



Appeal Decision

Site visit made on 4 December 2018

by **M Aqbal BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th January 2019

Appeal Ref: APP/F1610/W/18/3200440

Land adjacent to Fosse Lodge, The Fosse, Moreton in Marsh

- 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 Tim Harris against the decision of Cotswold District Council.
- The application Ref 18/00737/FUL, dated 23 February 2018, was refused by notice dated 11 April 2018.
- The application sought planning permission for redevelopment of former scrapyards for the erection of 10 dwellings at Land adjacent Fosse Lodge, Stratford Road, Moreton-in-Marsh, Gloucestershire, GL56 9NQ without complying with a condition attached to planning permission Ref 17/00842/FUL, dated 15 February 2018.
- The condition in dispute is No 30 which states that: The development shall not be occupied until details of a shared footpath and cycleway have been submitted to and approved in writing by the Local Planning Authority to link the application site with the existing footpath at the junction of the A429 with the Todenham Road. The development shall be completed in accordance with the approved details and retained thereafter.
- The reason given for the condition is: The provision of a pedestrian and cycle link is required due to the distance of the site from the nearest footpath, having regard to the scale of the development and the speed of traffic using the A429, as the failure to make such provision would result in a severe impact upon highway safety. In addition the provision of pedestrian and cycle facilities would accord with the sustainable objectives of Cotswold District Local Plan Policy 38 and the National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission is granted for redevelopment of former scrapyards for the erection of 10 dwellings at Land adjacent to Fosse Lodge, The Fosse, Moreton in Marsh, in accordance with the terms of the application, Ref 18/00737/FUL, dated 23 February 2018, subject to the schedule of conditions attached to this decision.

Procedural Matters

2. Since the determination of the application, on 24 July 2018 the Government published a new National Planning Policy Framework (the Framework). Accordingly, I have considered this appeal in light of the new Framework.
3. Also, since the determination of the application the Council has adopted the Cotswold District Local Plan 2011-2031 (LP). The Council has also confirmed that Policy 38 of the Cotswold District Local Plan has been superseded. I have therefore considered the proposal against the relevant policies of the new LP.

4. For the purposes of my decision and in the interests of precision, I have amended the description of the development, as originally provided on the application form, by omitting the reference to the full address of the appeal site.

Main Issue

5. The main issue is whether or not Condition 30 is necessary or reasonable in the interests of highway safety and supporting sustainable modes of travel such as cycling and walking.

Reasons

6. The appeal site comprises a rectangular strip of land located immediately adjacent to the eastern side of the Fosse Way (A429) and about 800 metres from Moreton-in-Marsh town centre. This is the nearest town to the appeal site and includes a range of shops and facilities.
7. Condition 30 requires the provision a shared footpath and cycleway between the appeal site and the existing public footpath at the junction of the A429 with the Todenham Road, which is about 200m south of the appeal site and provides a pedestrian route into Moreton-in-Marsh.
8. Paragraph 55 of the Framework says that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
9. At present the route between the appeal site and the existing public footpath comprises a tree-lined grass verge alongside the A429. I acknowledge that this route is short enough for walking and cycling. Nonetheless, this grass verge is particularly narrow in parts with an uneven surface. Moreover, the speed limit along the A429 near the appeal site is 60 mph and from my observations this carries a significant amount of traffic. In view of the above this grass verge is particularly unappealing for pedestrians and cyclists alike and is unlikely to be used by future occupiers of the proposed development.
10. Even if there is the likelihood that the above route is used by pedestrians and cyclists, in particular given that there are existing dwellings nearby, I have not been provided with any strong evidence to suggest that this has resulted in any highway safety issues. Most notably, no specific concerns have been raised by the relevant Highway Authority for the area, in respect of the existing situation or in light of the proposal. The Council has also confirmed that previous planning consents for residential development at the appeal site, albeit for a lesser number of dwellings, have not required the provision of a shared pedestrian and cycle path. For the above reasons, I am satisfied that the existing route does not raise any significant highway safety implications for pedestrians or cyclists. Therefore, the requirement of the shared footpath and cycleway in the interests of highway safety is not necessary.
11. Turning to the matter of supporting sustainable modes of transport, the existing public footpath at the junction of the A429 with the Todenham Road does not incorporate a cycleway. As such a cycleway link to this would be of limited benefit. In any event, cyclists could use the existing road network.

12. Nevertheless, I acknowledge that accessibility to and from the appeal site for pedestrians would be limited and that a dedicated footpath to improve pedestrian access between the appeal site and Moreton-in-Marsh would accord with local and national planning policy aims for reducing reliance on car travel.
13. However, for the reasons given below the deliverability of such a scheme is limited and would fail the test of reasonableness. I am also mindful that residential development at the appeal site has previously been approved without requiring a footpath link and also the Highway Authority do not consider this requirement to be necessary. Notwithstanding these matters, the approved development includes a condition requiring secure cycle storage facilities. Therefore, future occupiers would have the choice of an alternative mode of sustainable transport. As such, the proposed development would not be solely reliant on travel by car. Accordingly, the requirement of the shared footpath and cycleway in the interests of supporting sustainable modes of travel is not necessary.
14. More significantly, the appellant asserts that the requirements of Condition 30 cannot be delivered because the grass verge along the A429 varies between 1m and 2m in width, and the shared cycleway and footpath would require a minimum width of 3.5m, in accordance with the Council's requirements. Consequently, this would also require the agreement of third party land owners.
15. The appellant's assertions are clearly supported in the advice from Gloucestershire County Council – Highways Development Management¹ who say that Condition 30 is not necessary based on trip generation for the proposed development, and that there was limited highway extent along the A429 to facilitate a shared pedestrian and cycle path without requiring third party land, the availability of which is not guaranteed.
16. The Planning Practice Guidance (PPG)² also advises that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. Based on the above advice the requirement of Condition 30 would fail the reasonableness test.
17. In light of the above, I conclude that Condition 30 is not necessary or reasonable in the interests of highway safety or supporting sustainable modes of travel such as cycling and walking. For the above reasons the removal of Condition 30 would not conflict with the highway safety aims of Policy INF5 of the LP, or Policy INF4 of the LP, which amongst other matters supports developments which actively promote travel choice.

Other Matters

18. Given the modest scale of the proposed development and in the absence of any substantive evidence, I am not persuaded that it would result in increased congestion or demand for parking in Moreton-in-Marsh.

¹ Letter from Gloucestershire County Council – Highways Development Management, dated 28 March 2018

² Paragraph: 009 Reference ID: 21a-009-20140306

Conditions

19. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no 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 for the reasons originally stated. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
20. Section 73(5) of the Act says planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted, by extending the time within which development must be started. Therefore, Condition 1 of this permission runs from the date of the original consent³. The Council's suggested Condition 7 largely duplicates Condition 6 and therefore is not necessary.
21. Conditions 12, 14, 15, 16, 18, 24, 25, 26 and 27 which prevent any development approved by the planning permission from commencing until they have been complied with, are considered fundamental to the development hereby approved. It is necessary for them to take the form of 'pre-commencement' conditions in order to have their intended effect.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

M Aqbal
INSPECTOR

³ 17/00842/FUL

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from 15 February 2018.
- 2) The development hereby approved shall be implemented in accordance with the following drawing numbers: 2A; 3; 4; 5A; 6A; 7; 8; 9; 10; 11A; 12A; 13; 14 and 682-A
- 3) The external walls of the development hereby permitted shall be built of natural Cotswold stone and render and shall be permanently retained as such thereafter.
- 4) The roof slopes of the development hereby permitted shall be covered with clay tiles and shall be permanently retained as such thereafter.
- 5) Prior to the construction of any external wall of the development hereby approved, samples of the proposed roofing material shall be approved in writing by the Local Planning Authority and only the approved material shall be used.
- 6) Prior to the construction of any external wall of the development hereby approved, a sample panel of walling of at least one metre square in size showing the proposed stone colour, coursing, bonding, treatment of corners, method of pointing and mix and colour of mortar shall be erected on the site and subsequently approved in writing by the Local Planning Authority and the walls shall be constructed only in the same way as the approved panel. The panel shall be retained on site until the completion of the development.
- 7) All door and window frames shall be recessed a minimum of 75mm into the external walls of the building and shall be permanently retained as such thereafter.
- 8) The oak shall not be treated in any way and shall be left to weather and silver naturally and shall be permanently retained as such thereafter.
- 9) No bargeboards or eaves fascia shall be used in the proposed development.
- 10) New rainwater goods shall be of cast iron construction or a substitute which has been approved in writing by the Local Planning Authority and shall be permanently retained as such thereafter.
- 11) No windows and doors shall be installed/inserted/constructed in the development hereby approved, until their design and details have been submitted to and approved in writing by the Local Planning Authority. The design and details shall be accompanied by drawings to a minimum scale of 1:5 with full size moulding cross section profiles, elevations and sections. The development shall only be carried out in accordance with the approved details and retained as such at all times.
- 12) The development shall not start before a comprehensive landscape scheme has been approved in writing by the Local Planning Authority. The scheme must show the location, size and condition of all existing trees and hedgerows on and adjoining the land and identify those to be retained, together with measures for their protection during construction work. It must show details of all planting areas, tree and plant species,

numbers and planting sizes. The proposed means of enclosure and screening should also be included, together with details of any mounding, walls and fences and hard surface materials to be used throughout the proposed development.

- 13) Any trees or plants shown on the approved landscaping scheme to be planted or retained which die, are removed, are damaged or become diseased, or grassed areas which become eroded or damaged, within 5 years of the completion of the approved landscaping scheme, shall be replaced by the end of the next planting season. Replacement trees and plants shall be of the same size and species as those lost, unless the Local Planning Authority approves alternatives in writing.
- 14) Before any part of the development is occupied, a 10 year landscape management plan, including management of the new roadside hedgerow and maintenance schedules for all landscape areas, both during and after the implementation of the approved development, shall be approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.
- 15) Prior to the commencement of the development hereby permitted a land contamination assessment and associated remedial strategy, together with a timetable of works, shall be submitted to and approved in writing by the Local Planning Authority:

(a) The land contamination assessment shall include a desk study and site reconnaissance and shall be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses, identify risks to human health and the environment, and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be submitted and approved in writing by the Local Planning Authority prior to investigations commencing on site.

(b) The site investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.

(c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to and approved in writing by the Local Planning Authority. The Local Planning Authority shall approve such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.

Prior to occupation of the development hereby permitted:

(a) Approved remediation works shall be carried out in full on site under Quality Assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified

then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority in writing. (b) A completion report shall be submitted to and approved in writing by the Local Planning Authority. The completion report shall include details of the proposed remediation works and Quality Assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the completion report together with the necessary waste transfer documentation detailing what waste materials have been removed from the site. (c) A certificate signed by the developer shall be submitted to the Local Planning Authority confirming that the appropriate works have been undertaken as detailed in the completion report.

- 16) No development shall commence until a scheme for protecting the proposed dwellings from traffic noise has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall achieve internal levels of 30dB LAeq (8 hour) and 45dB LAmaxF in all sleeping areas between 2300 hours and 0700 hours with windows shut and other means of ventilation provided. An internal level of 40dB LAeq 1 hour shall be achieved in all other areas of the building and an external level of 50dB LAeq (1 hour) shall be achieved in garden areas and balconies. Prior to the permitted dwellings being occupied, all works that form part of the scheme shall be completed in accordance with the approved details.
- 17) No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site except between the hour 7.30am to 6.00pm Monday to Friday, 8.00am to 1.00 pm Saturday, and not at any time on Sundays, Bank or Public Holidays.
- 18) No development shall commence on site until a detailed design, maintenance and management strategy for a sustainable surface water drainage system has been submitted to and been approved in writing by the Local Planning Authority. The design detail must demonstrate the technical feasibility/viability of the drainage system to manage the flood risk to the site and elsewhere, include measures to ensure water quality is protected and that these systems are managed for the life time of the development. The scheme for the surface water drainage shall be carried out in accordance with the approved details before the development is put into use or occupied.
- 19) Notwithstanding the submitted plans the existing available visibility splays from the site access shown on drawing no. 22505_08_020_02 shall be maintained for the existing and proposed site vehicle access. The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility between 1.05m and 2.0m at the X point 2.4m inside the centre of the access measured from the nearside carriageway edge and between 0.26m and 2.0m at the Y points at the extent of splays to the nearside of the carriageway or nearside vehicle track edge above the adjacent carriageway level.
- 20) Notwithstanding the submitted plans vertical continuous features, vegetation or boundaries are to be restricted between 0.26m and 2m

above carriageway level between the nearside of the A429 and the estate road south of the site access to the boundary and north of the site access to the southern end of the southern apartment block.

- 21) The parking space accesses hereby permitted shall not be brought into use until the estate roadside frontage boundaries have been kept clear to provide visibility splays extending from a point 2m back along the centre of the parking spaces measured from the estate road nearside vehicle track edge (the X point) to a point on the nearer carriageway edge of the public road 15m distant in both directions (the Y points). The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility between 1.05m and 2.0m at the X point and between 0.26m and 2.0m at the Y points above the adjacent carriageway level.
- 22) Notwithstanding the submitted plans the building hereby permitted shall not be occupied until space has been laid out within the site for 13 cars to be parked including 11 resident and 2 visitor spaces, and for all vehicles to be able to turn so as to enter and leave the site in forward gear, and such provision shall be maintained thereafter
- 23) Notwithstanding the submitted plans the development hereby permitted shall not be occupied until secure and covered cycle storage facilities for a minimum of 12 bicycles has been made available within secure independently accessible spaces and stores including Sheffield style stands for the flats and individual stores for the house gardens.
- 24) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall:
 - i. specify the type and number of vehicles;
 - ii. provide for the parking of vehicles of site operatives and visitors;
 - iii. provide for the loading and unloading of plant and materials;
 - iv. provide for the storage of plant and materials used in constructing the development;
 - v. provide for wheel washing facilities;
 - vi. specify the intended hours of construction operations;
 - vii. measures to control the emission of dust and dirt during construction
- 25) No works shall commence on site (other than those required by this condition) on the development hereby permitted until the first 20m of the proposed access road, including the junction with the existing public road has been completed to at least binder course level and associated visibility splays.
- 26) No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed street within the development have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
- 27) No development shall commence on site until a scheme has been submitted to, and agreed in writing by the Council, for the provision of

fire hydrants (served by mains water supply) and no dwelling shall be occupied until the hydrant serving that property has been provided to the satisfaction of the Council.

- 28) Prior to the first occupation of the development hereby approved, the turning facility adjacent to the entrance shall be provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and such provision shall be maintained thereafter for the turning of vehicles.

Richborough Estates