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## Appeal Decision

Hearing Held on 11 October 2017

Site visit made on 11 October 2017

**by Roy Merrett BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 26 October 2017**

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**Appeal Ref: APP/M4510/W/17/3175245**

**Saint Antonys CE Primary School House, Pottery Bank, Newcastle upon Tyne NE6 3SU.**

- 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 Martin Reeves, Gleeson Developments Limited, against the decision of Newcastle-upon-Tyne City Council.
  - The application Ref 2015/0005/02/RVC, dated 4 February 2016, was refused by notice dated 28 October 2016.
  - The application sought planning permission for erection of 43 no. 2,3 and 4 bedroom two storey dwelling houses with associated hard and soft landscaping without complying with a condition attached to planning permission 2015/0005/01/DET, dated 8 May 2015.
  - The condition in dispute is No 12 which states that "The details for the private driveway areas for each dwelling which are to be constructed in a solid bound material shall be submitted to and approved by the local planning authority within two months of the commencement of the development. Thereafter, the private driveway areas shall be constructed in accordance with the approved details prior to the occupation of each dwelling".
  - The reason given for the condition is "In the interests of highway and pedestrian safety and residential amenity in accordance with the National Planning Policy Framework, saved Policies T4.5 and T7.1 of the Unitary Development Plan and Policies CS13 and CS14 of the Core Strategy and Urban Core Plan".
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 43 no. 2,3 and 4 bedroom two storey dwelling houses with associated hard and soft landscaping at Saint Antonys CE Primary School House, Pottery Bank, Newcastle upon Tyne NE6 3SU in accordance with the application Ref 2015/0005/02/RVC, dated 4 February 2016, without compliance with condition No 12 previously imposed on planning permission 2015/0005/01/DET, dated 8 May 2015 subject to the conditions in the schedule at the end of this decision letter.

### Procedural Matters

2. As currently worded the condition in dispute, No 12, requires driveways to be constructed in a solid bound material such as tarmac. However, instead of adhering to this requirement, the appellant proposes to surface driveways with
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a crushed aggregate material, in accordance with a specification detailed on drawing SD712 Revision B.

3. Following the site visit, a housing development that had been completed by the appellant at a nearby site on Caledonia Street was also visited. It was acknowledged by the parties that the dwellings there had incorporated crushed aggregate driveways to the same specification as proposed in this case.
4. The Council confirmed at the Hearing that it was not objecting to the proposal in terms of the safe operation of the highway.

### **Main Issues**

5. The main issues are the effect of the proposal on i) the accessibility of the dwellings, having regard to safety and convenience and ii) the visual amenity of the area.

### **Reasons**

#### *Accessibility*

6. In exercising my function on behalf of a public authority, I am aware of my duties under the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. Disability and age are relevant protected characteristics for the purposes of PSED.
7. The appellant included as part of their statement, a DVD presentation demonstrating various example scenarios of a crushed aggregate driveway being crossed with the assistance of different types of mobility aid. These aids included a traditional wheelchair, crutches, a mobility scooter and infant pushchairs.
8. I acknowledge that the DVD presentation represents a snapshot of a specific location and that the Council questioned the level of disability of those performing in the film; that the wheelchair manoeuvre was not shown to be completed; and that the surface material was a different colour to the buff proposed in this case. However, I am satisfied that the presentation demonstrates that, whilst crossing over aggregate may not offer quite the same level of comfort and convenience as crossing a smooth tarmac surface and may not be conducive to users of smaller wheeled walking aids, untested in the demonstration, it would not present any significant difficulty for a variety of users with different forms of mobility impairment.
9. The appellant stated that the company had not received any complaints from customers of the many homes it had built, specifically with regard to problems experienced with accessibility over completed aggregate driveway surfaces. Though at the Hearing the Council referred in general terms to observations of individuals with an infirmity or disability having difficulty crossing unbound surfaces, I am mindful that it has not produced any evidence to contradict the appellant, including in relation to sites within its own jurisdiction. Furthermore at the Hearing, the Council accepted that the proposed surfacing would be Building Regulation compliant insofar as the regulations relate to access to buildings.

10. It was evident from the Council's photographs and also at the site visit that some displacement of material onto the adjoining tarmac apron would be likely to occur. However, the interlocking of material between the component layers would mitigate this to a degree, given that the surface material would not have the freedom of movement of unbonded gravel for example. Whilst displaced aggregate may present a small risk to the stability of someone who was unsteady on their feet, or to the operation of a mobility aid, I am not persuaded that the level of risk would be so significant as to pose a genuine threat to the safe and convenient movement of those people. Furthermore, property owners seeking to avoid the long term deterioration of their driveways would have an incentive to retrieve and replace displaced aggregate.
11. The Council raised the concern that extensive weed growth on the driveways, if allowed to occur, could also impair movement. Whilst this may be so, it seems to me that just as a grassed lawn would need to be mown periodically, an owner would reasonably be expected to maintain their property so as to avoid such a risk.
12. During the Hearing, Mr. McClurry, a resident of a recently completed plot on the appeal site, referred to two trip-related incidents experienced by family members. However, whilst I have sympathy, no compelling information was provided to indicate that the incidents in question related to anything other than the unfinished condition of the driveway in question.
13. I have been provided with several previous appeal decisions involving proposals for driveways in unbound materials, including a number where accessibility was an issue. Whilst I note that some of those cases were dismissed, I have been provided with limited information about them, including how similar the site circumstances were compared with this case. Accordingly, I am not satisfied that the circumstances of those unsuccessful appeals can be regarded as comparable to the current proposal, which I have determined on its own merits.
14. The Council drew my attention to advice contained within the British Standard BS 8300:2009 Design of buildings and their approaches to meet the needs of disabled people – code of practice. However I find that the proposal would not conflict with this guidance insofar as it advises against the use of loose materials such as unbonded gravel and advocates a reasonably smooth surface.
15. Drawing together all of the above considerations, I conclude from the evidence before me, that the proposal would not place a disabled person or somebody, such as an aged person, with a mobility impairment at a substantial disadvantage and that accordingly it would be a proportionate means of achieving a solution to access. The proposal would not therefore result in harm to accessibility and accordingly would not conflict with the National Planning Policy Framework (The Framework); Saved Policies EN1.1 and H4 of the Newcastle-upon-Tyne Unitary Development Plan 1998 (UDP) and Policies CS11, CS14 and CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle-upon-Tyne 2015 (CS) insofar as they seek to secure inclusive design with safe, convenient and comfortable access for all.

### *Visual Amenity*

16. The Council accepted that it does not oppose the proposed surface aggregate material on grounds of appearance in its own right. I agree. Its concern is more in relation to a tendency for the driveways to become unkempt through weed growth and poor maintenance generally.
17. Whilst I would agree that the presence of weed growth would be harmful to visual amenity, as set out above, it is a matter for a house owner to observe the maintenance requirements of their property. Notwithstanding the appellant's own covenant system, which was referred to by the appellant but could not be enforced by the Council, there is nothing before me to suggest that the Council could not use its powers under section 215 of the Act to secure improvements, should excessive weed growth be deemed to be causing harm to the amenity of the area.
18. The photographs presented by the Council demonstrate that the displacement of aggregate can cause driveways and the adjacent apron areas to appear somewhat untidy. However, as referred to above, I consider that most property owners would feel an incentive to periodically retrieve displaced material. In any event from the information before me and my visit I am not persuaded that this impact would cause significant harm to the appearance of the area.
19. I conclude that the proposal would not result in harm to the visual amenity of the area. It would not therefore conflict with the Framework or with Saved Policies EN1.1 and H4 of the UDP and CS15 of the CS insofar as they seek to secure high quality design.

### *Other Matter*

20. At the Hearing it became apparent that the local resident, Mr. McClurry, had raised customer service related issues with the appellant. This however, is not a matter for my deliberations in this appeal.

### **Conditions**

21. I have had regard to the proposed replacement condition No 12 and the further conditions, and reasons for them, as set out in Council's statement, all of which are undisputed by the parties in the event of the appeal being allowed.
22. It was apparent from my visit that the development had commenced and accordingly, the commencement time period condition is not required. I have no reason to take issue with any of the other conditions in principle, however I have made minor alterations to the wording of some for clarification and to ensure they meet the tests for conditions set out in national planning guidance. The condition numbering is also altered to reflect the above.

### **Conclusion**

23. I have taken into consideration that at the Hearing there was agreement, in principle, between the Council and appellant that crushed aggregate would provide greater surface water run-off attenuation properties when compared to tarmac. Furthermore, it was also uncontested that the provision of tarmac driveways would add to the overall cost of the development, which would be reflected in the price of individual units. Accordingly the proposal would mean

that the units would be cheaper, albeit relatively marginally, but nevertheless potentially attractive to more purchasers with low incomes. The Council do not dispute that this would be in line with ambitions to regenerate the site and the wider area.

24. Notwithstanding that I have found the proposed driveways to be acceptable in their own right, these factors therefore only serve to add weight in favour of allowing the appeal. For the aforementioned reasons and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Roy Merrett*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development to which this permission relates shall be carried out in accordance with the approved plans referenced:

GH39:L:07 Rev:E: Location Plan;  
GH39:L:06 Rev E: Planning Layout;  
GH39:L:08 Rev:E: Soft Landscaping Layout;  
GH39:L:09 Rev:E: Boundary Treatment Plan;  
GH39:L:13 Rev:E: Adoption Plan;  
201/1F 201: Dwelling Type;  
201/1F 201: Dwelling Type;  
301/1G 301: Dwelling Type;  
302/1G 302: Dwelling Type;  
303/1E 303: Dwelling Type;  
304/1E 304: Dwelling Type;  
307/1A 307: Dwelling Type;  
309/1E 309: Dwelling Type;  
310/1D 310: Dwelling Type;  
401/1G 401: Dwelling Type;  
0282/SD700 Rev: Detached Garage Details Single;  
0282/SD701 Rev: Detached Garage Details Double;  
0282/SD703 Rev:A: Terraced Garage Details Standard Double;  
STE/15/02/09/01: Road Construction Details sheet 1 of 2;  
STE/15/02/09/02: Road Construction Details sheet 2 of 2.

- 2) The development of the residential dwellings shall be carried out in accordance with the external materials specified in the approved plans unless otherwise agreed in writing with the local planning authority. The development shall then be carried out in accordance with the approved details.
- 3) The approved Construction Method Statement shall be adhered to throughout the construction period. The approved Construction Method Statement shall, where applicable, provide for:
- i. details of temporary traffic management measures, temporary access, and vehicles attending the site;

- ii. wheel washing facilities;
  - iii. the parking of vehicles of site operatives and visitors;
  - iv. the loading and unloading of plant and materials;
  - v. storage of plant and materials used in constructing the development;
  - vi. measures to control vibration;
  - vii. measures to control the emission of dust and dirt;
  - viii. a scheme for the recycling and disposing of waste as a result of construction works;
  - ix. hours of operation;
  - x. the erection and maintenance of security hoardings, including decorative displays and facilities for public viewing; and
  - xi. a communication plan for liaising with the public.
- 4) No development shall take place outside the hours of 08:00 to 18:00 on Mondays to Fridays and 08:00 to 13:00 on Saturdays. No development shall take place on Sundays, bank or public holidays.
- 5) The approved refuse storage areas for each dwelling shall be implemented before each dwelling is brought into use and retained thereafter for the storage of refuse at all times.
- 6) The approved details for the boundary treatments shall be implemented in accordance with the approved plans prior to the occupation of each part of the residential development.
- 7) The approved landscape works shall be completed no later than the end of the first planting season following first occupation of the development or in accordance with a programme agreed in writing with the local planning authority. The approved landscape works shall be maintained in accordance with the current version of British Standard 4428 for a period of five years commencing on the date of Practical Completion and during this period any trees or plants which die or become diseased shall be replaced in the first available planting season with others of similar size and species and any grass that fails to establish shall be re-established.
- 8) The arrangements for the future management and maintenance of the proposed streets within the development which are not to be adopted and were approved by the local planning authority under planning reference 2015/0005/03/DCC on 25/10/2016 shall be adhered to at all times.
- 9) The external lighting for both adopted highway and non-adopted highway areas that was approved by the local planning authority under planning reference 2015/0005/03/DCC on 25/10/2016 shall be maintained at all times.
- 10) The residential development shall not be occupied until the approved highway access road areas have been constructed in accordance with the approved plans.
- 11) The private driveway areas already installed at the dwellings which have been completed and occupied shall be maintained in their completed form. The private driveway areas to be installed at those properties where the driveways are not yet installed shall be in accordance with the materials

and construction detail specified on Drawing No. SD712 Rev. B prior to the occupation of each dwelling and shall be maintained in their completed form.

- 12) The Approved Remediation Scheme shall be implemented in accordance with the approved timetable of works. Within three months of the completion of measures identified in the Approved Remediation Scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the local planning authority.
- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 14) The noise insulation scheme approved by the local planning authority under application 2015/0005/01/DET, as varied under application 2015/0005/04/RVC and also approved by the local planning authority, shall be implemented prior to any of the respective dwellings to which it relates becoming first occupied and shall be retained as such thereafter.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no front porch or rear extension shall be constructed, and no fence, gate, wall, or other means of enclosure other than those expressly authorised by this permission shall be erected or constructed within the curtilage of any property without planning permission being obtained from the local planning authority.
- 16) The dwellings on plots 1 to 8 on the Walker Road frontage shall not be occupied until the garages associated with these particular plots have been constructed in accordance with the approved plans. Thereafter the garages shall be retained at all times for use by the residents of these plots.
- 17) The residential development shall not be brought into use until the surface water and foul drainage scheme approved by the City Council has been constructed in accordance with the principles and proposals submitted within the Flood Risk Assessment and Drainage Strategy for the development.
- 18) The construction of the dwellings shall be carried out in accordance with the submitted sustainability statement of the planning application, unless otherwise agreed in writing with the local planning authority.

**END OF CONDITIONS SCHEDULE**

**APPEARANCES**

FOR THE APPELLANT:

Mark Eagland	Agent, Peacock and Smith
Anthony Lee	Group Technical Director, Gleeson Homes
Jolyon Harrison	Chief Executive, Gleeson Homes
Martin Reeves	Gleeson Homes
Ed Alder	Gleeson Homes
David Pearson	Principal, Westgate Consulting Engineers
John O'Connor	Principal, John O'Connor Consulting
Martin Popplewell	Director, Rosetta Landscaping Design

FOR THE LOCAL PLANNING AUTHORITY:

Colin Rising	Planning Officer
Samantha Bell	Student Planner
Ian Platais	Landscape Officer
Darren Varley	Flood Authority

INTERESTED PERSONS:

Ged McClurry	Local Resident
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