



Appeal Decision

Site visit made on 8 January 2024

by P B Jarvis BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/U4610/D/23/3330496 25 Ten Shilling Drive, Coventry CV4 8GZ

- 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 Jatinder Johal against the decision of Coventry City Council.
 - The application Ref PL/2023/0000047/RVC, dated 9 January 2023, was refused by notice dated 3 April 2023.
 - The application sought planning permission for residential development at plots 1 and 2 Ten Shilling Drive without complying with a condition attached to planning permission Ref: R/2001/5249 granted on 28 March 2002.
 - The condition in dispute is condition No: 13 which states that: *"The existing reservation located adjacent to the eastern boundary of the site shall be retained at a width of 7 metres in full accordance with the details indicated on the approved plan No. SA-3B and shall not be removed or altered in any way without the prior written approval of the local planning authority."*
 - The reason for the condition is *"To ensure the satisfactory appearance of the footpath in accordance with policy AM8 of the 2001 Coventry Development Plan."*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of removing the condition on the appearance of the footpath within the reservation strip.

Reasons

3. The appeal site relates to a 7 metre wide strip of land adjacent to part of the eastern boundary of the residential estate around Ten Shilling Drive. No. 25 is a detached two-storey dwelling which is located towards the centre of the estate adjacent to the eastern boundary and the strip of land in question.
4. The appeal site is part of a larger 'reservation' comprising a strip of land that runs along the entire eastern boundary of the residential estate connecting an area of open space to the north adjoining Guinea Crescent with Westwood Heath Road to the south. A narrow belt of woodland runs to the east of this strip which separates the estate from a large commercial / office business park located further to the east. An entrance to the business park lies at the end of the short cul-de-sac off which No. 25 is accessed and the appeal site fronts.
5. The appeal site has been enclosed by fencing and currently forms part of the garden / parking area to the side of the above property. Other parts of the

strip further to the north have also been blocked off by fencing such that it is currently not possible to access or walk along it. The section that runs south from the cul-de-sac has not been enclosed by fencing but planting has taken place along the front edge.

6. The reason for the condition in question is as set out above. Policy AM8 which provides the basis for the condition states that '*a network of convenient pedestrian routes, made safer by design, will be promoted and encouraged.*' The plan referred to (plan AS-3B) shows the 'footpath' running through the centre of a wide 7 metre strip of land with planting either side. Thus it seems to me that the reason for the condition was to ensure that the 'reservation strip', which is much wider than just the width of the footpath, was maintained to provide an appropriate setting for the footpath. Therefore, I do not agree, as contended by the Appellant, that the condition 'requires the dedication of a highway', rather it requires that a suitable corridor for the 'footpath' is provided.
7. This would accord with the requirements of the relevant policy to provide convenient routes that are safer by design. It seems to me that the generous width of the reservation strip was intended to provide a more open 'corridor' for the path thus providing a safe route to the side and rear of the residential dwellings that it runs alongside within a pleasant 'green' setting.
8. Current policy GE1 of the Coventry Local Plan (2017) (CLP) seeks to ensure that development proposals make provision for green infrastructure to ensure that it contributes to improvements in connectivity and public access, amongst other things, a key element of which includes the development of paths. I have also been referred to CLP Policy AC4 which seeks to ensure that development incorporates appropriate, safe and convenient access to walking and cycling routes. These policies take a similar approach to CDP Policy AM8 and provide an up to date policy context.
9. The status of the 'footpath' remains an ongoing matter of dispute. It is currently unrecorded on the Council's Definitive Map; however, the Council has made a Definitive Map Modification Order (DMMO) adding the path to it, but there will be a need for a DMMO inquiry in due course to confirm this. Therefore, the determination of the official status of the path is a separate matter and not one that is before me.
10. The Appellant disagrees that the condition is necessary as if the PRow exists then there is an existing 'mechanism' for ensuring the route remains open under other legislation. Whilst I would agree that the Highways Act 1980 is the appropriate legislation in this respect, as indicated above, that process is yet to be finalised. In any event, it is the wider 'green' corridor that the condition seeks to protect not the actual 'footpath' itself.
11. Therefore, in the current circumstances whereby the legal status of the 'footpath' is undetermined, the reason for the condition remains relevant as if the DMMO is confirmed, the wider reservation strip will provide a suitable and safe setting to accord with policy. Should it be finally determined that there is no legal PRow, then the need for the reservation strip may need to be reconsidered, taking into account all material considerations.
12. Overall, therefore I consider that the condition remains necessary and reasonable. It continues to serve a useful purpose having regard to the current

development plan. Its removal would be contrary to CLP Policies GE1 and AC4 for the reasons set out above.

Other Matters

13. I also find that the need for the condition would remain consistent with the relevant case law¹ that I have been referred to, including that, in the above circumstances, it is for a proper planning purpose, fairly and reasonably related to the development and is not unreasonable.
14. I have taken into account the National Planning Policy Framework and find, for the reasons set out above, that the condition accords with policies that seek safe, accessible and healthy places through the use of attractive, well-designed, clear and legible pedestrian routes.
15. I have taken into account all other matters put before me but find nothing to alter my conclusions reached above.

Conclusions

16. I therefore conclude that this appeal should be dismissed.

P B Jarvis

INSPECTOR

¹ Pyx Granite v Ministry of Housing and Local Government [1958] 1 QB 554