



Appeal Decisions

Site visit made on 7 July 2025

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 30th July 2025

Appeal A Ref: APP/W1905/W/25/3361747

Land at Faints Close, Cheshunt EN7 5RG

- 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 JNH Sales Ltd against the decision of Broxbourne Borough Council.
 - The application Ref is 07/24/0868/CONRV.
 - The application sought outline planning permission for the erection of 5 detached dwellings with access road, car and cycle parking without complying with a condition attached to planning permission Ref 07/19/0492/O, dated 12 September 2019.
 - The condition in dispute is No 14 which states that: *'A separately gated pedestrian access shall be provided for and retained at all times to provide access to the land to the north of the site and an approach footpath shall be provided and maintained within the site at all times thereafter. A management plan for the maintenance and retention for the footway and the gated access shall be prepared and submitted for written approval of the Council and the approved scheme implemented thereafter'*.
 - The reason given for the condition is: *'To ensure public access to leisure lands to the north of the site'*.
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Appeal B Ref: APP/W1905/W/25/3361759

Land at Faints Close, Cheshunt EN7 5RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by JNH Sales Ltd against the decision of Broxbourne Borough Council.
 - The application Ref is 07/24/0851/F
 - The development proposed is the retention of vehicle and pedestrian gate.
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Decision

1. Appeal A is allowed, and planning permission is granted for the erection of 5 detached dwellings with access road, car and cycle parking at Land at Faints Close, Cheshunt EN7 5RG in accordance with application Ref 07/24/0868/CONRV without compliance with condition No 14 previously imposed on planning permission Ref 07/19/0492/O, dated 12 September 2019, but subject to the schedule of conditions in Appendix A.
2. Appeal B is dismissed.

Preliminary Matters

3. As set out above there are two appeals on this site. Both appeals primarily relate to public rights of way across the appeal site. As such, whilst I have considered each proposal on its individual merits, to avoid duplication I have dealt with the issues common to both schemes together.

4. At the time of my visit, it appeared that the site had been fully developed with 5 dwellings and associated landscaping in place. It was evident that the entrance gates had previously been installed, however the gates have been removed as part of ongoing enforcement.

Main Issues

5. In both appeals the main issues are the effect of the proposal on the living conditions of surrounding residents, with regard to accessibility to leisure land and local permeability. An additional main issue in Appeal B is the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

6. The area is suburban; there are numerous housing estates in the wider area bordering the Rosedale Sports Ground and Claremont Open Space. The appeal site adjoins the Caldecot Avenue estate, joining Faints Close with the sports ground to the north. The boundary between the appeal site and Rosedale Sports Ground comprises a timber close board fence with locked metal pedestrian gate.
7. Policy DCS1 of the Broxbourne Local Plan (June 2020) (BLP) states that development proposals must increase permeability of the area by providing easy to navigate and safe physical connections with surrounding spaces, streets, paths and neighbouring development; and increase accessibility to open spaces, sports and play facilities where-ever possible.
8. A condition must be construed in the context of the permission as a whole and in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood. As such, although the disputed condition, subject of Appeal A, itself does not refer to public access, it is clear from the context of the permission and reason for the condition that public access across the appeal site was intended in order to achieve the objectives of BLP Policy DCS1.
9. I note that the Planning Practice Guidance (PPG) states that conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission. However, it is not lawful to impose planning conditions that require the dedication of any new access roads as public rights of way¹ or which derogate an owner's property rights.
10. Such matters should be dealt with through a s106 planning obligation and should be entered into voluntarily. Without a s106 or other legal agreement in place granting public access, the provision of the gated pedestrian access and approach footpath required by the disputed condition would be of no public benefit and only useable by the occupiers of the five houses. Considering the above, condition 14 is not enforceable or reasonable.
11. It would also not be reasonable to impose an alternatively worded planning condition that would require the appellant to enter into a planning obligation to achieve the original objective of the disputed condition.

¹ DB Symmetry Ltd v Swindon BC

12. I sympathise with the surrounding residents and acknowledge that without public access across the appeal site, the walking distance to the sports ground would be significantly increased. As such, the removal of the condition would fail to increase accessibility to open spaces as required by BLP Policy DCS1. Nevertheless, the condition is not the appropriate mechanism to achieve public access.
13. Appeal B would introduce a private vehicular and entrance gate on the southern boundary of the appeal site, creating a gated community of five dwellings. If public access were possible across the appeal site to the sports ground, this gate would inhibit that. Therefore, it would fail to accord with the objectives of BLP Policy DCS1.
14. Consequently, I conclude that removing the condition in Appeal A and the provision of the gate in Appeal B would both conflict with BLP Policy DCS1 as described above. They would also conflict with the National Planning Policy Framework (the Framework) where it requires sports facilities and open spaces to be safe and accessible with layouts that encourage walking and states that development has a high standard of amenity for existing and future users.

Character and appearance

15. The estate is characterised by detached dwellings set back from the road. There are numerous types of boundary treatments, including brick walls and metal railings. Whilst some dwellings have sizable driveways, the area benefits from a range of planting, including grass, trees, shrubs and flowers which soften the areas of hardstanding and offer visual variety and interest.
16. The parties agree that the entrance gates themselves would be in keeping with the character and appearance of the area and I have no reason to disagree. However, the Council have raised concerns that the proposed associated landscaping is poor and of a lower quality than that which was previously approved². The proposed scheme indicates areas of hardstanding, fencing, lawns, hedges, bird boxes and retained trees.
17. Although I have not been provided with the previously approved landscaping details, the proposed scheme would result in an area in front of the dwellings that would be dominated by hardstanding, with limited interventions in the way of soft landscaping. As such, it would have a harsh, sterile appearance at odds with the surrounding front gardens.
18. Consequently, I conclude that the development in Appeal B would harm the character and appearance of the area. It would conflict with Policies DSC1 and NEB4 insofar as they require development to enhance local character and distinctiveness, taking into account trees and landscaping. The proposal would also conflict with the Framework where it requires development to be visually attractive as a result of appropriate and effective landscaping.

² Application Reference: 07/20/0726/DRC

Other Matters

19. It has been asserted that the proposed gates subject of Appeal B are within permitted development rights. Nevertheless, the appeal relates to an application for full planning permission and must be assessed as such.
20. Concerns have been raised regarding CCTV on the site; however, I have not been provided with any substantiated evidence that the installed CCTV is sited such that it would compromise the privacy of surrounding residents. Emergency services and maintenance vehicles have alternative routes to access the sports ground. I note the uneven paving on approach to the appeal site, however, the maintenance of private land is not a planning matter. Several parties have raised concerns regarding delivery vehicles blocking the highway. Nonetheless, there is ample space within the appeal site for vehicles to stop and wait.

Conditions

21. This appeal grants a new planning permission for the development in Appeal A. 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. I have considered the previously imposed conditions, as well as the appellants suggested condition and the Council's response. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
22. As they continue to have effect, I have amended the reserved matters, plans, means of enclosure, landscaping, ecology, parking and highway specification conditions to reference the relevant, previously approved applications.
23. I have omitted the conditions related to site investigations, construction management plans, material details, highway works, construction hours and ground levels. Based on the information before me, these conditions have been previously discharged and are no longer relevant to the proposal before me.
24. The appellant has suggested an alternative wording for condition 14 which would require a vehicle and pedestrian gate on the northern boundary and allow for maintenance access. However, a condition related to maintenance access to the sports ground across the appeal site is not necessary as alternative access is possible.

Planning Balance and Conclusion

25. Both Appeal A and Appeal B would conflict with aspects of the development plan. They would both fail to increase permeability of the area and accessibility to open spaces sports and play facilities. Nevertheless, considering my findings above and the appeal site's status as private land, it would not be appropriate to require public access via condition and hence the proposed gates in Appeal B would not, in practice, prevent public access. This is a material consideration that outweighs the conflict with the development plan in respect of the first main issue in both appeals. However, Appeal B would also harm the character and appearance of the area, due to its limited landscaping scheme.
26. Consequently, for the reasons given above, I conclude that Appeal A is allowed, and planning permission is granted, without the disputed condition but subject to the schedule of conditions in Appendix A

27. With regard to Appeal B, I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework that outweigh that conflict. Therefore, Appeal B is dismissed.

K Allen

INSPECTOR

Appendix A: Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the details of appearance, layout and scale (hereinafter called “the reserved matters”) approved by planning permission ref: 07/20/0522/RM.
- 2) The development hereby permitted shall be carried out in accordance with the application and plans as approved by planning permission ref: 07/19/0492/O.
- 3) Within 6 months of the date of this decision, the screen and boundary walls, fences and any other means of enclosure approved by planning permission ref: 07/20/0549/DRC shall be erected in accordance with the approved details and thereafter retained.
- 4) Within 6 months of the date of this decision, the landscaping scheme approved by planning permission ref: 07/20/0726/DRC shall be provided.
- 5) Within 6 months of the date of this decision, habitat protection and enhancement measures, including bird and bat boxes, in accordance with recommendations contained within the ecological reports submitted with planning permission ref: 07/19/0492/O, shall be installed and thereafter retained.
- 6) Within 6 months of the date of this decision, the parking and turning area indicated on the drawings submitted with planning permission ref: 07/19/0492/O shall be provided and thereafter retained for that specific use.
- 7) Within 6 months of the date of this decision, the access to the site, including any works within the public highway, and all new highways within the site, approved by planning permission ref: 07/20/0981/DRC shall be provided in accordance with the specification of the Highway Authority.

***** End of Conditions *****