



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/22/3313441

**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 22/01165/VCIM, dated 11 July 2022, was refused by notice dated 30 September 2022.
- The application sought reserved matters consent for the erection of 153 dwellings, with associated car parking, landscaping, open space and access roads (reserved matters to outline planning permission reference 18/1353/VCUM) without complying with conditions attached to planning permission Ref 18/00827/REMM, dated 19 December 2018.
- The conditions in dispute are Nos 2, 9 and 10.
- 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 approval:
 - Site layout (P17-2355_01 Rev X) deposited with the Local Planning Authority on 29 November 2018
 - Street scene (P17-2355_06 Sheet No. 01 Rev J) deposited with the Local Planning Authority on 29 November 2018
 - Building and surface materials plan (P17-2355_12 Rev H) deposited with the Local Planning Authority on 29 November 2018
 - Enclosures plan (P17-2355_13 Rev H) deposited with the Local Planning Authority on 29 November 2018
 - Affordable tenure plan (P17-2355_14 Rev H) deposited with the Local Planning Authority on 29 November 2018
 - Site location plan (P17-2355_15 Rev I) deposited with the Local Planning Authority on 29 November 2018
 - Building heights plan (P17-2355_16 Rev H) deposited with the Local Planning Authority on 29 November 2018
 - Adoption plan (P17-2355_17 Rev H) deposited with the Local Planning Authority on 29 November 2018
 - Parking and cycle storage plan (P17-2355_18 Rev H) deposited with the Local Planning Authority on 29 November 2018
 - Enclosure and storage details (P17-2355_19 Rev C) deposited with the Local Planning Authority on 29 November 2018
 - Indicative masterplan (P17-2355_20 Sheet No. 01 Rev D) deposited with the Local Planning Authority on 29 November 2018
 - Landscape strategy plan (6524/LS/ASP1.0 Rev K) deposited with the Local Planning Authority on 29 November 2018
 - Proposed adoptable highway (125041/1000 Rev T2) deposited with the Local Planning Authority on 29 November 2018

- Proposed levels (125041/1005 Rev T5 and 125041/1012 Rev D) deposited with the Local Planning Authority on 29 November 2018
 - Boundary relationship sections (unnumbered) deposited with the Local Planning Authority on 29 November 2018
 - Proposed watercourse layout and details (125041/2005 Rev T6) deposited with the Local Planning Authority on 29 November 2018
 - Elevations and floor plans of proposed houses, apartments, bin stores and garages as included within the house type pack (P17-2355 - 5 December 2018) deposited with the Local Planning Authority on 5 December 2018.
 - The reason given for condition 2 is: To determine the scope of this approval.
 - Condition 9 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 drawing no. P17-2355_01 Rev X (and including the proposed pedestrian bridge adjacent to Plots 71 and 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 9 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 10 states: Notwithstanding the submitted plans, nor Conditions 2 and 9 above, no work in respect of the proposed pedestrian bridge adjacent to Plots 71 and 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 condition 10 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.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 153 dwellings, with associated car parking, landscaping, open space and access roads at Former site of Arla Dairies, Smisby Road, Ashby De La Zouch, Leicestershire LE65 2UF, in accordance with the application ref 22/01165/VCIM dated 11 July 2022, without compliance with conditions 2, 9 and 10 previously imposed on reserved matters consent ref 18/00827/REMM dated 19 December 2018, 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. 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 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). Those conditions are the subject of a linked appeal ref APP/G2435/W/22/3313435.

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. 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.

Conditions

13. 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.
14. As the development has already commenced, a time limit condition is unnecessary. The application documents submitted with the appeal included only one drawing, Drawing No P19-2816_30 REV: I, which shows the pedestrian bridge removed but which I am advised also shows other alterations to the layout and house types to those that were originally granted reserved matters consent. 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. The remaining conditions have been re-imposed for the original reasons.
15. I have also included an additional condition to ensure the delivery of the upgraded footway along the eastern side of the watercourse, 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.

Conclusion

16. 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 conditions set out in outline planning permission 18/01353/VCUM except as may be modified herein.
2. The development shall be carried out strictly in accordance with the following plans, unless otherwise required by a condition of this permission:
 - Site layout (P17-2355_01 Rev X) (excluding the pedestrian footbridge)
 - Street scene (P17-2355_06 Sheet No. 01 Rev J)
 - Building and surface materials plan (P17-2355_12 Rev H)
 - Enclosures plan (P17-2355_13 Rev H)
 - Affordable tenure plan (P17-2355_14 Rev H)
 - Site location plan (P17-2355_15 Rev I)
 - Building heights plan (P17-2355_16 Rev H)
 - Adoption plan (P17-2355_17 Rev H)
 - Parking and cycle storage plan (P17-2355_18 Rev H)
 - Enclosure and storage details (P17-2355_19 Rev C)
 - Indicative masterplan (P17-2355_20 Sheet No. 01 Rev D)
 - Landscape strategy plan (6524/LS/ASP1.0 Rev K)
 - Proposed adoptable highway (125041/1000 Rev T2)
 - Proposed levels (125041/1005 Rev T5 and 125041/1012 Rev D)
 - Boundary relationship sections (unnumbered)
 - Proposed watercourse layout and details (125041/2005 Rev T6)
 - Elevations and floor plans of proposed houses, apartments, bin stores and garages as included within the house type pack (P17-2355 - 5 December 2018).
3. Unless the development hereby approved is undertaken and thereafter maintained in accordance with a scheme first submitted to and agreed in writing by the Local Planning Authority pursuant to Condition 3 of reserved matters approval ref. 18/00827/REMM, within 3 months of the date of this permission 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.
4. 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.
5. Unless the development hereby approved is undertaken in accordance with a scheme first submitted to and agreed in writing by the Local Planning Authority pursuant to Condition 5 of reserved matters approval ref. 18/00827/REMM, within 3 months of the date of this decision a scheme of materials to be used in the construction of all hard surfaces (including all access roads, footways, pedestrian routes, bin storage and collection points, drives and parking / manoeuvring areas (and including marking out of parking

- areas)), together with a timetable for its implementation, shall be submitted in writing for approval by the Local Planning Authority. The development shall be carried out in accordance with the approved details and timetable.
6. Unless the development is carried out in accordance with an alternative scheme of external materials to be used in the construction of the buildings first submitted to and agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the details of wall and roof materials shown on either:
 - (i) Drawing no. P17-2355_12 Rev H; or
 - (ii) Drawing no. P17-2355_12 Rev H (in respect of Plot nos. 1 to 78, and 93 to 153 inclusive) and drawing no. P17-2355_12 Rev M (in respect of Plot nos. 79 to 92 inclusive) submitted in respect of application ref. 22/00680/VCIM.
 7. Unless the development hereby approved is undertaken and thereafter occupied in accordance with a scheme first submitted to and agreed in writing by the Local Planning Authority pursuant to Condition 7 of reserved matters approval ref. 18/00827/REMM, within 3 months of the date of this decision a detailed scheme for all boundary treatments within and surrounding the site, together with a timetable for their provision, shall be submitted in writing for approval by the Local Planning Authority. The development shall be carried out in accordance with the approved details. 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) no gates, fences, walls or other means of enclosure (other than any approved pursuant to this condition or reserved matters approval ref. 18/00827/REMM, or as a replacement of such in the same location, of the same type, 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 granted by the local planning authority.
 8. The development shall be carried out in accordance with the details of finished floor and external site levels shown on drawing nos. 125041/1005 Rev T5, 125041/1012 Rev D and 125041/2005 Rev T6, and as shown on the submitted boundary relationship sections drawing.
 9. Unless the development hereby approved is undertaken in accordance with a timetable for the implementation of pedestrian / cycle links first submitted to and agreed in writing by the Local Planning Authority pursuant to Condition 9 of reserved matters approval ref. 18/00827/REMM, within 3 months of the date of this decision a timetable for implementation of the pedestrian / cycle links shown on drawing no. P17-2355_01 Rev X (other than the pedestrian bridge adjacent to Plots 71 and 72) 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 thereafter available at all times for all pedestrians and (where applicable) cyclists.
 10. 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.
11. The development hereby approved shall be undertaken and thereafter managed / maintained in accordance with the external lighting scheme (including timetable) approved by the Local Planning Authority on 30 October 2019 pursuant to Condition 13 of reserved matters approval ref. 18/00827/REMM.
 12. 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.
 13. Unless the development hereby approved is undertaken in accordance with details for the relevant dwelling first submitted to and approved in writing by the Local Planning Authority pursuant to Condition 15 of reserved matters approval ref. 18/00827/REMM, no work shall take place above finished floor level in respect of the erection of any individual dwelling until such time as precise details of all windows and doors to that dwelling (including window styles, headers, cills, porches and door surrounds, as well as doors to any garage serving that dwelling) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
 14. Unless the development hereby approved is undertaken in accordance with details for the relevant dwelling first submitted to and agreed in writing by the Local Planning Authority pursuant to Condition 16 of reserved matters approval ref. 18/00827/REMM, no work shall take place above finished floor level in respect of the erection of any individual dwelling until such time as precise details of all chimneys, eaves, verges and any timber boarding for that dwelling have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
 15. No dwelling shall be occupied unless a scheme of bin / recycling storage serving that dwelling has been implemented and is available for use in accordance with a scheme first submitted to and agreed in writing by the Local Planning Authority.
 16. None of the apartments to Plots 51-59 (inclusive) or to Plots 85-92 (inclusive) shall be occupied at any time unless the bin and cycle stores shown on the approved drawings have been provided in full and are available for such use by occupiers of those plots.
 17. None of the dwellings to Plots 61, 62, 69, 70, 80, 83, 95, 132 and 152 shall be occupied at any time unless the bin stores shown to the front elevations of the relevant dwelling as detailed in the approved house type pack and on drawing no. P17-2355_19 Rev C have been provided in full and are available for such use by occupiers of those plots.
 18. None of the individual dwellings to Plot nos. 12-17, 19-24, 51-59, 82-92, 129-137 or 152-153 (inclusive) shall be occupied unless the bin / recycling

collection point serving the relevant dwelling has been implemented and is available for use in accordance with the approved drawings.

19. No street name plates shall be erected / displayed on the site other than in accordance with details approved by the Local Planning Authority on 14 October 2019 pursuant to Condition 22 of reserved matters approval ref. 18/00827/REMM.
20. Unless erected in accordance with details first submitted to and approved in writing by the Local Planning Authority pursuant to Condition 23 of reserved matters approval ref. 18/00827/REMM, 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.
21. Unless erected in accordance with details first submitted to and approved in writing by the Local Planning Authority pursuant to Condition 24 of reserved matters approval ref. 18/00827/REMM, no work shall commence in respect of the construction of any proposed substation until such time as precise details of the relevant structure (including its siting and materials of construction) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
22. Notwithstanding the provisions of Part 1 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) the dwelling to Plot 82 shall not be enlarged, improved or altered, nor shall any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse be provided unless planning permission has first been granted by the Local Planning Authority.
23. No windows shall be inserted at first floor level to the south elevation of Plot 13 or the east elevation of Plot 14 unless the windows are glazed with obscure glass to Pilkington Standard 3 (or its equivalent) and hung in accordance with details of their means and direction of opening first submitted to and approved in writing by the Local Planning Authority.
24. 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.
25. No site works of any description shall take place on any part of the site falling within 20 metres of its north western corner at any time unless the existing tree located adjacent to that corner is securely fenced off in accordance with a detailed scheme for its protection approved by the Local Planning Authority on 20 March 2019 pursuant to Condition 28 of reserved matters approval ref. 18/00827/REMM. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any

materials and any service trenches shall be dug and back-filled by hand, unless any alteration is first agreed in writing by the Local Planning Authority.

26. Plots 85 to 92 (inclusive) shall not be occupied at any time other than in accordance with a scheme of maximum occupancy of those dwellings (including mechanisms for ongoing monitoring and compliance by the relevant Registered Provider) approved pursuant to Condition 29 of reserved matters approval ref. 20/00807/FULM under discharge of condition application ref. 19/02454/DIS.
27. The development hereby approved shall be undertaken and thereafter managed / maintained in accordance with the scheme of rear access to Nos. 3 to 27 (odds) Northfields (including timetable) approved by the Local Planning Authority on 30 October 2019 pursuant to Condition 30 of reserved matters approval ref. 18/00827/REMM.
28. Unless the development is undertaken in accordance with details first submitted to and approved in writing by the Local Planning Authority pursuant to Condition 31 of reserved matters approval ref. 18/00827/REMM, none of the dwellings hereby permitted shall be occupied until such time as a strategy for the provision of unfettered public pedestrian, cycle and vehicular access (as appropriate) within those areas hatched in green on drawing no. 125041/1000 Rev T2, and including a timetable for its implementation has been submitted to and approved in writing by the Local Planning Authority. None of the dwellings hereby permitted shall be occupied at any time other than in accordance with the approved strategy and timetable.
29. Notwithstanding any previously approved hard surfacing details, within 3 months of the date of this decision, details of the upgraded surfacing of the footway on the eastern side of the watercourse and to the north of the main access road, 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.

End of Schedule