



Appeal Decision

Site visit made on 5 December 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/R1845/W/23/3320016

Land to rear 40 Wardle Way, Wolverley, Kidderminster

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Norgrove against the decision of Wyre Forest District Council.
 - The application Ref 22/0912/S73, dated 8 November 2022, was refused by notice dated 3 April 2023.
 - The application sought reserved matters for "Residential development for 1x3 bed single storey bungalow" without complying with conditions attached to reserved matters Ref 22/576/RES, dated 13 July 2022.
 - The condition in dispute is No.3.
 - Condition 3 states that: *The development hereby permitted shall not be first occupied until electric vehicle charging facilities have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.*
 - The reason given for condition 3 is: *To encourage sustainable travel and healthy communities.*
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Decision

1. The appeal is allowed and reserved matters is approved for residential development for 1x3 bed single storey bungalow at Land at rear of 40 Wardle Way, Wolverley, Kidderminster in accordance with the terms of the application 22/0912/S73 dated 8 November 2022 without complying with the un-numbered plans condition and condition 3, previously imposed on reserved matters reference 22/576/RES dated 13 July 2022 subject to the following conditions:
 - 1) The development hereby approved shall not be occupied until the access, parking and turning areas shown on the submitted plan drawing no. 4263-01 have been properly provided. This area thus formed shall thereafter be retained for the purposes of parking and turning only at all times.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan, 4263-01 and 4263-01G.

Preliminary Matters

2. The address above is taken from the application form. However, the Council has used Land at OS 381904 279513 Wardle Way, on the refusal notice as has the appellant on the appeal form.
3. On my visit I saw that the single storey bungalow had been built and that it looked to be substantially completed. The access, driveway and parking area

had been laid out and an Electric Vehicle (EV) charging point had been installed on the driveway. I saw that the property was 'For Sale' from the advertising board displayed at the end of the drive.

4. The application sought to vary two conditions, Nos. 1 and 3, with regards to changes to the internal layout of the dwelling from the approved plan and the provision of EV charging facilities respectively.
5. However, it is clear from the reserved matters approval notice that condition 1 does not relate to plans, but is a statement of fact relating to the reserved matters. However, there is an un-numbered condition relating to the approved plans. I have therefore proceeded on that basis.
6. The Council raises no concern with the internal changes to the dwelling that include enlarging the kitchen, removing the garage and installing a utility room. I have no reason to take a different view and there would be no conflict with Policy DM24 of the Wyre Forest Local Plan (the Local Plan) which requires high quality design.
7. As the Council's refusal notice relates to condition 3 (the EV charging facilities), I have confined my assessment to condition 3 only.
8. During the course of the appeal a revised National Planning Policy Framework (the Framework) was published on 5 September 2023 and replaces the previous version published in July 2021. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.

Main Issue

9. The appellant contends that condition 3 should not have been imposed on the reserved matters approval in the first instance and furthermore the Building Regulations cover the requirement to install EV charging facilities.
10. Hence the main issue is whether the disputed condition 3 is necessary and reasonable having regard to the reserved matters approval and in light of Building Regulations.

Reasons

11. Policy SP.16 of the Local Plan seeks to ensure that development minimises negative health impacts, including the impact of negative air quality and reducing people's exposure to poor air quality. Electric vehicles would be one means of reducing air pollution and hence the use and/or ownership of electric vehicles would help towards this. Local Plan Policy SP.37 goes further as it seeks to tackle renewable and low carbon energy. It requires, amongst other things, all new residential development to include EV charging points.
12. Any planning conditions that are imposed have to meet the statutory tests and be necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects as required by the Framework and the Planning Practice Guidance.
13. Planning permission is granted at the outline stage. A reserved matters application is by definition an application for the approval of matters pursuant

to the planning permission (the outline). For an approval of reserved matters conditions should only be imposed which directly relate to the matters being approved. Conditions relating to the permission or matters that fall outside the scope of the reserved matters should be imposed at the grant of outline permission stage.

14. A condition requiring the submission and approval of details and installation of approved EV charging facilities does not directly relate to any of the five reserved matters of access, appearance, landscaping, layout or scale, and thus goes beyond the scope of the reserved matters. Hence, condition 3 should have been imposed on the outline planning permission, not on the reserved matters.
15. Furthermore, at the time the reserved matters application was approved in September 2022 the government had already introduced changes to Building Regulations¹ and which were in force to deal expressly with the provision of EV charging facilities for new residential development.
16. It is a long-held principle that local planning authorities should not duplicate the function of other regulatory bodies or controls. The Framework reminds that planning decisions should assume these other controls and regimes will operate effectively. The amended Building Regulations require the provision of an EV charging facilities at the appeal site, and the appellant has provided evidence that the amended Building Regulations would apply in this instance.
17. The Council's reason for refusal goes further to state that condition 3 is necessary to ensure that the EV charging facilities are provided to the "correct specification" in line with the Council's adopted 'Streetscape Design Guide' (the Design Guide). This sets out various British Standards the charging infrastructure should adhere to and that residential charging points should be a minimum of 7kW.
18. The Council has not provided any substantive evidence to explain why the Building Regulations would not secure appropriate provision of an EV charging point and why the Design Guide specification should be adhered to over and above the Building Regulations. Nor has it brought to my attention any material differences between the requirements of the different documents that would render compliance with Building Regulations inadequate.
19. In the absence of evidence to the contrary I find that the amended Building Regulations would secure provision of an EV charging point, which has already been installed, and that condition 3 duplicates comprehensive controls set out in the amended Building Regulations brought in to deal specifically with the provision of EV charging facilities for residential development.
20. In conclusion, condition 3 goes beyond the scope of the reserved matters and should not have been imposed on the reserved matters approval. Furthermore, condition 3 duplicates the Building Regulations with regard to the provision and installation of EV charging facilities. Hence condition 3 is not necessary or reasonable.

¹ Document S "Infrastructure for the charging of electric vehicles" (February 2022) which came into effect from 15 June 2022

Conditions

21. The Planning Practice Guidance makes clear that decision notices for the grant of an application under Section 73 should also repeat the relevant conditions from the original permission, unless they have already been discharged. I have also considered the conditions against the advice in the Framework and Planning Practice Guidance.
22. I am not imposing condition 1 as it is advisory and does not meet the statutory tests.
23. I saw at my site visit that the work looks to have been completed on site. Whilst I saw that the access, driveway and turning area have already been formed, I am unsure it has been properly laid out in accordance with the plan 4263-01. Therefore I have retained condition 2 for certainty (but re-numbered it as condition 1).
24. Although I saw there was no garage, I was not able to see inside the dwelling to be sure the internal layout has been carried out in accordance as approved. Therefore, I have imposed a condition requiring that the bungalow be constructed in accordance with the revised and other plans for certainty. I have done this by using the previously unnumbered plans-condition (re-numbered as condition 2).

Conclusion

25. For the reasons set out above I conclude the appeal should be allowed.

K Stephens

INSPECTOR