



Appeal Decision

Site visit made on 8 June 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal Ref: APP/G2435/W/22/3313435

**Former site of Arla Dairies, Smisby Road, Ashby De La Zouch,
Leicestershire LE65 2UF**

- 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 Simon Harrison on behalf of Crest Nicholson Operations Limited against the decision of North West Leicestershire District Council.
- The application Ref 22/01052/VCIM, dated 12 July 2022, was refused by notice dated 30 September 2022.
- The application sought planning permission for the erection of 61 dwellings (amended scheme to Plots 72-78, 93-128 and 134-146) without complying with conditions attached to planning permission Ref 20/00807/FULM, dated 15 October 2021.
- The conditions in dispute are Nos 2, 17 and 18.
- Condition 2 states: The proposed development shall be carried out strictly in accordance with the following plans, unless otherwise required by a condition of this permission:
 - Site location plan (P19-2816_15 Rev B) deposited with the Local Planning Authority on 6 November 2020;
 - Site layout (P19-2816_01 Rev AC) deposited with the Local Planning Authority on 16 June 2021;
 - Materials plan (P19-2816_12 Rev F) deposited with the Local Planning Authority on 16 June 2021;
 - Enclosures plan (P19-2816_13 Rev F) deposited with the Local Planning Authority on 16 June 2021;
 - Enclosure details (P19-2816_19 Rev A) deposited with the Local Planning Authority on 27 July 2021; and
 - House type pack (P19-2816_200E) deposited with the Local Planning Authority on 16 July 2021.
- The reason given for Condition 2 is: To determine the scope of this permission.
- Condition 17 states: Notwithstanding the submitted plans, nor Condition 2 above, none of the dwellings shall be occupied until such time as a timetable for implementation of the pedestrian / cycle links shown on Site layout Drawing No. P19-2816_01 Rev AC deposited with the Local Planning Authority on 16 June 2021 (and including the proposed pedestrian bridge adjacent to Plot 72) has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed timetable (and, once provided, shall thereafter be so maintained) such that unfettered pedestrian and (where applicable) cycle access along all relevant routes is thereafter available at all times for all pedestrians and (where applicable) cyclists.
- The reason given for condition 17 is: To ensure the development provides for a satisfactory form of design, and to ensure a satisfactory form of pedestrian and cycle access within the site.
- Condition 18 states: Notwithstanding the submitted plans, nor Conditions 2 and 17 above, unless the development is carried out in accordance with a scheme first submitted to and agreed in writing by the Local Planning Authority in respect of

Condition 10 of reserved matters approval ref. 18/00827/REMM, no work in respect of the proposed pedestrian bridge adjacent to Plot 72 shall take place until such time as precise details of the structure (and including its materials of construction and details of its proposed maintenance) have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

- The reason given for the condition 18 is: To ensure the development provides for a satisfactory form of design, in the interests of amenity, to prevent flooding, and to ensure a satisfactory form of pedestrian access within the site.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 61 dwellings (amended scheme to Plots 72-78, 93-128 and 134-146) at Former site of Arla Dairies, Smisby Road, Ashby De La Zouch, Leicestershire LE65 2UF, in accordance with the application ref 22/01052/VCIM, dated 12 July 2022, without compliance with conditions 2, 17 and 18 previously imposed on planning permission 20/00807/FULM, dated 15 October 2021, and subject to the conditions set out in the attached schedule.

Background and Preliminary Matters

2. Outline planning permission ref 18/01353/VCUM was granted for the erection of up to 153 dwellings in October 2018. Reserved matters consent ref 18/00827/REMM was subsequently granted for 153 dwellings in December 2018. A separate full planning permission ref 20/00807/FULM, relating to an amended scheme for plots 72-78, 93-128 and 134-146 (61 dwellings in total), was granted in October 2021. The development of the site is well underway with many of the dwellings already being completed and occupied on both phases one and two.
3. The appeal seeks permission to complete the development without complying with conditions that relate to the provision of a pedestrian footbridge over a watercourse. Similar conditions were included on the reserved matters consent ref 18/00827/REMM, which are the subject of a separate appeal ref APP/G2435/W/22/3313441.

Main Issue

4. The main issue is whether the conditions requiring the provision of a pedestrian footbridge over the watercourse are necessary to secure a satisfactory form of design with particular regard to pedestrian and cycle access within the site.

Reasons

5. The development comprises two phases which are divided by a watercourse, Gilwiskaw Brook, that runs through the middle of the site. Phase 1 is on the western side of the watercourse and phase 2 is to the east of it. A substantial crossing, which forms part of the main spine road and has wide footpaths on either side, has already been constructed over the watercourse. Footpaths have also been constructed along either side of the watercourse. These connect to the spine road and in turn to Smisby Road. The nearest bus stop is on Smisby Road, almost directly opposite the main entrance to the site. Whilst there is employment development and some further residential development to the north of the site the main town centre is to the south. A Public Right of Way

(PROW) runs along the southern and eastern boundaries of the site, providing a pedestrian connection between residential developments to the north and south of the development site. I understand that land to the east of the site is allocated for future development.

6. A design code, which was produced by the developer and approved by the Council in relation to a condition of the outline planning permission, and the original approved plans, show a pedestrian bridge over the watercourse, creating a shortcut between plots 71 and 72.
7. Without the footbridge, future occupiers of dwellings in the north east section of the development would be able to reach the main bridge on the main spine road via the footway that runs alongside the watercourse. This is the length of two plots (plots 96 and 120), which are dual aspect with main elevations fronting the path. At the time of my visit plot 120 and this section of the footway were completed, and I was able to see that this creates a short, safe, attractive and convenient route. The appellant's proposed addition of a tarmac finish would increase its long term durability and ensure its suitability for all potential users.
8. Likewise, occupiers of dwellings on the western side of the watercourse can safely and easily reach the main bridge to access the PROW and any future development to the east, along the footpaths to the front of plots 39-42.
9. The Council do not dispute the extra walking distance and time calculations provided by the appellant. From my observations on site, I also have no reason to disagree. Although one of the alternative routes would be almost double the time it would be if the bridge was provided, the additional time increase would still be less than two minutes. As such, whilst I acknowledge the importance of pedestrian and cycle desire lines, particularly in larger estates, in this case the removal of the footbridge requirement would result in a negligible increase in distance and time to access routes and destinations on either side of the estate. As such it would not deter residents from walking or cycling and would not be detrimental to their health and well-being.
10. The development would continue to be well designed, well connected and easy to get around by foot and on cycle and would not therefore encourage people to use their cars. The bridge removal would also not detract from the value of the watercourse as a central area of public open space, given that walkways would remain present on either side of it. The overall design quality of the development would not therefore be materially diminished.
11. I therefore conclude that the conditions requiring the provision of a pedestrian footbridge are not necessary to secure a satisfactory form of design with particular regard to pedestrian and cycle access within the site, and therefore fail the policy tests for conditions. The removal and variation of conditions requiring the provision of a pedestrian footbridge over the watercourse would not conflict with Policy D1 of the North West Leicestershire Local Plan (March 2021) or Policy T4 of the Ashby De La Zouch Neighbourhood Plan 2011-2031, which require amongst other things that new residential developments are well designed, perform positively against Building for Life 12 and encourage new and/or enhanced footpaths and cycleways.
12. I also find no conflict with the Council's adopted Good Design for North West Leicestershire Supplementary Planning Document Building for new

development or Paragraphs 92, 130, 134 and 135 of the National Planning Policy Framework.

Other Matters

13. As the planning obligation attached to the full planning permission contained a clause, binding it to any future Section 73 applications relating to the approved development, I am satisfied that allowing the appeal would not prejudice this.

Conditions

14. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has already commenced and is already partially occupied, the Appellant and Council have agreed a revised list of conditions that they consider remain relevant. In the event that some of these have in fact already been discharged, that is a matter which can be addressed by the parties. I have however amended the wording of some conditions to reflect the fact that commencement and occupancy have already occurred.
15. As the development has already commenced, a time limit condition is unnecessary. The application documents submitted with the appeal included only two drawings, Drawing No P19-2816_30 REV: I, which shows the pedestrian bridge removed but outlines the whole of the site in red, as opposed to only the 61 dwellings to which this permission relates; and drawing No P19-2816_01 REV: AA, which includes the pedestrian bridge but outlines the correct site area. I have therefore reimposed the original list of approved drawings and have added a note confirming that this excludes the pedestrian bridge, for the avoidance of doubt.
16. Conditions 2 and 3 are necessary in the interests of satisfactory drainage. Conditions to deal with any potential contamination are necessary to ensure the land is fit for purpose and to prevent pollution. Conditions relating to habitat management, landscaping and external lighting are necessary in the interests of nature conservation and ensuring a high standard of design and amenity. Conditions relating to floor levels, materials, surfacing, means of enclosure, bin storage, street furniture, retaining structures and spaces adjacent to public footways are necessary to ensure a satisfactory end appearance and to achieve safe places with natural surveillance. As the materials plan is covered by condition 1, I have not repeated this elsewhere.
17. Conditions to ensure the delivery of the approved footways, cycleways, vehicular accesses, parking spaces and visibility splays, together with the implementation of an approved travel plan, are necessary to ensure future occupiers of the development have safe and satisfactory travel options. This includes a new condition (13) to ensure the delivery of the upgraded footway adjacent to plots 96 and 120, which is necessary in lieu of the footbridge to ensure a high quality and well-maintained footway link to the main bridge is available at all times. Wheel washing during construction is also necessary in the interests of highway safety.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed.

R Bartlett

INSPECTOR

Schedule of Conditions

1. The development shall be carried out strictly in accordance with the following plans, unless otherwise required by a condition of this permission:
 - Site location plan (P19-2816_15 Rev B)
 - Materials plan (P19-2816_12 Rev F)
 - Enclosures plan (P19-2816_13 Rev F)
 - Enclosure details (P19-2816_19 Rev A)
 - House type pack (P19-2816_200E)
 - Site layout (P19-2816_01 REV AC) (excluding the pedestrian footbridge)
2. Within 3 months of the date of this decision, a scheme shall be submitted to the local planning authority for approval, detailing the protection of the Gilwiskaw Brook during and following construction works. The scheme shall include the following elements:
 - a) A construction management plan showing how the brook will be protected during the remainder of the construction works and details for dealing with surface water during heavy rainfall / flooding events. The construction management plan should also include, but not be limited to, a scheme to treat and remove suspended solids from surface water run-off during all construction works;
 - b) A biodiversity and ecological management plan from construction through to management of the area after completion, with a habitat management calendar to ensure that the site is managed for wildlife;
 - c) A landscape management plan including details of the SUDs systems, detailing an agreement of who will be responsible for the biodiversity and ecological management plan upon completion of construction and continued monitoring of the water quality to ensure that water quality issues meet the targets necessary to prevent deterioration on the River Mease SAC.

The development and future management of the site shall be undertaken in accordance with the approved details.

3. Within 3 months of the date of this decision, a surface and foul water drainage scheme for the site, together with a timetable for its implementation and details in respect of its long-term management, shall be submitted in writing to the local planning authority for approval. The development shall be carried out and thereafter be maintained in accordance with the approved scheme and timetable.

4. Unless the development is implemented in accordance with details first submitted to and approved in writing by the local planning authority in respect of condition 11 of planning permission ref. 16/00275/OUTM or condition 11 of planning permission ref. 18/01353/VCUM, a remedial scheme and a verification plan shall be prepared and submitted to and approved in writing by the local planning authority, within 3 months of the date of this permission. The remedial scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination (Environment Agency 2004) and BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings; the verification plan shall be prepared in accordance with the requirements of:
- the evidence report on the Verification of Remediation of Land Contamination Report: SC030114/R1 (Environment Agency 2010);
 - CLR 11 Model Procedures for the Management of Land Contamination (Environment Agency 2004);
 - BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings; and
 - CIRIA C735, "Good practice on the testing and verification of protection systems for buildings against hazardous ground gases" CIRIA, 2014.

If, during the course of development, previously unidentified contamination is discovered, development shall cease on that part of the site, and it shall be reported in writing to the local planning authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and approved in writing by the local planning authority. The Risk Based Land Contamination Assessment shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS 8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs); and
- CLR 11 Model Procedures for the Management of Land Contamination (Environment Agency 2004).

Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity.

5. Within 3 months of the date of this decision, either (i) a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development, or part thereof, or (ii) a verification investigation undertaken in line with the agreed Verification Plan for any works outlined in the remedial scheme relevant to either the whole development or that part of the development, and the report showing the findings of the verification investigation, shall be submitted in writing for approval by the local planning authority. The verification investigation report shall:
- a) Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - b) Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;

- c) Contain Movement permits of all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
 - d) Contain test certificates of imported material to show that it is suitable for its proposed use;
 - e) Demonstrate the effectiveness of the approved remedial scheme; and
 - f) Include a statement signed by the developer or the approved agent, confirming that all the works specified in the Remediation Scheme have been completed.
6. Unless the development is implemented in accordance with details first submitted to and approved in writing by the local planning authority in respect of Condition 13 of planning permission ref. 16/00275/OUTM or Condition 13 of planning permission ref. 18/01353/VCUM, within 3 months of the date of this decision, precise details of all mitigation measures set out under Section 6 of the submitted Extended Phase 1 Habitat Survey (WYG, November 2014), together with a timetable for their implementation, shall be submitted in writing for approval by the local planning authority. Unless any alternative measures are first agreed in writing by the local planning authority, no development shall be undertaken at any time other than in strict accordance with the approved measures and timetable.
7. Within 3 months of the date of this decision, a scheme of vehicular, cycle and pedestrian access connecting the application site to land to the east of the site as shown hatched on the plan LPA/16/00275/OUTM attached to planning permission ref. 16/00275/OUTM shall be submitted in writing for approval by the local planning authority. The submitted scheme shall include details of:
- a) Proposed alterations to roads and plot layout required to accommodate the works;
 - b) Proposed treatment of / alterations to public right of way O80;
 - c) A strategy to demonstrate its future maintenance; and
 - d) A timetable for its provision.
- This scheme shall be completed in accordance with the approved details and timetable and thereafter maintained at all times.
8. The Travel Plan approved pursuant to Condition 9 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 22/00716/DIS shall be adhered to at all times.
9. Unless the development is undertaken in accordance with an alternative construction vehicle management plan (including wheel cleansing facilities and construction vehicle parking facilities, and a timetable for their provision) first submitted to and approved in writing by the local planning authority, no development shall be undertaken at any time other than in accordance with the details and timetable approved in writing by the local planning authority on 3 April 2018 in respect of Condition 23 of planning permission ref. 16/00275/OUTM.
10. Within 3 months of the date of this decision a landscaping scheme, together with a timetable for its implementation and a strategy for its long-term management and details of root protection for all trees to be planted within or adjacent to any existing or proposed public highway, shall be submitted in writing for approval by the local planning authority. The landscaping shall be

- implemented in accordance with the approved scheme and timetable and shall thereafter be maintained in accordance with the management strategy.
11. Any tree or shrub which may die, be removed or become seriously damaged shall be replaced in accordance with the approved landscaping scheme (or any alternative scheme first agreed in writing by the local planning authority) in the first available planting season thereafter.
 12. The development hereby permitted shall be carried out in accordance with the details of hard surfacing (including timetable for implementation) approved pursuant to Condition 13 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 21/02091/DIS.
 13. Notwithstanding condition 12, or any previously approved hard surfacing details, within 3 months of the date of this decision, details of the upgraded surfacing of the footway adjacent to the watercourse and plots 96 and 120, including a timetable for implementation, shall be submitted in writing for approval by the local planning authority. The upgrading works shall be completed in accordance with the approved details and shall thereafter be maintained and retained as such.
 14. None of the individual dwellings hereby permitted shall be occupied until such time as all of the proposed means of enclosure within or adjacent to the relevant plot as shown on drawing nos. P19-2816_13 Rev F and P19-2816_19 Rev A, have been implemented in full. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no gates, fences, walls or other means of enclosure (other than any approved shown on drawing nos. P19-2816_13 Rev F and P19-2816_19 Rev A or as a replacement of such in the same location, constructed in the same materials, and at a height not exceeding that which it replaces) shall be erected adjacent to any public footway or highway, unless planning permission has first been approved by the local planning authority.
 15. The development hereby permitted shall be carried out in accordance with the details of proposed ground and floor levels approved pursuant to Condition 16 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 21/02091/DIS.
 16. Within 3 months of the date of this decision, a timetable for the implementation of the pedestrian / cycle links shown on the approved site layout plan shall be submitted in writing for approval by the local planning authority. The development shall be carried out in accordance with the approved timetable (and, once provided, shall thereafter be so maintained) such that unfettered pedestrian and (where applicable) cycle access along all relevant routes is available at all times for all pedestrians and (where applicable) cyclists.
 17. No work in respect of the erection of any dwellings to Plot nos. 93-95, 110, or 140-144 (inclusive) shall be carried out until such time as a detailed scheme of pedestrian accessibility between the eastern boundary of the site and public right of way O80 (including details of hard surfacing, gates, means of

enclosure, details of the treatment of any changes in levels and a timetable for its implementation) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and timetable.

18. No individual dwelling shall be occupied until such time as its associated car parking provision (including garage space(s) where applicable) has been provided in full in accordance with the details shown on the approved plans and once provided, shall not be obstructed and shall thereafter be so maintained.
19. The development hereby permitted shall be carried out in accordance with the details of external lighting (including timetable for implementation) approved pursuant to Condition 21 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 22/01231/DIS.
20. Unless any alteration is first agreed in writing by the local planning authority, all rainwater goods and utility boxes to individual units shall be finished in black.
21. The development hereby permitted shall be carried out in accordance with the details of windows and doors approved pursuant to Condition 23 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 21/02091/DIS.
22. The development hereby permitted shall be carried out in accordance with the details of chimneys, eaves, verges and timber boarding approved pursuant to Condition 24 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 21/02091/DIS.
23. None of the individual dwellings shall be occupied at any time unless the scheme of bin / recycling storage serving that dwelling has been implemented and is available for use in accordance with the details of bin / recycling storage approved pursuant to Condition 25 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 22/00716/DIS.
24. No street name plates shall be erected / displayed on the site other than in accordance with the details approved pursuant to Condition 26 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 21/01231/DIS.
25. No retaining walls / structures shall be erected unless in accordance with precise details of their external materials of construction first submitted to and approved in writing by the local planning authority.
26. No individual dwelling hereby permitted shall be occupied until such time as one metre by one metre pedestrian visibility splays have been provided on the highway boundary on both sides of the access serving the relevant dwelling with nothing within those splays higher than 0.6 metres above the level of the adjacent footway / verge / highway. Once provided, the relevant splays shall thereafter be so maintained.

27. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on the approved layout plan have been implemented in full.
28. None of the dwellings hereby permitted shall be occupied at any time other than in accordance with the approved strategy (including timetable) for the provision of unfettered public pedestrian, cycle and vehicular access approved pursuant to Condition 30 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 22/00716/DIS.
29. None of the individual dwellings hereby approved shall be occupied until such time as all side elevation / parking surveillance windows as shown on the relevant plot's approved elevations have been installed.
30. None of the individual dwellings hereby approved shall be occupied until such time as residents of the relevant dwellings have been provided with a Waste Minimisation and Recycling Pack in accordance with details approved pursuant to Condition 32 of planning permission ref. 20/00807/FULM under discharge of condition application ref. 22/00716/DIS.
31. None of the dwellings on Plots 142 to 146 (inclusive) shall be occupied until such time as a detailed scheme for the treatment of the interface between those plots and public right of way O80 has been implemented in full in accordance with details first submitted to and approved in writing by the local planning authority. Once provided, the approved scheme shall thereafter be so maintained.

End of Schedule