- 3) The development shall be carried out in accordance with the details for foul drainage provided in the following documents and plans as approved by the local planning authority (Ref: DISCN/00388/22) dated 19 June 2023:

Longitudinal Section Dwg No. 104
Manhole Construction Details Dwg No. 106
Private Drainage Construction Details Dwg No. 112
Received by the local planning authority on 11 August 2022

Pond Setting Out Details Dwg No. 300
Overland Flow Route Plan Dwg No. 400
400 Private drainage (Sheet 1 of 2) Dwg No. 100 Rev G
Private Drainage (Sheet 2 of 2) Dwg No. 101 Rev F
1yr Storm Calcs dated 26.09.2022 prepared by Causeway
2yr Storm Calcs dated 26.09.2022 prepared by Causeway
30yr Storm Calcs dated 26.09.2022 prepared by Causeway
100yr +40%CC Storm Calcs dated 26.09.2022 prepared by Causeway
100yr Storm Calcs dated 26.09.2022 prepared by Causeway
Received by the local planning authority on 28 September 2022

- 4) The development shall be carried out in accordance with the details for the provisions of storm water drainage provided in the following documents and plans as approved by the local planning authority (Ref: DISCN/00389/22) dated 22 November 2022:

Longitudinal Sections Dwg No. 104
Manhole Construction Details Dwg No. 106
Private Drainage Construction Details Dwg No. 112
Pond Setting Out Details Dwg No. 300 Overland Flow Route Plan Dwg No. 400
Private Drainage (Sheet 1 of 2) Dwg No. 100 Rev G Private Drainage (Sheet 2 of 2) Dwg No. 101
Rev F 1yr Storm Calcs 2yr Storm Calcs dated 26.09.2022
30yr Storm Calcs dated 26.09.2022
100yr +400%CC Storm Calcs dated 26.09.2022 100yr Storm Calcs dated 26.09.2022

- 5) The development shall be carried out in accordance with the details for site investigation/and contamination provided by the following documents and plans as approved by the local planning authority (Ref: DISCE/00053/22) dated 19 June 2023:

DRAFT Site Features Plan Dwg No. 22044 GE03 Rev B
Extent of Made Ground Approximately 2m Dwg No. 22044 GE06
Received by the local planning authority on 11 August 2022

Geo-Environmental Assessment Report reference 22044 Rev GA04 dated 27 July 2022 received by the local planning authority on 25 August 2022.

- 6) Prior to occupation of any dwelling hereby approved, clauses (a), (b) and (c) of this condition shall be complied with:

- a. All remediation work approved under the Remediation Strategy in Condition 5 above shall be completed and carried out under the Quality Assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works, contamination is encountered which has not previously been identified, the additional contamination shall be fully assessed, and an appropriate remediation scheme and timescales shall be submitted to and approved in writing by the local planning authority.
 - b. A Completion Report shall be submitted to and approved in writing by the local planning authority. The Completion Report shall include details of the remediation works and Quality Assurance certificates to verify that the works have been carried out in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included together with the necessary waste transfer documentation detailing the waste materials that have been removed from the site.
 - c. A certificate signed by the developer shall be submitted to the local planning authority confirming that the appropriate works have been undertaken as detailed in the Completion Report.
- 7) The development shall be carried out in accordance with the Construction Management Plan (CMP) provided in the following document and plan as approved by the local planning authority (DISCN/00390/22) dated 8 December 2022:

Banbury Rd Stratford – CMP v1
CMP Site Plan – Banbury Rd Stratford Dec 22
- 8) The development shall be carried out in accordance with the details for open space specification provided in the following documents and plans as approved by the local planning authority (DISCN/00391/22) dated 15 December 2022:

Planting Plan (07635-FPCR-XX-ZZ-DR-L-0001)
LEAP Play Area Layout (07635-FPCR-XX-ZZ-DR-L-0002)
Landscape Specification and Ecological Management Plan (7635 LEMP C)
On Plot Planting Plan (7635-FPCR-XX-ZZ-DR-L-0003)
- 9) The development shall be carried out in accordance with the details for open space maintenance provided in the following documents and plans as approved by the local planning authority (DISCN/00392/22) dated 15 December 2022:

Planting Plan (07635-FPCR-XX-ZZ-DR-L-0001)
LEAP Play Area Layout (07635-FPCR-XX-ZZ-DR-L-0002)
Landscape Specification and Ecological Management Plan (7635 LEMP C)
On Plot Planting Plan (7635-FPCR-XX-ZZ-DR-L-0003)
- 10) Prior to the construction of any dwelling hereby permitted, details of any utility service sub-stations and underground services shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details.

- 11) The development shall be carried out in accordance with the detail for external samples provided in the following documents and plans as approved by the local planning authority (DISCN/00393/23) dated 8 February 2023:

051 – External Material Rev E (*new layout*)
7635-P-02D External Works Layout (*old layout*)

- 12) The development shall be carried out in accordance with the detail for soft landscaping provided in the following documents and plans as approved by the local planning authority (DISCN/00394/22) dated November 2022:

Planting Plan (07635-FPCR-XX-ZZ-DR-L-0001)
LEAP Play Area Layout (07635-FPCR-XX-ZZ-DR-L-0002)
Landscape Specifications and Ecological Management Plan (7635 LEMP C)
On Plot Planting Plan (7635-FPCR-XX-ZZ-DR-L-0003)

- 13) The development shall be carried out in accordance with the detail for hard landscaping provided in the following documents and plans as approved by the local planning authority (DISCN/00395/22) dated 23 November 2022:

Planting Plan (07635-FPCR-XX-ZZ-DR-L-0001)
102A External Levels (Sheet 1 of 2)
103A External Levels (Sheet 2 of 2)
External materials (051 – External Materials Rev A)
Site Layout (050 – Working Site Layout v1)
113 Surface Finishes Plan

- 14) Any dwelling incorporating a downpipe, shall not be occupied until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.

- 15) The development shall be carried out in accordance with the detail for the provision of electric vehicle charging points (EVCPs) provided in the following documents and plans as approved by the local planning authority (DISCN/00396/22) dated 7 December 2022:

052 – Services Layout Plan Rev A.

- 16) No dwelling shall be occupied until 3 bins for the storage of refuse, recycling and green waste have been provided for it, in accordance with the Council's bin specifications.

- 17) The development shall be carried out in accordance with the detail for the provision of fire hydrants provided in the following documents and plans as approved by the local planning authority (DISCN/00058/23) dated 8 February 2023:

Water Construction Plan Dwg No. MU4220-W01 Rev 03

- 18) The development hereby permitted shall not be occupied until Banbury Road (A422) has been improved to provide Bus Stop Infrastructure in accordance with a scheme to be submitted to and approved in writing by the local planning authority.

19) The construction of the estate roads serving the development, including footways, verges, and footpaths, shall be constructed in accordance with specifications that have been submitted to and agreed in writing with the local planning authority.

20) No dwelling shall be occupied until the road, including footways serving that dwelling have been constructed in accordance with specifications to be submitted to and approved in writing by the local planning authority.

21) The development shall be carried out in accordance with the detail for the provision of vehicle parking and turning areas provided in the following documents and plans as approved by the local planning authority (DISCN/00398/22) dated 23 November 2022:

057 – Fire Brigade Access Plan
P-001 Dustbin Tracking

22) The development hereby permitted shall be carried out in accordance with the recommended mitigations measures, as set out under section 4 of the ecological survey addendum 2020 by Cotswold Wildlife Surveys (version 02) dated 21 September 2020.

23) The development shall be carried out in accordance with the detail for the provision of ecological mitigation/drainage provided in the following plan as approved by the local planning authority (DISCN/00399/22) dated 23 November 2022:

111 Kerbing Plan Rev D.