



Appeal Decision

Site visit made on 15 August 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2023

Appeal Ref: APP/T2405/W/23/3318532

43 New Street, Blaby, Leicestershire LE8 4GT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Perry against the decision of Blaby District Council.
 - The application Ref 22/0464/FUL, dated 6 May 2022, was refused by notice dated 25 November 2022.
 - The development proposed is the erection of 12 dwellings with associated vehicular access, parking and landscaping and drainage including demolition of 43 New Street, Blaby.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 12 dwellings with associated vehicular access, parking and landscaping and drainage including demolition of 43 New Street, Blaby at 43 New Street, Blaby, Leicestershire LE8 4GT in accordance with the terms of the application Ref 22/0464/FUL, dated 6 May 2022, subject to the conditions set out in the Schedule at the end of this decision.

Application for Costs

2. An application for costs was made by Mr Perry against Blaby District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Various descriptions of the development have been given on the planning application and appeal documents. The application which has led to this appeal was originally for 15 dwellings, but this was reduced to 12 dwellings as part of the application process. I have taken the description in the heading above from the Council's decision notice and the appeal form as these accurately reflect the proposal before me.
4. A signed and completed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 has been submitted including contributions towards civic amenity facilities, healthcare, libraries and off-site open space. In respect of those matters, the UU meets the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework), and I have proceeded to determine this appeal giving due consideration to those parts of the UU.

Main Issue

5. The main issue is whether the proposal would make suitable provision for the collection of household waste.

Reasons

6. The appeal proposal would be served by a shared private access. The Local Highway Authority (LHA) has concluded that whilst they are satisfied that there are no highway safety or parking implications, the proposed road layout would not conform to an acceptable standard and therefore it would not be considered for adoption and future maintenance by the LHA.
7. The unadopted nature of the proposed access route has in turn led to an objection from the Council's Neighbourhood Services as the Waste Collection Authority (WCA). The WCA's Waste Collection Guidance¹ requires householders to present their wheeled bins at the boundary of the public highway, and new development to be designed to be adopted as a public highway.
8. Due to the layout of the appeal proposal, the boundary with the adopted public highway would be the junction with New Street, and it would not be possible to provide a suitable presentation point for household waste adjacent to the adopted highway without impeding vehicular and pedestrian traffic.
9. The LHA has confirmed that the private access could be constructed to withstand the weight of a refuse vehicle and other larger wheel-based vehicles, although the matter of future maintenance would be unresolved. The LHA are also satisfied that the current refuse vehicles used by the WCA can enter, turn, and leave the site in a forward gear.
10. However, the concerns of the WCA in respect of the unadopted nature of the access remain. To a large degree, these concerns stem from the WCA's statutory duty to collect waste from rate payers under Section 45 of the Environmental Protection Act 1990 (the EPA). This Section states:
*45. It shall be the duty of each waste collection authority—
(a) to arrange for the collection of household waste in its area except waste—
(i) which is situated at a place which in the opinion of the authority is so isolated or inaccessible that the cost of collecting it would be unreasonably high, and
(ii) as to which the authority is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste.*
11. With regard to the cost of collection, the WCA refers to liability claims arising from damage to the roads and other private property. Reference is also made to the procurement of a bespoke vehicle which could lessen the risk of damaging the access road. The likelihood of this scenario is unclear, given that the LHA has concluded that the proposed access and the potential form of construction as recommended by the LHA is suitable for the existing fleet of waste collection vehicles.

¹ Waste Storage and Collection Guidance for New Developments, April 2021; and New Development Quick Reference Guide - Waste Storage and Collection.

12. However, I am mindful that the make-up of the vehicle fleet could change, and I consider that it is reasonable for the Waste Guidance and the approach of the WCA to allow for such changes. It may therefore be the case that a future vehicle fleet would not be able to safely access the development, and that this would result in unreasonable costs being placed on the WCA to address the constraints of the appeal proposal.
13. The appellant contends that a determination as to whether the exceptions of S.45 of the EPA provide the WCA with a justification to refuse to collect waste is not within my jurisdiction. Indeed, it may be for the Courts to determine whether the WCA can be compelled to collect household waste from the appeal proposal. However, in the absence of such a decision from the Courts, there remains a reasonable possibility that the WCA could refuse to collect waste from the site due to its inaccessibility by its existing or future vehicle fleet and the associated costs, including potential costs. I have had regard to that possibility as a material consideration in my decision, and taken by itself this may result in residents of the proposal not being provided with adequate waste disposal facilities.
14. However, even if I was to conclude that the WCA may refuse to collect waste under S.45(a)(i) of the EPA, then S.45(a)(ii) refers to adequate arrangements for waste disposal being made. In this respect the appellant has provided a UU as part of the appeal process which requires the signatory to have a private waste collection service. The use of a private waste collection service for a suburban development of this nature is unusual, but it is not inherently unfeasible or unacceptable in planning terms.
15. The Council and the WCA have expressed concern about the effectiveness of the UU in perpetuity. However, the obligations of the UU would remain in place in perpetuity and the Council would be able to enforce against them on that basis. Successors in title to the appellant would be bound by the UU, and this would also be the case when plots are re-sold individually in the future. The obligations would remain in place even if individual property owners indicated a preference for waste to be collected by the WCA.
16. Reference is also made to the potential that the appointed waste management company could go into liquidation. However, the UU includes a funding arrangement over the lifetime of the development, including the imposition of a service charge. The appellant emphasises that the company would be a non-profit organisation owned by the future homeowners and financed by a service charge. These provisions should provide sufficient confidence and certainty that the private waste collection scheme would endure. Furthermore, even if the management company was liquidated, the UU requires the waste collection measures to be retained in perpetuity. The responsibility for this would remain with the individual householders, and it has not been demonstrated that the liability for waste collection would revert to the Council.
17. The Council's Statement of Case raises a number of other issues in relation to the UU. However, this was based on a draft document, and the completed UU has addressed matters such as the timescale for the submission and approval of a Waste Collection Scheme. The reference to enforcement within the completed UU is appropriate as this gives the Council the power to ensure compliance with the provisions of the UU, rather than representing an unacceptable imposition of an obligation on the Council. Reference to

indemnities within the UU is also appropriate, as this gives the Council or other body a degree of protection when performing their statutory duties.

18. The Council's Waste Guidance states that the Council will not support or allow the deferment of its statutory duty to collect household waste to a separate management company or contractor. However, this is only guidance and is not part of the adopted development plan. It is not a determinative matter in my consideration of this appeal. Given the particular circumstances of this site with regards to planning matters, I consider that the issue of the collection of household waste is satisfactorily addressed by the UU and that on this issue the UU meets the tests set out in paragraph 57 of the Framework.
19. I therefore conclude on the basis of the evidence before me, including the UU, that the proposal would make suitable provision for the collection of household waste. The proposal would therefore comply with Policies CS2 and CS10 of the Core Strategy² and Policy DM1 of the Delivery Plan³ in respect of the design of new development and transport infrastructure. The proposal would also comply with the Framework with regards to achieving well-designed places, promoting healthy and safe communities, and promoting sustainable transport.
20. The Council refers to Policy BNP1 of the Blaby Neighbourhood Plan 2018 in its reason for refusal, but this is not relevant to this main issue as the policy relates to matters of character and a sense of place rather than design and infrastructure.

Other Matters

21. I have had regard to the comments raised locally in respect of the proposal. With regards to access to the site, based on what I have seen and read the local highway network would be sufficient to cope with the extra traffic movements arising from the proposed development. The proposal also includes suitable off-road parking provision and do not include a through road leading to nearby commercial units. The highways consultee has not objected to the principle of the proposal, subject to the access not being to an adoptable standard.
22. The mix of housing is also appropriate for this area and I note that the Council accepts that the proposed mix meets the housing needs of the district. In respect of climate change, it has not been demonstrated that issues such as heat pumps, electric car charging points and solar panels are required to ensure compliance with local and national planning policy.
23. There would be some disturbance during construction, but this would be for a temporary period and potentially harmful effects can be suitably controlled by condition. The degree of noise and air pollution arising from the completed development would also not be out of character with nearby residential uses.
24. The layout of the development is such that this would not lead to unacceptable harm to the outlook, privacy, light and access requirements of nearby residents and recreational facilities. Matters including means of enclosure and obscured glazing can be addressed by condition. The effect on trees and planting within the site can also be suitably controlled by condition.

² Local Plan (Core Strategy) Development Plan Document 2013

³ Local Plan (Delivery) Development Plan Document 2019

25. There is no substantive evidence before me that services in the area are inadequate for the increase in demand that may arise from the proposal.

Conditions

26. The Council, consultees and appellant have made comments on a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. As a result, I have amended some of the conditions for clarity and accuracy.
27. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty. I have removed the reference to a historic site layout and location plan as this does not relate to the approved development.
28. A condition regarding the demolition of 43 New Street is required in the interests of the character and appearance of the area and the living conditions of nearby residents.
29. Conditions regarding details of materials and boundary treatment are required in the interests of character and appearance. A condition regarding waste and refuse collection is required in the interests of the amenity of future residents and highway safety.
30. Conditions requiring the submission of a soft landscaping scheme and an arboricultural method statement are required in the interests of character and appearance and biodiversity. These details should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations. Conditions in respect of the timing and implementation of the soft landscaping and future management are required in the interests of certainty, character and appearance, and biodiversity. An ecological enhancement strategy is required in the interests of biodiversity.
31. A condition regarding floor levels is required in the interests of the living conditions of nearby residents.
32. It is appropriate to require the submission of a construction method statement in the interests of the living conditions of residents, highway safety and drainage. I have also included conditions in respect of land contamination in the interests of public safety. Details in respect of these conditions should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
33. Conditions regarding noise mitigation and the use of obscure glazing are appropriate in the interests of the living conditions of residents.
34. Conditions in respect of drainage, including implementation and maintenance, are required to ensure that the site is properly drained and in the interests of highway safety. Details of surface water drainage should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.

35. Conditions in respect of the implementation and maintenance of the access road and parking areas are required in the interests of highway safety and the living conditions of residents. I have inserted a clause regarding the written approval of the Council regarding phasing to give some control and flexibility in respect of implementation.
36. Due to the extent of parking provision and the proximity of the site to nearby dwellings, the removal of national permitted development rights in respect of the use of garages and for extensions to a number of plots are clearly justified in the interests of highway safety and the living conditions of residents. A restriction on obstructions in the vicinity of the highway is required in the interests of highway safety.
37. The implementation of a programme of archaeological work is necessary in the interests of the historic environment. This should be undertaken at the pre-commencement stage as it relates to matters which need to be established before the commencement of building operations.

Conclusion

38. I conclude that the appeal should be allowed.

David Cross

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be built in strict accordance with the approved plans listed below:
 - Site Location Plan – Dr No – (04)10-01
 - Proposed Site Plan 01– Dr No – (04)12-01 - Rev J
 - Proposed Site Plan 02– Dr No – (04)12-02 - Rev J
 - Proposed Landscaping Plan– Dr No – (04)12-03 - Rev J
 - Proposed Refuse Collection Plan– Dr No – (04)12-04 - Rev J
 - House Type AV.1 - Plots 2,4,11 – Dr No – (04)13-01 Rev D
 - House Type AV.2 – Plot 10– Dr No – (04)13-02 Rev D
 - House Type B – Plot 9– Dr No – (04)13-03 Rev D
 - House Type C – Plot 1 – Dr No – (04)13-04 Rev D
 - House Type D – Plots 3,5,7 – Dr No – (04)13-05 Rev E
 - House Type E – Plot 12 – Dr No – (04)13-06 Rev D
 - House Type E Garage – Plot 12 – Dr No – (04)13-07 Rev D
 - House Type F – Plot 8 – Dr No – (04)13-08 Rev D
 - House Type Av.1 – Plot 11 – Dr No – (04)13-09 Rev B
 - House Type Av.3 – Plot 6 – Dr No – (04)13-10 Rev A
 - Proposed Site Elevations – Dr No – (04)14-01 Rev F
 - Works to No. 43 and 45 New Street – Dr No – (04)15-01 01 Rev A
 - Hard Landscaping Layout – Sheet 1 of 2 – Dr No – FW2021-C-011-01 Rev A1
 - Hard Landscaping Layout – Sheet 2 of 2 – Dr No – FW2021-C-011-02 Rev A1
 - Drainage Strategy – Sheet 1 of 2 – Dr No – FW2021-D-401-01 Rev A2
 - Drainage Strategy – Sheet 2 of 2 – Dr No – FW2021-D-401-02 Rev A2
- 3) No above ground development on any of the dwellings hereby approved (shown as plots 1-12 on the proposed site plans drawings – Dr No (04)12-01 - Rev J and (04)12-02 - Rev J) shall commence until such time as the existing dwelling at No 43 New Street has been demolished and the retained property (No 45 New Street) has been made good in strict accordance with the details shown in (04)15-01 01 Rev A.
- 4) No above ground construction shall take place until details of the materials to be used in the external elevations of the dwellings hereby approved have been submitted to and agreed in writing by the District Planning Authority. The development shall subsequently be carried out in accordance with the approved details.
- 5) Notwithstanding the submitted details, no above ground construction shall take place until boundary treatment details to be provided throughout the development have been submitted to and approved in writing by the District Planning Authority. The development shall subsequently be carried out in accordance with the approved details.
- 6) The development hereby approved shall be carried out in accordance with the Waste Collection Strategy as detailed in the approved plan entitled - Proposed Refuse Collection Plan– Dr No – (04)12-04 - Rev J. The Waste Collection Strategy shall subsequently be implemented and adhered to in perpetuity in accordance with the approved details.

- 7) Prior to commencement of the development hereby approved, a plan showing a detailed soft landscaping scheme shall be submitted to and agreed in writing by the District Planning Authority. The scheme shall include details of:
 - a) Any existing trees, shrubs, hedges, water bodies to be retained and measures of protection in the course of the development.
 - b) New tree and shrub planting. Including plant type, size, quantities and locations.
 - c) Other surface treatments.
 - d) Any changes in levels of contours.
 - e) The position of service and/or drainage runs (which may affect tree roots).
- 8) Within one year of completion of the development hereby approved, the soft landscaping scheme shall be implemented in strict accordance with the details as specified on the approved plans. If within a period of 5 years from the completion of the development any of the trees, hedges, shrubs or plants die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority gives written consent to any variation.
- 9) Prior to first occupation of any dwelling hereby approved, a Landscaping Management Plan (drafted by a competent professional and to include the management arrangements of all existing and proposed hedgerows, and the maintenance arrangements for all landscaped areas, landscape buffers, swales, balancing ponds, drainage features and new planting within the development) shall be submitted to and approved in writing by the District Planning Authority. The agreed Landscaping Management Plan shall subsequently be implemented and adhered to in accordance with the approved details.
- 10) No development shall take place until an Arboricultural Method Statement, including Tree Protection Plan, shall be submitted to and approved in writing by the District Planning Authority. The agreed Arboricultural Method Statement, including Tree Protection Plan, shall subsequently be implemented and adhered to in accordance with the approved details.
- 11) No above ground construction shall take place until an ecological enhancement strategy has been submitted to and approved in writing by the District Planning Authority. Any enhancement measures (such as integrated bird/bat boxes) need to be shown on all relevant submitted plans/elevations. All works are to proceed strictly in accordance with the approved scheme.
- 12) No above ground construction shall take place until details of the Finished Floor Levels throughout the development hereby approved have been submitted to and approved in writing by the District Planning Authority. The development shall be carried out in accordance with the approved details.
- 13) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the District Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a. Routing of construction traffic
- b. The parking of vehicles of site operatives and visitors.
- c. Loading and unloading of plant and materials.
- d. Site compound locations.
- e. Storage of plant and materials used in constructing the development.
- f. Measures to control the emission of dust and dirt during construction.
- g. Hours of operation – the details shall include the hours of construction and the Hours of loading/unloading of materials.
- h. Construction noise and vibration strategy.
- i. Piling strategy
- j. Wheel cleaning facilities
- k. Timetable for provision of facilities
- l. Management of surface water on site during construction

The approved Construction Method Statement shall be adhered to throughout the construction period of the development hereby approved.

- 14) Prior to commencement of development (with the exception of the demolition of 43 New Street) a Phase II ground investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
- a) a survey of the extent, scale and nature of contamination;
 - b) an assessment of the potential risks to:
 - i. human health;
 - ii. property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - iii. adjoining land;
 - iv. ground waters and surface waters;
 - v. ecological systems;
 - vi. archaeological sites and ancient monuments
 - vii. an appraisal of remedial options and proposal of the preferred option(s) and construction methods
 - viii. piling strategy.

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11".

- 15) 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 District Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the District Planning Authority for a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

- 16) The development hereby approved shall be carried out in strict accordance with the recommendations set out within the Existing Noise Climate And Noise Impact Assessment - Revision 2.
- 17) No development shall take place until such time as details of the disposal of surface water drainage have been submitted to and approved in writing by the District Planning Authority. The development shall subsequently be carried out in accordance with the agreed details.
- 18) No occupation of the development approved by this planning permission shall take place until such time as details in relation to the long-term maintenance and management of the surface water drainage system within the development have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage system shall then be maintained in accordance with these approved details in perpetuity.
- 19) Before the development hereby permitted is brought into use, drainage shall be provided within the site such that surface water does not drain into the public highway and thereafter shall be so maintained.
- 20) No above ground construction shall take place until the site access road, including visibility splays and internal road network shown on the approved plans has been implemented in full, unless otherwise agreed in writing with the Local Planning Authority. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
- 21) Prior to the occupation of any dwelling hereby approved, the parking and turning facilities and any private access drives for each dwelling, as detailed in the approved drawings, shall be provided and retained and be made available for such use in perpetuity.
- 22) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any subsequent re-enactment with or without modification), the car parking space indicated within the proposed garages serving plots 2,4,6,8,9,10,11 and 12 shall not be converted or put to any alternative use that would prevent it being available as a garage for the parking of a motor vehicle without prior permission of the District Planning Authority granted on an application submitted in that regard.
- 23) No vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 5 metres of the highway boundary.
- 24) All windows serving bathrooms, en-suites and w.c's shall be obscurely glazed and non-opening above 1.7m and shall remain so in perpetuity.
- 25) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any subsequent re-enactment with or without modification) no extensions, alterations or additions, or the provision of any additional building within its curtilage, shall be constructed within the plots 1, 9 and 12 without the prior permission of the District Planning Authority granted on an application submitted in that regard.

- 26) No demolition/development shall take place/commence (with the exception of the demolition of 43 New Street) until the necessary programme of archaeological work has been completed. The programme will commence with an initial phase of trial trenching to inform a final archaeological mitigation scheme. Each stage will be completed in accordance with a written scheme of investigation (WSI), which has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed mitigation WSI, which shall include the statement of significance and research objectives, and
- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
 - The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
- 27) The materials to be used in the external surfaces of the alterations to 45 New Street shall match those used in the existing building.

End of Schedule