



Appeal Decision

Site visit made on 3 June 2019

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2019

Appeal Ref: APP/L3245/W/19/3220307

Land off Ellesmere Road, Shrewsbury SY1 2QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by The Saxonby Group against Shropshire Council.
 - The application Ref 18/02392/OUT, is dated 23 May 2018.
 - The development proposed is outline application for residential development and formation of vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for residential development and formation of vehicular access at Land off Ellesmere Road, Shrewsbury SY1 2QR in accordance with the terms of the application, Ref 18/02392/OUT, dated 23 May 2018, subject to the conditions set out in the attached schedule.

Background and Main Issue

2. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
3. A statement has been submitted by the Council in response to the appeal and this concludes that had the Council determined the application, it would have granted permission subject to a Planning Obligation regarding affordable housing and a contribution towards highway works and a number of suggested conditions.
4. However, notwithstanding the Council's position in relation to the proposal, there are a number of objections to it from interested parties relating to various matters.
5. The proposal is for outline planning permission with all matters reserved except for access. Though the description refers to residential development, the application form indicates that 36 dwellings are proposed, 3 of which would be for intermediate affordable housing.
6. A previous outline application for 36 dwellings and associated infrastructure on the site was granted planning permission at appeal in January 2019

(Ref APP/L3245/W/18/3206619). I have been provided with a copy of this decision and in reaching my decision have had regard to it where relevant.

7. Having regard to the representations received and to the outcome of the recent appeal, I consider that the main issue is whether there are any material differences between the proposal and that previously granted planning permission and whether there has been any material change in circumstances since the previous appeal that would justify me reaching a different conclusion to the previous Inspector.

Reasons

8. As stated, outline planning permission was granted at appeal for the erection of 36 dwellings and associated infrastructure at the site on 4 January 2019 with all matters approved except for landscaping (Ref APP/L3245/W/18/3206619). The proposal before me is also for outline planning permission for the same number of dwellings, though approval is only being sought for access at this stage. The proposed access is broadly of the same design and in the same position as that previously approved, being positioned fairly centrally within the Ellesmere Road frontage.
9. A number of concerns have been raised by interested parties in relation to both the proposed access and to the highway and pedestrian safety implications of the proposal. Whilst I have had regard to these, I also note that the Highway Authority did not object to the proposal, subject to a number of recommendations and conditions. In addition, I note that highway safety was not a main issue in relation to the previous appeal and that the same transport information was submitted in support of both proposals, the previous Inspector finding no reason to disagree with the Council's position that the scheme would be acceptable in highway safety terms.
10. Although an updated revised National Planning Policy Framework (the Framework) has been published since the previous appeal was determined and approval granted, none of the revisions within the Framework fundamentally alter the previous assessment of the proposal or justify a different decision on it being reached.
11. In reaching my decision I have had regard to all of the concerns raised by interested parties and note that a number of other technical reports have been submitted in support of the proposal and that these are the same reports submitted with the approved scheme for 36 dwellings. In light of this and of the findings of the previous Inspector, I have no reason to disagree with his decision in relation to the number of other matters raised.
12. Taking the above matters into consideration, I conclude that there are no material differences between the proposal before me and that recently approved and that whilst an updated revised Framework has been published since the previous decision was made, none of the revisions within the Framework relevant to the proposal justify me reaching a different conclusion to the previous Inspector.

Other Matters

13. An Ecological Statement and a Great Crested Newt (GCN) Mitigation and Management report dated November 2017 were submitted in support of the proposal and confirmed the presence of GCNs on the appeal site. Mitigation

and habitat creation and enhancement measures are proposed and subject to these and to the imposition of suitably worded conditions, the Council's Biodiversity Officer raises no objections to the proposal.

14. GCNs are a European Protected Species and consequently in order for planning permission to be granted, the three tests of the Habitats Directive must be met. In reaching my decision I have had regard to these tests and to the views of the Council's Biodiversity Officer and of Natural England and I am satisfied, based on the submitted evidence, that the relevant tests have been met.

Conditions

15. I have had regard to the conditions suggested by the Council and to those imposed by the previous Inspector. Where necessary I have amended and amalgamated them in the interests of clarity and consistency and to avoid duplication.
16. I have imposed a condition specifying the approved plans as this provides certainty. I have also imposed conditions specifying the reserved matters and a timeframe for their submission.
17. I have imposed a number of conditions which due to their nature require the submission of details prior to the commencement of development and these relate to site investigations for contamination, drainage, a construction method statement, various highway works and nature conservation requirements. The imposition of these conditions has been formally agreed by the appellant and are in the interests of environmental management, nature conservation and highway safety. Also, in the interests of nature conservation a lighting plan and the installation of bird and bat boxes are required. To ensure that great crested newts are protected the required environmental management plan and habitat management plan need to accord with the work already carried out on this issue.
18. To protect the buildings from the risk of flooding minimum ground floor slab levels are required in accordance with the Flood Risk Assessment and I have imposed a condition accordingly.
19. I have not imposed the suggested conditions requiring updated surveys and requiring that a European Protected Species Mitigation Licence is obtained as bearing in mind the existence of an extant consent without such conditions and the existence of the licencing regime, I do not consider these conditions to be necessary. Similarly, I have not imposed the suggested conditions regarding disabled access and landscaping as I do not consider these to be necessary bearing in mind that disabled access forms part of the building regulations regime and that landscaping is a reserved matter.

Planning Obligation

20. A Planning Obligation in the form of a completed S106 agreement has been submitted during the course of the appeal which secures the provision of affordable housing on site and a contribution towards highway works comprising a controlled pedestrian crossing on Ellesmere Road. I have considered the Planning Obligation in light of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 56 of the Framework.

21. I note that a similar Planning Obligation was submitted with the previously allowed appeal and I am satisfied that it is necessary and in accordance with the relevant development plan policies requiring affordable housing provision and pedestrian safety and that based on the evidence before me, it meets the requirements of regulation 123(3) of the CIL Regulations.
22. I am therefore satisfied that the Planning Obligation is fairly and reasonably related to the development proposed and that it meets the tests set out in Regulation 122 of the CIL Regulations and as such I have taken it into account in determining the appeal.

Conclusion

23. For the above reasons and having regard to all matters raised, I conclude that the appeal should be allowed.

Beverley Wilders

INSPECTOR

Richborough Estates

SCHEDULE OF CONDITIONS

1. Approval of the details of the design and external appearance of the development, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: L200 Proposed Site Plan, 02432-01C and 02432-02C.
5.
 - a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contamination on the site. The Site Investigation Report shall be undertaken by a competent person and conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The Report is to be submitted to and approved in writing by the local planning authority.
 - b) In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the local planning authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
 - c) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
 - d) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to the approval in writing by the local planning authority.
 - e) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the local planning authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

6. No development shall take place until a scheme of the surface and foul water drainage has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner) and shall include details of the proposed maintenance regime for any sustainable drainage system to ensure that the drainage system remains in good working order throughout its lifetime.
7. 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 provide for:
 - a) the parking of vehicles of site operatives and visitors
 - b) loading and unloading of plant and materials
 - c) storage of plant and materials used in constructing the development
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - e) wheel washing facilities
 - f) measures to control the emission of dust and dirt during construction
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - h) a construction traffic management and HGV routing plan.
8. No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water have been submitted to and approved by the local planning authority. The agreed details shall be fully implemented before the use hereby approved is commenced or the building(s) occupied.
9. Before any other operations are commenced, the proposed vehicular access and visibility splays, shall be provided and constructed to binder course level and completed to adoptable standard as shown on the application drawings before the development is fully occupied and thereafter maintained. The area in advance of the sight lines shall be kept permanently clear of all obstructions.
10. Prior to the commencement of the development full engineering details of the proposed 2.0m wide footway along Ellesmere Road (site frontage) shall be submitted to and approved in writing by the local planning authority. The works shall be fully implemented in accordance with the approved details before any of the dwellings it would serve are first occupied.
11. No development shall commence until an Environmental Management Plan for the construction period has been submitted to and approved in writing by the local planning authority. The submitted plan shall include:
 - a) An appropriately scaled plan showing 'Wildlife/Habitat Protection Zones' where construction activities are restricted, where protective measures will

be installed or implemented and where ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots) will be installed or implemented;

b) Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;

c) Requirements and proposals for any site lighting required during the construction phase;

d) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);

e) The times during construction when an ecological clerk of works needs to be present on site to oversee works;

f) Identification of Persons responsible for:

i) Compliance with legal consents relating to nature conservation;

ii) Compliance with planning conditions relating to nature conservation;

iii) Installation of physical protection measures during construction;

iv) Implementation of sensitive working practices during construction;

v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and

vi) Provision of training and information about the importance of 'Wildlife Protection Zones' to all construction personnel on site.

g) Pollution prevention measures.

All construction activities shall be implemented strictly in accordance with the approved plan.

12. No development shall take place until a habitat management plan has been submitted to and approved in writing by the local planning authority. The submitted plan shall include:

a) Description and evaluation of the features to be managed;

b) Ecological trends and constraints on site that may influence management;

c) Aims and objectives of management;

d) Appropriate management options for achieving aims and objectives;

e) Prescriptions for management actions;

f) Preparation of a works schedule (including an annual work plan and the means by which the plan will be rolled forward annually);

g) Personnel responsible for implementation of the plan;

h) Detailed monitoring scheme with defined indicators to be used to demonstrate achievement of the appropriate habitat quality;

i) Possible remedial/contingency measures triggered by monitoring;

j) The financial and legal means through which the plan will be implemented.

The plan shall be carried out as approved.

13. Within 90 days prior to the commencement of development, a badger inspection shall be undertaken by an appropriately qualified and experienced ecologist and the outcome reported in writing to the local planning authority. If new evidence of badgers is recorded during the pre-commencement survey then the ecologist shall submit a mitigation strategy that sets out appropriate actions to be taken during the works.

14. Prior to the first occupation of the development hereby permitted (or prior to the commencement of the use hereby permitted) a visibility splay measuring 2.4m x 43m to the nearside carriageway edge shall be provided to each side of the access where it meets the highway and such splays shall thereafter be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the adjacent highway carriageway.

15. Prior to first occupation of any of the dwellings hereby approved on the site details of the makes, models and locations of bird and bat boxes shall be submitted to and approved in writing by the local planning authority. The following boxes shall be erected on the site prior to first occupation of any of the dwellings on the site:

- A minimum of 5 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.

- A minimum of 8 artificial nests, of either integrated brick design or external box design, suitable for swifts (swift bricks or boxes).

- A minimum of 4 artificial nests, of either integrated brick design or external box design, suitable for house martins (house martin nesting cups).

- A minimum of 2 artificial nests, of either integrated brick design or external box design, suitable for sparrows (32mm hole, terrace design).

Boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

16. Prior to first occupation of any of the dwellings hereby approved on the site a lighting plan shall have been submitted to and approved in writing by the local planning authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Artificial lighting and wildlife: Interim Guidance: Recommendations to help minimise the impact artificial lighting (2014). The development shall be carried out strictly in accordance with the approved details prior to first occupation of any of the dwellings on the site and thereafter retained for the lifetime of the development.

17. The development hereby permitted shall not be brought into use until the areas shown on the approved plans for parking and turning of vehicles have

been provided properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use.

18. The gradient of the access(s) from the highway carriageway shall not exceed 1 in 24 for a distance of 5 metres and thereafter the gradient of the drive shall not exceed 1 in 10.
19. The plans submitted in relation to conditions 11 and 12 shall accord with the Great Crested Newt Mitigation and Management (Turnstone Ecology, November 2017), unless otherwise approved in writing by the local planning authority.
20. Ground floor slab levels shall be no lower than 54.00m AOD in accordance with the recommendations of the submitted AECOM Flood Risk Assessment dated 17 May 2016.

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