



Appeal Decision

Hearing Held on 31 October 2023

Site visit made on 31 October 2023

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2024

Appeal Ref: APP/U2750/W/23/3326395

Thornton Manor Farm, Burton Cottages to Thornton Manor, Thornton Bridge YO61 2RH.

- 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 Faro Properties VIII Ltd against the decision of North Yorkshire County Council.
- The application Ref 21/03571/DVCON, dated 5 August 2021, was refused by notice dated 25 January 2023.
- The application sought planning permission for Variation of condition 2, 8, 12 and 14 of planning permission 6.36.6.C.FUL (Erection of 2 semi-detached affordable dwellings, conversion of 3 barns to form 3 dwellings and formation of new vehicular access) to amend design details and to allow details to be submitted after works commenced without complying with conditions 1, 3, 4, 5 and 6 attached to planning permission Ref 6.36.6.D.DVCON (12/03921/DVCON), dated 26 July 2016.
- The conditions in dispute are No.s 1, 3, 4, 5 and 6 which states that:
- 1) The development hereby approved shall be carried out in accordance with the submitted details as amended by other conditions of the consent and the following approved plans: Site Location Plan: 1:2500, Site Plan Drawing No 201 Revision A Proposed Alteration to Unit 2 Plans Schematic Layout, Elevations and Sections Drawing No 202 Revision A, Proposed New Build Semi Detached Units, Plans, Elevations and Sections Drawing No 205 Revision A, Proposed Alterations to Unit 3, Schematic Layout, Plans and Elevations Drawing No. 203 Revision A, Proposed Alterations to Unit 4, Schematic Layout, Plans and Elevations Drawing No 204 Revision A.
- 3) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, the access(es) to the site shall be laid out and constructed in accordance with the following requirements: -
 - (i) the access shall be formed with 10 metre radius kerbs, to give a minimum carriageway width of 6 metres, and that part of the access road extending 20 metres into the site shall be constructed in accordance with Standard Detail number E7d and the Specification of the Local Highway Authority;
 - (ii) any gates, barriers or other means of enclosure shall be erected a minimum distance of 20 metres back from the carriageway of the existing highway and shall open into the site;
 - (iii) provision shall be made to prevent surface water from the site/plot discharging onto the existing or proposed highway in accordance with the approved details and/or Standard Detail number E7d and the Specification of the Local Highway Authority.
- 4) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months

of the date of this permission, visibility splays providing clear visibility of 2m x 70 metres by 2m x 160 metres measured down the centre line of the access road and the nearside channel line of the major road shall be provided at the junction of the access road with the county highway at a height of 1m above the level of the adjacent carriageway. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

- 5) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, full details of the proposed vehicular access, parking and turning arrangements shall have been submitted to and been approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. Those arrangements shall be constructed in accordance with the specification so approved in accordance with a timescale agreed in writing with the Local Planning Authority in consultation with the Local highway authority. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
 - 6) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, the vehicular access, parking and turning facilities shall be formed in accordance with the submitted drawing [Reference No. 207 revision A], the access shall be surfaced to the specification of the highway authority unless otherwise agreed in writing with local planning authority. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
 - The reasons given for the conditions are: In order to ensure that the development is carried out in accordance with the approved drawings, to ensure a satisfactory means of access to the site from the public highway, in the interests of vehicle and pedestrian safety and convenience, in the interests of road safety to provide for drivers of vehicles using the access road to the site and the public highway with a standard of inter-visibility commensurate with the vehicular traffic flows and road conditions, to ensure appropriate on-site vehicle parking facilities with associated access and manoeuvring areas, in the interests of highway safety and the general amenity of the development, to provide for appropriate on-site vehicle parking facilities with associated access and manoeuvring areas & in the interests of highway safety and the general amenity of the development.
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Decision

1. The appeal is allowed and planning permission is granted for Variation of conditions 2, 8, 12 and 14 of planning permission 6.36.6.C.FUL (Erection of 2 semi-detached affordable dwellings, conversion of 3 barns to form 3 dwellings and formation of new vehicular access) to amend design details and to allow details to be submitted after works commenced without complying with conditions 1, 3, 4, 5 and 6 attached to planning permission Ref 6.36.6.D.DVCON (12/03921/DVCON) at Thornton Manor Farm, Burton Cottages to Thornton Manor, Thornton Bridge YO61 2RH in accordance with the application Ref 21/03571/DVCON made on 5 August 2021 without complying with condition No.s 1, 3, 4, 5 and 6 previously imposed on planning permission 6.36.6.D.DVCON (12/03921/DVCON) dated 26 July 2016 and subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application seeks to vary an approval that was in itself a variation of conditions relating to a previous permission. In terms of the substance of the proposal, it was confirmed that this relates to the erection of two semi-

detached dwellings, conversion of three barns to form three dwellings and the formation of a new vehicular access.

3. I observed on my site visit that the two semi-detached dwellings had been built and that three other dwellings appeared to exist within what appeared to be former barns. There were no signs that the dwellings were occupied and they appeared empty. Discussions at the Hearing drew the conclusion that although now unoccupied, one of the barn conversion units within the site may have previously been occupied at one point some time ago.
4. In essence, the proposal seeks to provide an alternative access to that originally intended to serve the residential development scheme, closely to the south of the two semi-detached dwellings on the site. The evidence indicates that the access position was previously approved under a separate permission.
5. The scheme that is before me does not seek to use that access but instead create a new vehicular access further north, the provision of which would require the removal of the existing side element of unit 2 which is the easternmost converted barn adjacent to the road and would sever the existing fence and hedge adjacent to Helperby Lane.
6. I was advised at the Hearing by the appellant that acceptable visibility splays for the development did not prove achievable from the originally proposed access. The Council did not contest this point.

Main Issue

7. The main issue therefore is whether the visibility splay associated with the access proposed would have any significant adverse impact on highway safety.

Reasons

8. The appeal site sits adjacent to Helperby Lane close to its junction with Raskelf Road with the river Swale running slightly further to the south-east. To the north-east of the access the road alignment is curved with most vehicles which travel southbound having just turned off Raskelf Road. There are other existing site accesses in the vicinity.
9. The road alignment to the south is slightly straighter for a significant distance to the south which may account for the higher speeds identified for northbound traffic at the access.
10. The consideration of DMRB standards is useful in relation to this site. However, it is the case that DMRB standards have been specifically developed for the strategic road network, which the evidence does not indicate that Helperby Lane forms part of. Further, the stopping sight distances within the DMRB are not necessarily reflective of the significant improvements in vehicle braking technology since the introduction of those distances.
11. Whilst it provides useful guidance for this case, I subsequently do not consider it to be the case that every full and specific DMRB requirement should be applied to this site, the context of which has been assessed on the basis of its own particular characteristics.
12. Speed surveys have been undertaken by the appellant and the Council did not contend the design speeds, nor provide any evidence of any other speed surveys. The Council initially suggested within their evidence that visibility

- splays of 160m in both directions should be provided. However, the appellant suggested that by using speed surveys, a design speed could be adopted and the Council agreed at the Hearing with that approach.
13. Based on the design speeds for vehicles travelling northbound towards the proposed access of 48.1mph the stopping sight distance is identified as 137.3m when calculated against the DMRB desirable minimum and 105.8m when calculated against the DMRB absolute minimum.
 14. Based on the design speeds, which for vehicles travelling southbound is identified as 31.4mph the stopping sight distance is identified as 68.2m when calculated against the DMRB desirable minimum and 54.8m when calculated against the DMRB absolute minimum.
 15. The appellant has identified that due to the limited number of HGV's that use the road, amounting to only 2% of total vehicle movements, it is appropriate to apply the differing deceleration rate used to determine the DMRB absolute minimum requirements as opposed to the desirable minimum.
 16. The appellant therefore considers that the required visibility splays accord with the safe stopping distance identified as the absolute minimum within the DMRB guidance. During the Hearing, the Council accepted that they would agree that they would consider the absolute minimum figures appropriate to the site in considering the length of the visibility splays given the nature of the road and the traffic data obtained by the appellant. I agree with that position.
 17. The drawing 2023/7246/001 P1 submitted by the appellant alongside the appeal shows that the visibility splay in both directions associated with the absolute minimum is available.
 18. Vertical visibility has also been considered. This is particularly important when considering traffic approaching from the south of the site as it is in that direction that there exists a slight crest in the road. Although the crest to the south may restrict visibility of the whole of an approaching vehicle, the evidence indicates that some of the approaching vehicle will be likely to be visible within the splay. Further, vehicles that would be taller and therefore likely larger and heavier, having longer stopping distances would be more visible than smaller vehicles that would likely have shorter stopping distances.
 19. I therefore conclude that the visibility splay that would be provided as part of the now proposed access to the site even if based on the DMRB absolute minimum standards would have no significant adverse impact on highway safety. There would therefore be no conflict with Policy TI1 of the Harrogate Local Plan (2020) which states amongst other things that the Council will promote a safe, reliable, and convenient transport system.
 20. There would also be no conflict with Paragraphs 114 and 115¹ of the Framework² which state amongst other things that it should be ensured that safe and suitable access to the site can be achieved for all users and that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

¹ The change in paragraph numbers from the Council Decision notice is due to the publication of a revised Framework in December 2023. I must refer to the latest version in place at the time of the decision.

² National Planning Policy Framework December 2023.

Other Matters

21. Although I note points made by interested parties, the principal concern in relation to this proposal is visibility between drivers using the access and those approaching, rather than the visibility of other potential obstructions within the road. There is no firm evidence that the access in combination with other established accesses would create any unacceptable impact on highway safety.
22. I have noted that a previous appeal was considered on this site which was dismissed. Although the provision of an alternative access was ultimately not favoured by the previous Inspector, they did appear to acknowledge that access c, (which is close to the site of the access proposed here albeit slightly further south) as part of those proposals could provide a visibility splay in a southerly direction up to 98 metres. In any event, the appellants proposal is accompanied by detailed supporting evidence which has enabled me to conclude in the manner that I have.
23. There is no evidence that flooding would make the revised access proposals impractical. I note concerns from interested parties about the safety of existing accesses in the vicinity. However, ultimately, I am required to focus on whether or not the access proposed under this application would be acceptable or otherwise. The appellant advised that the visibility splays for the originally proposed access were not ultimately achievable, a point which the Council did not contend.
24. The original requirement for affordable housing within application 6.36.6.C.FUL was not carried across by the Council to 6.36.6.D.DVCON (12/03921/DVCON).

Conditions

25. Other conditions which are not the subject of this application are repeated as there is no firm evidence before me that these have been discharged or are no longer relevant. The conditions that I have imposed on this approval are necessary so that the proposed access to the site is appropriately provided in the interests of highway safety before any of the units are further occupied from the current position. A condition requiring the removal of an access to the north of the semi-detached dwellings is unnecessary as the provision of the parking spaces would mean that this access could no longer be used in any event.

Planning Balance and Conclusion

26. The proposal would accord with the development plan and there are no material considerations including the Framework which indicate a decision should be made otherwise than in accordance with it. The appeal is therefore allowed.

T Burnham

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall be carried out in accordance with the following approved plans: 2021.208 100 D, 2021.208-001 A, 2021.208 101 D, 2021.208 102 C, 2021.208 201 E, 2021.208 202 D & 2021.208 203 C.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and reenacting that Order with or without modification), no extensions, garages, roof or dormer windows other than any expressly authorised by this permission shall be erected without the grant of further specific planning permission from the Local Planning Authority.
3. There shall be no further occupation of any unit until;
 - i) The access to the site has been constructed and is available for use in accordance with the details shown on drawings 2021.208 201 E & 2021.208 203 C. The access shall be retained as approved for the lifetime of the development.
 - ii) Visibility splays of a minimum of 2.4 metres x 54.8 metres to the north and 2.4 metres x 105.8m to the south have been provided. These shall thereafter be retained for the lifetime of the development.
4. The access to the site shall be set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority. The crossing of the highway verge and/or footway must be constructed in accordance with the approved details and/or Standard Detail number E50A.
5. The part of the access extending 6 metres into the site from the carriageway of the existing highway must be at a gradient not exceeding 1:40.
6. The final surfacing of the access within 6 metres of the public highway must not contain any loose material that is capable of being drawn on to the public highway.
7. There shall be no further occupation of any unit until the proposed parking facilities shown on drawing 2021.208 201 E have been constructed and are available for use. Thereafter these areas must be maintained clear of any obstruction and retained for their intended purpose at all times for the lifetime of the development.
8. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA: Finished floor levels of the proposed dwellings should be set no lower than 17.45m AOD.
9. Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, evidence shall be

provided to indicate how surface water disposal has been undertaken. If a sustainable drainage scheme has been provided, the submitted details shall:

i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

ii. include a timetable for its implementation; and

iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

10. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

11. The recommendations of the Bat Survey Report (Michael Gavahan Consultancy September 2009) in Section F (Works to be undertaken by the Ecologist) and Section G (Works to be undertaken by the Developer) shall be implemented in full. These recommendations relate to: Works shall commence in autumn or early winter (F2). A precautionary check for bats will be undertaken by a licenced bat-worker using an endoscope prior to the commencement of work (F3). General Precautions shall be undertaken to avoid harm to bats (G1-5). New roosting provision will be created in the stables and car ports (G6). Care will be taken to avoid disturbance to nesting birds (G).

12. Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission details of the proposed boundary treatments shall be submitted for the written approval of the Local Planning Authority. No boundary shall extend beyond the site boundary and all highway land shall remain clear of development. Thereafter, the approved details shall be implemented in full and thereafter retained as such unless otherwise agreed in writing by the Local Planning Authority.