



Appeal Decision

Hearing held on 12 March 2025

Site visit made on 12 March 2025

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/P0119/W/24/3351774

Land at Lyde Green, Emersons Green, South Gloucestershire BS16 7NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Norft Ltd against the decision of South Gloucestershire Council.
 - The application Ref is P24/00131/RVC.
 - The application sought planning permission for construction of a 7m access road into the Lyde Green development site with associated changes in the priority of Lyde Green Road. The widening of Lyde Green Road north to Road 5 to 7m and installation a 3m multi-user path, with provision of street lighting and planting. Re-surfacing of existing public right of way without complying with conditions attached to planning permission Ref P19/16524/F.
 - The first condition in dispute is No 2 which states that: The development hereby approved shall not commence until such a time that: a) Planning permission has been granted for residential development on the land at Lyde Green Farm, as identified in the site location plan submitted with application P19/1275/F; b) That permission has been implemented; and c) The owners of both sites have agreed terms that the access permitted under this application (P19/16524/F) will be used to serve the new residential development at Lyde Green Farm.
 - The reason given for condition No 2 is: To ensure that the development is constructed to serve its intended purpose of providing improved connectivity between the proposed Lyde Green Farm residential site and existing residential areas to the west for pedestrians, cyclists and horse riders, to accord with Policies CS8 and CS29 of the South Gloucestershire Local Plan; Core Strategy (Adopted) December 2013 and Policies PSP10, PSP11 and PSP47 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (Adopted) November 2017. The condition is required as a Grampian condition (pre-commencement) to ensure that construction works are not undertaken until it is guaranteed that the proposed access improvements are needed to serve their intended purpose; and would therefore deliver the benefits identified
 - The second condition in dispute is No 11 which states that: No development shall commence until the area of replacement Common land as shown on the Replacement Common Land plan IMA-19-167 020 D has been registered as common land in accordance with an order under s17 of the Commons Act 2006.
 - The reason given for condition No 11 is: To ensure that any Common land lost as a result of the development is replaced with an equivalent or larger area of land, to accord with Policy CS9 of the South Gloucestershire Local Plan: Core Strategy (Adopted) December 2013; Policy PSP1, PSP2, PSP3, PSP10 and PSP19 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (Adopted) November 2017 and the National Planning Policy Framework, paragraph 99.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a 7m access road into the Lyde Green development site with associated changes in the priority of Lyde Green Road. The widening of Lyde Green Road north to Road 5 to 7m and installation a 3m multi-user path, with provision of street lighting and planting. Re-surfacing of existing public right of way at Land at Lyde Green,

Emersons Green, South Gloucestershire BS16 7NT in accordance with the application Ref P24/00131/RVC without compliance with condition numbers 2 and 11 previously imposed on planning permission Ref P19/16524/F and subject to the conditions in the attached schedule.

Applications for costs

2. Both main parties have applied for an award of costs against the other. These are the subject of separate Decisions.

Background and Main Issues

3. Although the appeal is allowed, condition 2 is modified rather than being removed in its entirety, as set out in the attached schedule. Condition 11 is removed for the reasons given below.
4. In this decision, references to 'the appeal scheme' refer to the appellant's road improvements scheme subject to planning permission Ref P19/16524/F. The proposed residential development at Lyde Green Farm is referred to as 'the residential development'. The planning application for that development is as yet undetermined.
5. The appellant has submitted an application under section 19 of the Commons Act 2006 (the 2006 Act). This seeks to establish that land within the appeal site that is currently shown as being registered common land should be removed from the commons register. This is on the basis of evidence that they consider demonstrates that such land should instead be registered highway land. An application seeking to correct the highways register has also been submitted to the Council. In addition, a separate section 19 application has been submitted by the Open Spaces Society seeking an alternative correction to the boundary of registered common land. In this decision I refer to the applications seeking to correct the commons register as the section 19 applications. These applications have not yet been determined. Therefore, the appeal scheme involves development on land currently registered as common land. The appeal is determined on that basis.
6. The planning practice guidance (PPG) advises that pre-commencement conditions should only be used where there is clear justification. In that regard, it was agreed at the hearing that without prejudice to the appeal decision, the main parties would seek to agree alternative wording to conditions 2 and 11. This sought to allow a material start to development of the appeal scheme to be made prior to conditions 2 and 11 being discharged. I return to this subsequently.
7. Following discussion at the hearing, the wording of the main issues has been updated slightly, without fundamentally changing their meaning. With regard to condition 2, the updated wording refers to the effect of the proposal on the character and appearance of the surrounding area. This is to relate the need for that condition to the potential harm that the Council sought to avoid by its imposition. With regard to condition 11, the main issue refers only to whether the condition is necessary (and not its reasonableness), as that is the main area of contention between the main parties. Also, it refers only to the need for the condition having regard to the 2006 Act. In the context of this appeal, the Act is central to the protection and/or provision of replacement common land that the condition seeks to ensure.

8. Therefore, the main issues are:

- whether condition 2 is reasonable, necessary and enforceable, having regard to the effect of the proposed development on the character and appearance of the site and surrounding area; and
- whether condition 11 is necessary, having regard to the provisions of the 2006 Act.

Reasons

Condition 2

9. The appeal scheme was submitted with the stated intention of providing access to the residential development site. Parts a. and b. of condition 2 require that the appeal scheme cannot be implemented until such time as the residential development has been granted and implemented. The Council considered that such a restriction was necessary due to their concerns that without there being a residential development to connect into, the appeal scheme would result in visual harm, appearing as a road to nowhere.
10. In addition, condition 2 part c. requires that the appellant and the owners of the residential development site agree terms that the appeal scheme will be used to serve the residential development. This similarly seeks to avoid harm to the character and appearance of the surrounding area in the event of the appeal scheme being delivered without the residential development. Or alternatively where it is provided but not needed due to the residential development being served by an alternative access.
11. Although the appeal site is close to a mix of commercial and residential developments on Elderflower Way, it has the appearance of a rural road. This rural character is emphasised by the absence of pavements along its length, and the presence of common land, hedgerows and trees to either side of the road. Therefore, the appeal site contributes to the character of open countryside in its immediate surroundings.
12. The appeal scheme would involve the removal of some mature vegetation alongside the road that currently contributes to its pleasant rural character. Conditions on the appellant's permission require details of landscaping, surfacing and lighting to be agreed with the Council. Consequently, there would be scope for provision of sensitive replacement planting. Nonetheless, in the event that the appeal scheme was delivered in advance of the residential development, the increase in hard surfacing and loss of established planting would undoubtedly have an urbanising effect, thus harming its rural character. Such harm would be modest in scale due to the limited scale of the proposals, but would endure until such time as development at Lyde Green Farm was forthcoming when the surrounding context would be changed.
13. The residential development relates to an allocated site and would contribute to the Council's housing land supply. In addition, I note the evidence relating to deficiencies with the proposed access arrangements for the development, which is described as being land locked. Also, that the appeal scheme would provide an alternative, standards-compliant access to that development. Nonetheless, whilst the likelihood of no development coming forward on that site may be low, its

delivery remains uncertain despite the appeal scheme permission having already been granted.

14. I note that it is not unusual for infrastructure to be installed prior to the development that it would serve, including for allocated sites. In that regard, there are examples in the locality of access spurs having been installed in advance of the developments that they are intended to serve. However, those are already viewed in the context of other surrounding developments. For example, access spurs off Elderflower Way are opposite existing residential and commercial buildings on that road. As such, those access spurs appear closely associated with existing development and do not appear unduly stark relative to their surroundings. Whereas, given its rural context, installation of the appeal scheme here without any associated development on either side of the road, would have a more harmful, urbanising effect and in circumstances where the timescales for the residential development remain uncertain.
15. Accordingly, parts a. and b. of condition 2 are reasonable and necessary to retain a link between the timing of the delivery of the appeal scheme and the residential development. This is in order to minimise the risk of harm from the appeal scheme being delivered in advance of the residential development, or in circumstances where it is no longer needed. Similarly, the requirement for an agreement between the appellant and the owner of the residential development site under condition 2 part c., is an appropriate mechanism to ensure that the appeal scheme is only delivered in circumstances where it is needed to provide suitable access arrangements for that development.
16. The appellant has raised that it has not yet been possible to make any progress in reaching such an agreement. Nonetheless, I am not persuaded that there are no prospects at all of agreement being reached, particularly in light of the appellant's submission that the appeal scheme is necessary for that development to proceed. The nature of the agreement of terms that would satisfy part c. is not specified in the condition. However, it is not so vague as to be devoid of meaning and instead provides a degree of flexibility as to a suitable form of agreement.
17. The appellant refers to *Newbury DC v SSE* [1978] 1 WLR 1211 in connection with their concern that the condition relies upon the actions of a third party. However, the condition is negatively-worded. Therefore, in line with guidance in the PPG on the use of such conditions, it is a reasonable means of controlling timing of the development relative to the residential development that it is intended to serve. Accordingly, condition 2 parts a. to c. are reasonable, necessary and enforceable.
18. As the proposal is designed specifically to connect into the residential development, it would not extend beyond that site or beyond Elderflower Way in the opposite direction. Consequently, without the residential development, evidence of any benefits that would be experienced from widening a short stretch of road and the multi-user path is highly limited, and not sufficient to justify the harm to character and appearance reasoned above.
19. However, condition 2 as a whole prevents any development from commencing before parts a. to c. have been satisfied. Whereas, the main parties submit that the condition could be amended to allow for the installation of the proposed dropped kerb with tactile paving to the west of Lyde Green Road. This element of the proposal would be close to Elderflower Way and therefore would be viewed in the

context of development already in place there. For precision, a red circle has been added to approved General Arrangement Plan (drawing ref: IMA-19-167-D010) to identify the location of those works. This is identified on Revision C to that plan. The suggested amendment to the timing of the condition is:

“No development, apart from the works associated with the creation of a new dropped kerb with tactile paving to the west of Lyde Green Road as shown within the red circle on the General Arrangement Plan IMA-19-167 D010 Rev C, shall commence until such a time that:...”

20. In the absence of clear justification for condition 2 being pre-commencement it is appropriate for the wording to be amended as set out above. By allowing the appeal scheme to be implemented as described in advance of condition 2 parts a. to c. being satisfied, the time pressure to address those parts of the condition relative to the expiry of the appeal scheme permission would fall away. Moreover, I am not persuaded that the retention of condition 2 as amended would prevent the appeal scheme from facilitating the sequencing of construction traffic to the residential site in the event that that is deemed to be necessary.
21. Therefore, subject to the suggested amendment, condition 2 is reasonable, necessary and enforceable, having regard to the effect of the proposed development on the character and appearance of the site and surrounding area. As such, it would meet the six tests for conditions as set out in the National Planning Policy Framework (Framework). It would also satisfy Policies CS8 and CS29 of the Local Plan: Core Strategy (December 2013) and Policies PSP10 and PSP11 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (November 2017) (Policies Plan). Together these generally seek to ensure developments are accessible and safe. It would also accord with Policy PSP47 of the Policies Plan, which establishes the mixed use allocation for Emersons Green East.

Condition 11

22. The 2006 Act prohibits restricted works on common land, including resurfacing of land, without consent for such works. Consequently, until such time as any amendments to the commons register are confirmed, there would be a requirement under the 2006 Act for consent for works to common land (under section 38 of the 2006 Act). Or alternatively for deregistration of the commons land to be sought. Moreover, the 2006 Act includes provisions for enforcement where such works are carried out in contravention of section 38.
23. Therefore, having regard to the current extent of the registered common land, relevant provisions under the 2006 Act are in place to protect common land. These separate provisions would apply whether or not condition 11 is retained. Furthermore, whatever the outcome of the section 19 applications, the provisions of the 2006 Act would apply where the appeal scheme involves restricted works on any land remaining as registered common land.
24. Policy PSP44 of the Policies Plan seeks to protect open space by limiting development on such land unless one of three criteria have been met. Criterion b. of that Policy requires that the loss of open space would be replaced by an alternative provision that should be in place before that land is lost. A similar approach is advocated by paragraph 104 (formerly paragraph 99) of the Framework. Neither Policy PSP44 nor paragraph 104 specifically refers to

common land. Nonetheless, common land is a form of open space and its recreational use is generally seen as an important feature. The effect of removing condition 11 would remove the control from the planning permission over whether or not replacement common land is required to be in place prior to the commencement of development.

25. However, whilst a form of open space, common land is afforded specific protections under separate statutory provisions, as reasoned above. Those provisions are specific to protecting commons and its special qualities. Therefore, although the removal of condition 11 would not comply with Policy PSP44 criterion b., I find that it would not remove the protection of the open space that Policy PSP44 and paragraph 104 of the Framework generally seek to achieve.
26. In addition, its removal would not be premature relative to the determination of the section 19 applications. Those would need to be determined in light of relevant evidence and are separate to the consideration of this planning appeal. Until such time as those are determined, the appeal scheme involves development on common land and legislative provisions outside of the planning regime are in place to address its protection. That the appellant may previously have accepted imposition of this condition does not affect my consideration of the need for it in this decision.
27. Both the Council and the Open Spaces Society suggested different, alternative wording to condition 11. Both sought to take account of the possibility that instead of replacement common land being required by an order under section 17 of the 2006 Act, that the commons register might be amended under section 19. In addition, alternative wording to condition 11 was submitted at the hearing, with the effect of allowing a discreet area of works to implement the planning permission prior to requiring the provision of replacement common land. Nevertheless, rather than being a safer option, retention of condition 11 or amendment to it could readily result in conflict with subsequent determinations under the 2006 Act. Furthermore, for the reasons given and in the circumstances of this case, such a condition is not necessary to secure appropriate protection of the common land.
28. Accordingly, I conclude that condition 11 is not necessary, having regard to the provisions of the 2006 Act. Therefore, its removal would not conflict with Policy PSP44 or paragraph 104 of the Framework. Other development plan policies referenced in the reason for the condition are not relevant to this main issue.

Conclusion and Conditions

29. I therefore conclude that the appeal should be allowed and grant a new permission with amended wording for condition 2 and without condition 11.
30. The guidance in the PPG 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 planning permission cannot be granted under section 73 such that it extends the time limit for implementation, the time limit condition is adjusted such that permission runs from the date of the original permission.
31. General Arrangement Plan Revision C only differs from the previously approved version by virtue of a circle added to specify the area of works that can be implemented ahead of discharging condition 2 parts a. to c.. Therefore, it is not

necessary to update reference to it in approved plans condition 3, or other conditions that make reference to it. In the absence of substantive evidence to the contrary, all other conditions on the original planning permission remain relevant and are restated on this decision.

Rachel Hall

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from 7 June 2023.
- 2) No development, apart from the works associated with the creation of a new dropped kerb with tactile paving to the west of Lyde Green Road as shown within the red circle on the General Arrangement Plan IMA-19-167 D010 Rev C, shall commence until such time that:
 - a) Planning permission has been granted for residential development on the land at Lyde Green Farm, as identified in the site location plan submitted with application P19/1275/F;
 - b) That permission has been implemented; and
 - c) The owners of both sites have agreed terms that the access permitted under this application (P19/16524/F) will be used to serve the new development at Lyde Green Farm.
- 3) The development shall be implemented in accordance with the approved plans and documents, as below:
 - Application Boundary Plan (Drawing no. IMA-19-167 Rev B) (Received by local authority 24 June 2020)
 - General Arrangement Plan (Drawing no. IMA-19-167-D010)
 - Drainage and Levels Plan (Drawing no. IMA-19-167-D500)
 - Technical Drainage Note 1: S278 Highway Works Existing Ditches (Received by local authority 27 January 2021)
 - Replacement Common Land (Drawing no. IMA-19-167-020 Rev D) (Received by local authority 30 June 2022).
- 4) Prior to the commencement of development, construction details of the proposed works to the highway and multi-user path to achieve an adoptable standard shall be submitted to and approved in writing by the local planning authority. The submitted details shall be in accordance with the works as approved in principle; as shown on the General Arrangement Plan IMA-19-167-D010. All works shall thereafter be completed in accordance with the approved plans.
- 5) Prior to the commencement of any works to public rights of way, construction details of any proposed works to existing rights of way shall be submitted to and approved in writing by the local planning authority. The submitted details shall be in accordance with the works as approved in principle; as shown on the General Arrangement Plan IMA-19-167-D010. All works shall thereafter be completed in accordance with the approved plans.

- 6) Prior to the commencement of development, a site-specific Construction Management Plan (CMP), shall be first submitted to and approved in writing by the local planning authority. The approved CMP shall be fully complied with at all times. The CMP shall address the following matters:
 - i. Measures to control the tracking of mud off-site from vehicles.
 - ii. Measures to control dust from construction works approved.
 - iii. Adequate provision for the delivery and storage of materials.
 - iv. Adequate provision for contractor parking.
 - v. Details of access, routing and turning arrangements for all construction traffic.
 - vi. Measures for pedestrian and cyclist protection during construction.
 - vii. Membership details of the considerate contractor scheme or similar and contact details of the site manager.
 - viii. Details of hours of operation during construction.
- 7) Prior to the laying of any new surfacing, details of proposed surface treatments for the road widening works, new access construction, footpath construction and public right of way re-surfacing shall be submitted to the local planning authority for approval in writing. The works shall be carried out in accordance with the agreed details.
- 8) Prior to the commencement of development, a scheme of landscaping, which shall include details of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection during the course of the development; proposed planting (and times of planting), and boundary treatments shall be submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the agreed details.
- 9) Nesting birds - works that involve removing vegetation such as scrub (bramble and shrubs) and trees are to be undertaken outside of nesting bird season (generally March to August inclusive), if this is not possible a suitably qualified ecologist is to undertake a nesting bird check or the vegetation. If nesting birds are present works can commence once all young have fledged, a suitable buffer of a minimum of 5m radius is to be installed if works are required in the surrounding vegetation.

Reptiles - grassland is to be cut in a phased approach using hand tools. The grassland is to be cut to 10cm and left for a minimum of 24 hours to allow reptiles to disperse, it can then be cut to ground level and be maintained at a short sward to deter reptiles from using the site. The grassland is to be cut starting from the roadside inwards to deter any reptiles towards the field adjacent. This should be done when reptiles are active (usually March to October) and temperatures above 10 degrees so that they are mobile and can move out of harms way.

If any European protected species are recorded at any point during the works, works are to cease immediately and Natural England consulted.

- 10) Prior to the completion of the works to widen the highway, to create the new access construction and to construct the multi-user path, a street lighting scheme shall be implemented in accordance with details to first be submitted to and approved in writing by the local planning authority.

APPEARANCES

For the appellant:

Julian Darling	Appellant (Director of NORFT)
Fred Quartermain	Partner at Thrings LLP
Rebecca Morgan	Director of Stokes Morgan Planning Ltd
Paul Greatwood	Director of IMA Transport Planning

For the local planning authority:

Patrick Jackson	Senior Planning Officer, Major Sites Team at South Gloucestershire Council
Eileen Paterson	Team Manager, Major Sites Team at South Gloucestershire Council
Andrew Griffiths	Solicitor at South Gloucestershire Council
Horatio Waller	Counsel instructed by South Gloucestershire Council

Interested parties:

Rowena Meager	Counsel instructed by Graham Cridland
Graham Cridland	Solicitor for Edward Ware Lyde Green Ltd
Chas Townley	Open Spaces Society