



Appeal Decision

Site visit made on 5 January 2024

by Lewis Conde BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Ref: APP/P1615/W/23/3323815

Land north of the Royal Exchange, Gloucester Road, Hartpury, Gloucester, Gloucestershire Grid Ref Easting: 379894, Grid Ref: Northing 225007

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr & Mrs D. Brookes against the decision of Forest of Dean District Council.
- The application Ref P0150/23/FUL was approved on 12 May 2023 and planning permission was granted subject to conditions.
- The development permitted is Erection of three dwellings, construction of improved vehicular access and closure of existing vehicular access.
- The conditions in dispute are Nos 1 and 3 which state that:
 - (1) 'The development hereby permitted shall be commenced before the 11th June 2023'; and
 - (3) 'Development shall not begin until the new vehicular access and visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres in each direction measures along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above'.
- The reasons given for the conditions are:
 - (1) 'To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004'; and
 - (3) 'In the interests of highway safety in accordance with the paragraphs 108 and 110 of the National Planning Policy Framework'.

Decision

1. The appeal is allowed and planning permission is granted for the erection of three dwellings, construction of improved vehicular access and closure of existing vehicular access at Land north of the Royal Exchange, Gloucester Road, Hartpury, Gloucester, Gloucestershire, Grid Ref Easting: 379894, Grid Ref Northing: 225007, in accordance with the terms of the application, Ref P0150/23/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The site address in the banner heading above is taken from the appeal form, as opposed to the original planning application form, as this provides a more accurate description of the site address.
3. The description of development permitted in the banner heading above, is taken from the original planning application form as opposed to the Council's

decision notice as this more accurately reflects the development that has been granted permission. However, I have removed the reference to 'amendments to approved development' as this is not a description of development.

4. A revised version of the National Planning Policy Framework (the Framework) was issued in December 2023. Both main parties were offered the opportunity to comment on the implication of the changes to national policy on the appeal proposal. Where received, comments have been taken into account.
5. Although this appeal is technically allowed, the effect of the decision is for a condition originally imposed by the Council to be made more precise rather than removing its restrictions.
6. Additionally, for reasons that are set out below, I have still found it necessary to impose a condition limiting the time-limit for the commencement of development to align with the original grant of planning permission ref: P0156/20/FUL (i.e. by 11 June 2023). I recognise that this means that the time limit for commencement of the permission that I am allowing has already expired. However, the appeal has been made within the statutory time period following the date of the decision and effectively what is being challenged by the appeal is the decision.

Background and Main Issues

7. On 11 June 2020, the Forest of Dean Borough Council approved full planning permission, ref: P0156/20/FUL (herein referred to as 'permission P0156/20/FUL') for the "*Erection of three dwellings, construction of improved vehicular access and closure of existing vehicular access (Amendment to Approved Development)*", subject to several conditions. This included a standard time-limit condition for the commencement of development within three years (i.e. by 11 June 2023). It also included a condition relating to the provision of a new vehicular access and visibility splays (Condition 4).
8. A Section 73 application (ref: P0150/23/FUL) was subsequently made by the appellant to vary Conditions 2 (approved plans) and 3 (external materials and colour) of permission P0156/20/FUL'. This was to enable modifications to the design of the previously approved development.
9. On 12 May 2023 the Section 73 application was approved resulting in a new planning permission (herein referred to as the 'S73 permission'). The S73 permission was subject to several conditions that the Council re-imposed from permission P0156/20/FUL, which it deemed to remain relevant. This includes Condition 1 (a standard time-limit condition for the commencement of development). However, the precise wording of Condition 1 was updated to reflect that the three-year timescale for commencement of development continued to take effect from the date that permission P0156/20/FUL was originally granted (i.e. by 11 June 2023). Additionally, Condition 3 relating to the provision of a new vehicular access and visibility splays was a re-imposition of Condition 4 from permission P0156/20/FUL, that had not been discharged.
10. The Framework and the Planning Practice Guidance (PPG) set out that planning conditions should be kept to a minimum and only imposed where they meet the 'six tests', namely: where they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

11. The appellant contends that the imposition of Condition 1 on the S73 permission is unlawful and that having regards to the above tests of conditions it is not relevant to planning, not relevant to the development to be permitted, nor reasonable. It is also contended that the wording of Condition 3 is neither precise, enforceable, nor reasonable.
12. The main issues are therefore:
 - a) Whether Condition 1 is relevant, reasonable, and necessary having regards to legislation and guidance that govern the use of planning conditions; and
 - b) Whether Condition 3 is sufficiently precise, enforceable, and reasonable to maintain highway safety.

Reasons

Condition 3

13. From the evidence before me, I have no reason to believe that there is not a need for a condition to protect highway safety by requiring that the proposed new vehicular access and visibility splays onto the adjoining carriageway are provided before any of the wider development takes place.
14. However, as worded, Condition 3 does not suitably phase the relevant works, as the Council has suggested was its intention. Instead, the wording of the current condition is highly conflicting as it prevents any development from beginning until such time as acts of development are delivered.
15. As such, I find the condition is not precise, it cannot reasonably be complied with and therefore is also not enforceable. Condition 3, as imposed by the Council, therefore does not meet the tests of a condition outlined at paragraph 56 of the Framework, or as detailed within the PPG.
16. Accordingly, I find that Condition 3, as worded, is not sufficiently precise, enforceable, or reasonable so as to maintain highway safety, as per the relevant aims of Section 9 of the Framework.

Condition 1

17. As per the requirements of Section 91(1)(a) of the Town and Country Planning Act 1990, as amended (the 'Act'), permission P0156/20/FUL was granted subject to a condition that the development must be begun not later than the expiration of 3 years from the date of the permission.
18. Section 73(1) of the Act allows for the determination of applications to develop land without complying with conditions subject to which a previous planning permission was granted. However, importantly, Section 73(5) establishes that planning permission must not be granted under Section 73 of the Act that would have the effect of changing a condition to a previous permission to extend the time limit by which a development must be started.
19. The above is reinforced through the advice of the PPG, which states that '*Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made*'.

20. Regardless of whether or not the appellant's Section 73 application specifically sought to extend the timeframe for the commencement of development as outlined on permission P0156/20/FUL, Section 73(5) of the Act does not enable such changes.
21. Section 91(b) of the Act enables an authority to attach a condition to a planning permission to allow longer or shorter periods for commencement of development than 3 years, having regard to the provisions of the development plan and to any other material considerations. However, this still does not negate the requirements of S73(5) of the Act.
22. Similarly, in determining a Section 73 application the Local Planning Authority (LPA) also has powers to impose fresh conditions related to the nature and extent of the permission, but still, these must remain within the confines of Section 73(5) of the Act.
23. I therefore find that the Council's re-imposition of Condition 1, (as slightly re-worded to clarify the timescale remains as per the original permission) to be both reasonable and necessary, as the Council did not have the powers to do otherwise. In light of the legislative requirements and the advice of the PPG, it is also clearly relevant to planning and the development to be permitted. I also find it meets all other tests of conditions outlined under the Framework and the PPG.
24. Although in determining this appeal I am considering the matters afresh and have the power to reach an alternative decision to the Council, I remain bound to the limits imposed under Section 73(5) of the Act.
25. The appellant also suggests that the imposition of Condition 3 made it totally impractical and unreasonable to implement the S73 permission within the relevant timescales imposed by Condition 1. This is because the relevant highway/vehicular access works would have needed to be carried out within approximately 4 weeks.
26. For reasons discussed, I agree that Condition 3 should have been subject to a different wording. Had the Council previously used a more appropriate wording, the appellant may have had a greater opportunity to comply with the relevant condition within the specified timeframe for commencement of development. Nonetheless, it remains that the very same worded condition was also included on permission P0156/20/FUL¹. Its prerequisites would therefore have been known to the appellant. The appellant had three years from the grant of permission P0156/20/FUL in order to commence the development within the relevant time-limit. This would seemingly also provide sufficient opportunity to have addressed the requirements of the condition relating to provision of the new vehicular access and visibility splays (i.e. through seeking to vary/remove/discharge the condition, as necessary).
27. Overall, having regard to relevant legislation and guidance that govern the use of planning conditions, I find Condition 1 is relevant, reasonable, and necessary.

¹ Albeit, it was Condition 4 of that permission.

Other Matters

28. I note the appellant's arguments regarding the Council's housing land supply position and that the development has previously been demonstrated as being acceptable, while it continues to comply with the development plan and national policy. Even if I were to agree, these matters do not overcome the issue of there being no appropriate mechanism to extend the timeframe for the commencement of the development via a Section 73 application.
29. It was evident from the site visit that some works have already taken place at the site. However, it is not the role of this appeal to determine whether a material start under a previous permission(s) may have been made or whether there is an extant planning permission at the site.
30. I note the appellants' frustrations with the manner in which the LPA dealt with their application, however, the appeal has been determined on its own merits.

Conditions

31. Allowing the appeal grants a new planning permission. As detailed, the Act and the PPG establish that planning permission cannot be granted under Section 73 to extend the time limit within which a development must be started. Accordingly, a condition is attached to clarify that permission must commence within the time-limit of the original planning permission P0156/20/FUL (i.e. by 11 June 2023).
32. The guidance in the PPG also 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 I have limited information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the main parties if needed.
33. A condition to ensure compliance with the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. I have added the site location plan and approved drainage drawings to the list of plans/drawings suggested by the Council.
34. As indicated a condition requiring the delivery of the new vehicular access and associated visibility splays, before commencement of the wider development hereby permitted, is needed in the interests of highway safety. The precise wording of the condition has been commented upon by the appellant.
35. Likewise, a condition requiring that the proposed vehicular access is not brought into use until such time as any existing vehicular accesses are permanently closed is also reasonable and necessary in the interests of highway safety.
36. A condition relating to the provision of electric vehicle charging points is reasonable and necessary in the interest of sustainability. A condition to ensure that the approved drainage arrangements are implemented/operational prior to the occupation of the proposed development is reasonable and necessary in the interest of drainage and to avoid the potential of increased flood risk.

37. Landscaping conditions, including requirements associated with the potential future maintenance/replacement of landscaping, are reasonable and necessary in the interests of the visual amenity of the site and the surrounding area. I have undertaken minor editing to the precise wording of the conditions for purposes of clarity and certainty and to ensure compliance with the Framework and PPG.
38. Conditions requiring the provision of bio-diversity enhancements and that restrict the installation of external lighting on the site are both needed in the interest of biodiversity. Again, I have undertaken some minor editing to the precise wording of the Council's suggested conditions for clarity purposes.
39. Finally, I have not imposed the Council's suggested condition that relates to additional planting that would infill existing vehicle accesses to be closed at the site. This could instead be suitably dealt with under the details required by another condition (i.e. Condition 4).

Conclusion

40. For the reasons given above, I have found that Condition 3, as worded, was neither precise, enforceable, or reasonable. The appeal is therefore allowed, with Condition 3 varied and a new planning permission granted, subject to the additional conditions below.
41. However, for reasons outlined I have continued to re-impose a condition that limits the commencement of development, while I recognise that the time-limit for the commencement of this new permission has already expired.

Lewis Condé

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than the 11 June 2023.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan (Scale 1:12500)
 - Block plan K2209-08
 - Proposed Site Layout, Drawing No. K2209-01 Rev A;
 - Proposed Elevations and Floor Plans, Drawing No. K2209-02 Rev C
 - Proposed Elevations and Floor Plans, Drawing No. K2209-03 Rev C
 - Proposed Elevations and Floor Plans, Drawing No. K2209-04 Rev C
 - Landscaping, Drawing No. K2209-05 Rev E
 - Mitigation Plan, Drawing No. K2209-06 Rev C
 - Sections or cross sections, Drawing No. K2209-07 Rev A
 - Drainage Layout, Drawing No. P20.200-500 P1
 - SUDS Details, Drawing No. P21.200-501 P1
- 3) A new vehicular access to the site shall be provided in accordance with that shown on the approved site layout (drawing no. K2209-01 Rev A). Visibility splays shall be provided from a point 0.6m above carriageway level at the centre of the new vehicular access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway (measured perpendicularly), for a distance of 43 metres in each direction measures along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow within the established sightlines that would obstruct the visibility described above.

Except for the installation of the new vehicular access and visibility splays, no other development shall take place until the aforementioned new vehicular access and visibility splays are provided.
- 4) The vehicular access hereby permitted shall not be brought into use until all existing vehicular accesses to the site (other than that intended to serve the development) have been permanently closed in accordance with details to be submitted to and agreed in writing beforehand by the Local Planning Authority.
- 5) The development hereby permitted shall not be first occupied until the proposed dwellings have been fitted with the electric vehicle charging point. The charging points shall comply with BSEN 62196 Mode 3 or 4 charging and BS EN 6185 or any equivalent or higher specification. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced, in which case the replacement charging points shall be of the same specification or a higher specification in terms of charging performance.
- 6) The drainage for the development hereby permitted shall be undertaken in accordance with the details as submitted. All required drainage shall be

- in place and operational before development is occupied and thereafter permanently maintained.
- 7) The existing hedgerow and landscaped boundaries as shown on plan number K2209-06 Rev C dated 11 May 2023 shall be maintained and retained at a minimum height of 2m. All works shall be carried out strictly in accordance with any approval and prior to occupation of the development and thereafter permanently retained.
 - 8) External lighting at the site shall be carried out in accordance with the details shown on drawing K2209-06 Rev C dated 11 May 2023. All external lighting units shall be installed in accordance with the text details on the plan (not only those indicated by arrows). No additional external lighting shall be installed thereafter.
 - 9) Biodiversity enhancements including wildlife-friendly planting shall be installed prior to first occupation of the development in accordance with details shown on drawing number K2209-06 Rev C, dated 11 May 2023 and thereafter retained and maintained for their designed purpose as agreed.
 - 10) The landscaping scheme shown on the approved plan no. K2209-06 Rev C dated 11 May 2023 shall be fully implemented not later than the first planting season following the completion of the development. If at any time during the subsequent five years any tree, shrub or hedge forming part of the scheme shall for any reason die, be removed or felled it shall be replaced with another tree, shrub or hedge of the same species during the next planting season in accordance with details approved in writing by the Local Planning Authority.