
Appeal Decision

Hearing held on 31 March 2015

Site visit made on 26 April 2015

by R Schofield BA(Hons) MA MRTPI

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

Decision date: 29 April 2015

Appeal Ref: APP/T2405/A/14/2227076

Warwick Road & Cambridge Road, Whetstone, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Mark Davis against the decision of Blaby District Council.
 - The application Ref 14/0387/1/MX, dated 27 March 2014, sought approval of details pursuant to condition No 2 of a planning permission granted on 3 October 2013.
 - The application was refused by a notice dated 21 August 2014.
 - The development proposed is demolition of existing industrial buildings and proposed residential development for a maximum of 136 dwellings, associated infrastructure, open space and vehicular access from Cambridge Road.
 - The details for which approval is sought are: appearance; landscaping; layout; and scale.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing industrial buildings and proposed residential development for a maximum of 136 dwellings, associated infrastructure, open space and vehicular access from Cambridge Road at Warwick Road & Cambridge Road, Whetstone, Leicestershire in accordance with the terms of the application Ref 14/0387/1/MX, dated 27 March 2014, subject to the conditions set out in the schedule to this decision.

Applications for Costs

2. Applications for costs were made by Mr Mark Davis against Blaby District Council and by Blaby District Council against Mr Mark Davis. These applications are the subject of separate Decisions.

Preliminary Matters

3. Although the application form indicated that permission was also sought for access, this matter was dealt with at outline stage. The only matters that were reserved are those set out in the header above.
4. While the layout details submitted included an additional access, the parties agreed at the Hearing that the reason for refusal in relation to the additional proposed access could be overcome by condition.
5. Another of the reasons for refusal related to the clustering of affordable housing. However, having regard to the S106 agreement relating to the

outline planning permission, the Council decided not to pursue this reason for refusal at the Hearing.

Main Issues

6. In the light of the above, and taking into consideration discussion of them at the Hearing, the main issues are:
 - whether conditions attached to outline planning permission 12/0176/1/OX require the agreement of an appropriate mix of housing at the reserved matters stage; and, if so,
 - whether the proposed development provides an appropriate mix of housing, having regard to the requirements of the National Planning Policy Framework (the Framework) and the development plan.

Reasons

Whether conditions attached to outline planning permission 12/0176/1/OX require the agreement of an appropriate mix of housing at the reserved matters stage

7. A body of case law¹ was drawn to my attention, albeit through the appellant's Costs Application, in order to demonstrate the existence of a series of established legal principles, namely: that in seeking to control or restrict the use of that for which they are granting planning permission, Local Planning Authorities must do so by condition rather than seek to rely upon the description of development; that a planning permission should be construed within the four corners of the consent itself, including the conditions in it and the reasons for those conditions; that a condition must be explicit in what it seeks to achieve; that there is no room for an implied condition, which seeks to widen the scope of what any reserved matters are; and that if there is any ambiguity in a condition then it should be resolved in a common sense way.
8. Bearing these principles in mind, I turn to Condition 22 of the outline planning permission. This states that, '*This permission does not convey approval to submitted indicative layout nor suggested housing mix*'. The reason given is '*For the avoidance of doubt and to ensure the provision of an appropriate amount and mix of affordable housing*'.
9. The Council was of the view that it was not in a position to fix a housing mix at outline stage. Given that the numbers of dwellings planned for the site had yet to be determined, that numbers would be very likely to have a bearing on mix and that there may well be evidential changes in the time it could take to apply for a reserved matters permission, this cannot be considered to be an unreasonable position to take.
10. Notwithstanding this, debate over whether such a condition was necessary, given that the submitted drawings showing a mix were only ever indicative, is largely moot. Of greater pertinence is whether such a condition places any restriction upon, or requires the agreement by the Council of, the subsequent mix of dwellings sought by the appellant at reserved matters stage. The Council was, through the imposition of Condition 22, stating unequivocally that the indicative mix was not agreed and was clearly intending to reserve the matter of mix for later agreement. However, notwithstanding this intention

¹ Please refer to the list of Documents Submitted at the Hearing (below).

there is not any explicit requirement within the condition reserving mix for later agreement, in accordance with development plan policies applicable at the appropriate time. Nor, alternatively, does the condition seek to define the parameters of any mix that may be forthcoming under a reserved matters application. Such an approach would have overcome the Council's concern about not being able to 'fix' mix at outline stage.

11. The outline permission reserved, among other matters, layout and scale for future approval. The definitions of both are set out in Part 1 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. Layout is defined as *'the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development'*. Scale is defined as *'the height, width and length of each building proposed within the development in relation to its surroundings'*.
12. The Council contends that, irrespective of the implications of Condition 22, 'mix' falls within the definitions of 'scale' and 'layout', as noted above, on the basis of a plain common sense interpretation of the Development Management Procedure Order². However, taking such an approach it is clear that neither definition makes reference to 'mix' in relation to development proposals, whether with regard to bedroom sizes or some other factor. Their focus can be regarded as being the interrelationship between, and juxtaposition of, the different elements of a development and its surroundings. Although the constituent parts of a development, i.e. the 'mix', may have a bearing upon such interrelationships it is, at best, an implicit consideration. A condition setting out a requirement for, among other things, agreement of scale and layout at reserved matters stage cannot be regarded as explicitly requiring agreement of mix.
13. The Council suggests that the issue of bedroom numbers is nothing to the point, as the number of bedrooms for each dwelling necessarily informs issues of scale and layout. However, this is not automatically the case. A single large unit could be, for example, a pair of semi-detached dwellings, a small terrace or a large detached house, all with varying bedroom numbers but of the same scale.
14. This being so, I conclude that, whatever the Council's intentions, the conditions attached to outline planning permission 12/0176/1/OX do not require the agreement of an appropriate mix of housing at the reserved matters stage. Consequently, there is no need for me to consider whether the appeal proposal provides a mix that accords with that preferred by the Council as, in my judgment, this requirement is outwith the terms of the outline application.

Other Matters

15. Concerns have been expressed about a range of issues with regard to development on the appeal site, including traffic generation, pedestrian safety, flood risk and the lack of need for new houses. However, these relate to the principle of development, which has already been established by the grant of outline planning permission.

² English Clays Lovering Pochin & Co v Plymouth Corporation [1973] 2 All ER 730 at 735

16. It is suggested that the plans show an additional access from the barns on the corner of Cambridge Road and Warwick Road onto Cambridge Road and that revision to the site outline eats into the open space proposed. However, the barns, and thus the access, are not part of the appeal proposal before me and the Council has not raised any concerns about the size of the open space, which does not appear to be insignificant in extent. It is further suggested that Japanese Knotweed is present upon the site, but no substantive evidence of this is before me.
17. The need to retain the 'rural feel' of Warwick Road, by retaining as many trees and shrubs as possible, is emphasised. Although some trees may need to be felled to accommodate a new footpath along Warwick Road, in order to improve pedestrian safety, which is also a concern, I see no reason why the proposed new landscaping, which includes trees and native hedgerow, would not mitigate this.
18. The issue of how construction traffic may enter the site has been raised. This is a matter to be resolved by the Construction Method Statement required by a condition of the outline planning permission.
19. The occupier of 2 Warwick Road (No 2) has raised concerns about overlooking from the two new dwellings proposed that would be facing the rear of this property. However, these appear to be a reasonable distance from the boundary with the garden to No 2, with a road separating them from it. They are also quite some considerable distance from the dwelling itself. Consequently, I do not consider that overlooking would be an issue.
20. It is questioned whether the affordable housing is 'pepperpotted' appropriately throughout site. However, the extent to which this is achievable has already been resolved through the S106 agreement concluded at outline planning permission stage.
21. The issue of trees adjacent to No 2, on land alleged to be in the ownership of the appellant, which are in need of lopping or removing was also raised. However, this is a private matter.

Conditions

22. The proposed planning conditions were discussed in some detail at the Inquiry. I have made amendments in the light of those discussions. In some cases this is to improve precision, clarity and enforceability, as well as avoiding overlap, and elsewhere to reflect more closely the (still extant) model conditions in Circular 11/95: The Use of Conditions in Planning Permissions.
23. Those relating to a timescale for implementation and adherence to the approved plans are necessary in the interests of proper planning. Those requiring the removal of the access onto Warwick Road, the closure of redundant extant accesses, visibility splays and private drives are necessary in the interests of highway safety. Those relating to garages and parking areas are necessary in the interests of highway safety and the efficient operation of the highway network.
24. The appellant proposed amending a number of the conditions attached to the outline planning permission and attaching them to the appeal permission. It was agreed, however, that this would most likely lead to confusion and, as such, was not appropriate.

25. Conditions were proposed by the Highways Authority relating to highways and drainage matters. However, a number of these are covered by conditions already attached to the outline planning permission and, as such, are not needed. It was also agreed that those relating to a joint cycle/footway running the full length of the red line boundary with Warwick Road and requiring specific garage sizes may not be achievable on the basis of the approved plans and, as such, it was not reasonable to impose them.

Conclusion

26. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be allowed.

R Schofield

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr David Manley QC
Mr Andy Ward
Mr Mark Davis
Mr Paul Robinson

RG+P Ltd
Strata Homes
Strata Homes

FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter Gibson
Mr Ian Jones
Mr Ian Davies
Mr Matt Lennon

Blaby District Council
Blaby District Council
Blaby District Council
Leicestershire County Council

DOCUMENTS SUBMITTED AT THE HEARING

1. List of suggested conditions, submitted by the appellant.
2. Parts 1 and 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2010, submitted by the appellant.
3. Journal of Planning Law and Environment 2003 Case Comment R (on the application of Murray) v Hampshire CC (No.1) [2002] EWHC 1401 (Admin), submitted by the appellant.
4. Journal of Planning Law and Environment 1995 Case Comment R v SoSE ex parte Slough BC [1995] EGCS 95 (CA), submitted by the appellant.
5. Cotswold Grange Country Park LLP v SoSCLG and Tewkesbury BC [2014] EWHC 1128 (Admin), submitted by the appellant.
6. R (on the application of Lloyds Pharmacy Ltd) v Leeds CC and Manor Park Surgery [2013] EWHC 4031 (Admin), submitted by the appellant.
7. Costs rebuttal and Costs Application, submitted by the Council.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Layout 40051/001N dated 28.03.14; Garage Elevations 40051/006A dated 11.04.14; Landscape Proposals 50059/001 dated March 2014; Landscape Proposals 50059/002 dated March 2014; Planning 04 – Sorrento dated 10.01.2014; No.7 AH3 (2010) dated 25.01.13; No.9 Imola (2010) dated 14.01.13; 10 Brick Milan (2010) dated 09.04.14; 10 Siena (2010) dated 18.03.14; 10 KTYPE TRAD (201) dated 03.04.14; 10 AH1 (2010) dated 31.01.13 ; 11 Florence (2010) dated 12.03.14.
- 3) Notwithstanding the approved plans listed in Condition 2 above no development shall take place until amended plans showing the removal of the vehicular access to the site from Warwick Road have been submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the approved plans before the development hereby permitted is first occupied.
- 4) The development hereby permitted shall not be occupied until the proposed garages shown on drawing Nos 40051/001N and 40051/006A have been provided and made available for use. The garages shall thereafter be retained for their intended use and shall not be converted into living accommodation without the prior written permission of the local planning authority granted on an application submitted in that regard.
- 5) No dwelling hereby permitted shall be occupied until the areas shown on drawing No 40051/001N as private access drives/turning spaces have been drained and surfaced in accordance with details submitted to and approved in writing by the local planning authority. Those areas shall not thereafter be used for any purpose other than the parking and/or manoeuvring of vehicles.
- 6) No development shall take place until a scheme for the permanent closure and reinstatement of any vehicular accesses that become redundant as a result of the permission hereby granted has been submitted to and approved in writing by the local planning authority. The scheme shall thereafter be implemented as approved within one month of the permitted vehicular access being brought into use.
- 7) Before first use of the development hereby permitted visibility splays of 2.4 metres by 25 metres shall be provided at the junction of the internal access road with Cambridge Road. These splays shall be in accordance with the standards contained in the Leicestershire County Council design guide (or replacement thereof) and shall be so maintained, and kept free of obstruction above a height of 0.6 metres, thereafter.
- 8) Any shared private drives serving up to five dwellings shall be a minimum width of 4.25 metres for at least the first five metres behind the highway boundary and have a drop crossing of a minimum size as shown in figure DG20 of the 6Cs Design Guide at its junction with the adopted road carriageway. Such drives shall be provided before any dwelling hereby permitted is first occupied and shall be maintained thereafter.