



Appeal Decision

Site visit made on 22 August 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2023

Appeal Ref: APP/C1570/W/22/3311539

Land to the west of High Lane, Stansted CM24 8LQ

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Scott McArthur against the decision of Uttlesford District Council.
 - The application Ref UTT/21/2376/FUL, dated 21 July 2021, was refused by notice dated 3 October 2022.
 - The application sought planning permission for redevelopment of site to provide 35 no. dwellings with associated garages, drainage infrastructure, landscaping and parking including the creation of new vehicular access from High Lane and additional footpath access points from Cambridge Road and High Lane, without complying with a condition attached to planning permission Ref UTT/18/1993/FUL, dated 30 May 2019.
 - The condition in dispute is No 18 which states that: The pedestrian links, as indicated on drawing no. P18-0133_01 (Rev N) as Path 1, Path 2 and Path 3, shall be constructed to a minimum width of 2 metres.
 - The reason given for the condition is: In the interests of accessibility and in accordance with ULP Policy GEN1.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site to provide 35 no. dwellings with associated garages, drainage infrastructure, landscaping and parking including the creation of new vehicular access from High Lane and additional footpath access points from Cambridge Road and High Lane, without complying with condition 18 attached to planning permission Ref UTT/18/1993/FUL, dated 30 May 2019, on Land to the west of High Lane, Stansted CM24 8LQ, in accordance with the terms of the application, Ref UTT/21/2376/FUL, dated 21 July 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. As there was no post code on the application form, I have taken this from the appeal form. The new development has now been named King Charles Drive.
3. The redevelopment of the site is complete, and all of the new dwellings are occupied. The only exception to this is the provision of the pedestrian links referred to as Path 2 and Path 3 by the condition in dispute. However, the Council has conceded in an email dated 18th September 2023, that the condition in dispute is not enforceable and that the provision of these paths is not a requirement of the S106 Agreement.

4. The evidence before me shows that the development has been completed in accordance with planning permission ref UTT/18/1993/FUL, and that all necessary conditions and planning obligations have been discharged.

Main Issue

5. The reason given for the condition in dispute on the original decision notice was in the interests of accessibility and in accordance with Policy GEN1 of the Uttlesford Local Plan (2005) (the Local Plan). However, the reason for refusing to vary the condition was that the loss of 2 of the 4 approved pedestrian access points would reduce accessibility for occupiers of the development resulting in a poorly designed scheme, contrary to Policies GEN1 and GEN2 of the Local Plan.
6. The main issue is therefore the effect of varying or removing the condition in dispute on the pedestrian accessibility of the site and on the overall design of the development.

Reasons

7. Paragraph 56 of the National Planning Policy Framework (The Framework) and the Planning Practice Guidance (PPG) set out the relevant tests for conditions, which must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. All of these requirements must be met.
8. The condition in dispute, as currently worded, is neither precise nor enforceable. Whilst it requires the pedestrian links indicated on a specific drawing number to be constructed to a minimum width of 2 metres, it does not specify when the pedestrian links must be provided by or that they must be retained. I also note that whilst the approved drawing numbers have been listed at the beginning of the decision notice, there is no condition requiring the development to accord with these and the completion of a development in full, is not enforceable.
9. The Council has accepted that the condition as currently worded is not enforceable and that the construction of the Paths in question are not secured by the S106 Agreement. The pedestrian link that has been provided from the site, onto Cambridge Road, and the footpaths at the main entrance of the site joining High Lane, appear to be at least 2 metres wide. Consequently, no enforceable breach of condition appears to have occurred.
10. The appellant is seeking to vary the condition in dispute to read "*The pedestrian links, as indicated on drawing No. BRD/19/045/052 as Footpath 1 and Footpath 4, shall be constructed to a minimum width of 2 metres.*"
11. It was evident from my site visit that Footpaths 1 and 4 have already been constructed to a minimum width of 2 metres, in accordance with the originally approved drawings.
12. The site is bound by the B1351 High Lane to the east and by the B1383 Cambridge Road to the west. The principal vehicular and pedestrian access into the site is from High Lane. There is an additional pedestrian access, approximately midway along the western boundary of the site, that joins the footpath along Cambridge Road.

13. The site slopes uphill from north to south. Due to the site levels, there are steep embankments between the development and the unlit footways on either side of it. These embankments contain mature landscaping that is valuable in terms of screening and softening the appearance of the development. The Council's Landscape Officer has commented that the removal of the requirement for the footpath links would reduce the impact of the development on the landscaped boundaries of the site. The landscaping also provides ecological benefits and reduces road traffic noise and improves privacy and security for occupiers of the new houses.
14. With regard to the necessity of the condition, the development is relatively small and has pedestrian access links to footpaths along the main roads on either side of it. Although the two additional pedestrian links that have not been provided would have created shortcuts for occupiers of the development, these reduced distances would not be significant and would not deter people from walking. Moreover, given that these links, due to the significant differences in ground levels, would have had to be provided by steep steps, they would not have improved accessibility for those with mobility issues, pushchairs, wheelchairs or for cyclists.
15. The Local Highway Authority does not object to the loss of the footpaths and note that this would not preclude pedestrian access to and from the site. It previously advised that due to the constraints of the site these may not be achievable. Moreover, the Local Highway Authority would not be willing to adopt or maintain the pedestrian links in the event that they were provided. I have been referred to the Highway Authority response to the original application, dated 5 October 2018, in which the disputed condition was recommended. However, this does not reflect the more recent responses of the Highway Authority. I am also advised that the achievable gradients would not be compliant with Manual for Streets guidance and this has not been disputed.
16. Given the technical difficulties caused by the land levels, the condition also fails the test of reasonableness. Providing the links would require significant excavation works, the construction of retaining walls and would result in the loss of mature landscaping. This would result in an urban appearance that would detract from the character and appearance of this edge of settlement location.
17. For the reasons set out above, it is my view that the omission of Paths 2 and 3 would not unacceptably diminish the design quality or accessibility of the overall development. Consequently, the removal of condition 18, even if it had been enforceable, would not be contrary to Policies GEN1 or GEN2 of the Local Plan. These Policies require new development to be well designed taking account of the reasonable needs of all potential users, including the needs of people with disabilities and the need to encourage movement other than by car. There would also be no conflict with The Framework in so far as it relates to accessibility and the need for high quality design.
18. I have considered the variation of the condition suggested by the appellant, but this would also fail the relevant tests for conditions. Given that all pedestrian links necessary to make the development acceptable have been provided to an appropriate width and standard, a revised condition is not required.

Other Matters

19. Objections have been made to the pedestrian link referred to as Path 1, which has been constructed in accordance with the 2-metre minimum width requirement and as such is not in breach of the disputed condition. The objections relate to the wide footpath opening resulting in a loss of landscaping, loss of privacy, increased noise and increased security risks. However, as this footpath was approved as part of the original development and any minor alterations to it do not form part of the proposal before me to delete the requirement for Paths 2 and 3, I have not considered this matter further.
20. Whilst I have had regard to the history of the development site that has been drawn to my attention, this does not change my view that Paths 2 and 3 are unnecessary to make the development compliant with the relevant Development Plan Policies. Nor does it alter the fact that the existing condition is not enforceable and therefore dismissing this appeal would not facilitate the Council in taking any action. The condition of existing adopted pavements outside of the development site are the responsibility of the County Council.

Conditions

21. 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 is already complete and occupied, the Council has provided a revised list of conditions that it considers remain relevant due to their ongoing requirements.
22. I have therefore re-imposed the condition requiring the surface water drainage system to be maintained in accordance with the previously approved details to ensure the site is appropriately drained to reduce the risk of flooding. The retention of ecological enhancement measures and the retention (and replacement where necessary) of soft landscaping is necessary to ensure the appearance of the site reflects its edge of settlement location and to support local wildlife. The retention of obscure glazing is necessary in the interests of privacy, and the conditions to ensure visibility splays are kept free from obstruction and to prevent the use of unbound surfaces are necessary in the interests of highway safety.

Conclusion

23. For the reasons given above I conclude the appeal should succeed.

R Bartlett

INSPECTOR

Schedule of Conditions

- 1) The surface water drainage system shall be maintained in accordance with the maintenance plan details submitted to and discharged by the local planning authority under application ref UTT/19/2586/DOC, and yearly records of any maintenance undertaken shall be made available for inspection upon the request of the local planning authority.
- 2) All ecological mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Report sections 5 and 6 (Southern Ecological Solutions, July 2018) and the Badger Survey (Southern Ecological Solutions, August 2018) as submitted with the planning application ref UTT/18/1993/FUL. This includes bat sensitive lighting, planting which enhances the environment for bats, installation of bat boxes, due diligence regarding nesting birds, due diligence for hedgehogs when undertaking vegetation clearance, creation of hedgehog habitat, permeable boundaries for hedgehogs, retaining boundary trees and hedgerows, plantings to include grassland and fruiting trees to increase foraging for badgers. The enhancement measures shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.
- 3) Any soft landscaping which within a period of five years from the substantial completion of the development dies, is removed or becomes seriously damaged or diseased shall be replaced in the next planting season with other landscaping of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards.
- 4) First and second floor flank windows serving en-suites, landings, bathroom and dual secondary dual aspect windows shall be obscurely glazed with glass of obscuration level 4 or 5 of the range of glass manufactured by Pilkington plc at the date of this permission or of an equivalent standard. Glazing of that obscuration level shall thereafter be retained in those windows.
- 5) The visibility splays of the new vehicular access onto High Lane, with dimensions of 2.4 metres by 70 metres to the north and 2.4 metres by 133 metres to the south, as measured from and along the nearside edge of the carriageway, shall be retained free of any obstruction at all times.
- 6) The internal visibility splays as indicated on DWG no. P18- 0133_01 Rev N shall be retained free from any obstruction at all times.
- 7) No unbound material shall be used in the surface treatment of any vehicular access within 6 metres of the highway boundary.

End of Schedule