
Appeal Decision

Site visit made on 23 June 2015

by Ron Boyd BSc (Hons) MICE

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

Decision date: 1 September 2015

Appeal Ref: APP/V2635/W/15/3005766

Land south of Russett Close and north of Gaywood River, King's Lynn, Norfolk.

- 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 Mrs I Boyer against King's Lynn and West Norfolk Borough Council.
 - The application Ref 14/01690/OM, is dated 25 November 2014.
 - The development proposed is described as 'construction of up to 81 dwellings with access road (including bridge) cycle and pedestrian routes, landscaping and open space'.
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Decision

1. The appeal is allowed and planning permission is granted for construction of up to 81 dwellings with access road (including bridge) cycle and pedestrian routes, landscaping and open space at land south of Russett Close and north of the Gaywood River, King's Lynn, Norfolk in accordance with the terms of the application, Ref 14/01690/OM, dated 25 November 2014, subject to the conditions on the attached schedule.

Procedural matters

2. The application was submitted in outline with all matters reserved. However, access to the site is defined as being from Russett Close as shown on submitted Drawing No. 1051-03 and an indicative site layout is shown on the submitted Concept Plan. I have dealt with the appeal on that basis.
3. Following submission of a draft Unilateral Undertaking, and the Council's comments on the draft, the appellant submitted a signed Unilateral Undertaking dated 17 July 2015 under the provisions of Section 106 of the Town and Country Planning Act 1990. I have considered the document in the light of the Council's comments on the draft. I am satisfied that it meets the tests set out in paragraph 122 of the CIL Regulations 2010 and have taken it into account in my consideration of the appeal.
4. The application form incorrectly stated the appellant's title. Following advice from the appellant's agent I have corrected this in the above heading.

Main issue

5. I consider this to be the effect the proposed development would have on the provision of open amenity space for residents living nearby on the Reffley Estate.

Reasons

The site

6. The appeal site is an area of some 2.03 hectares of open land generally bounded by the Gaywood River to the south and the Black Drain, an open drain, to the north. Russett Close, part of the Reffley housing estate built in the 1960's and 1970's runs immediately north of, and broadly parallel to, the Black Drain. Vehicular access to the appeal site is proposed via a gap of around 37m between Nos. 50 and 51 on the south side of Russett Close. A bridge is proposed to provide access across the Black Drain. The area of this gap, which is bounded by Russett Close to the north, the side boundaries to Nos. 50 and 51 Russett Close to the east and west respectively, and Black Drain to the south, was, until recently, grassland used by local residents as informal open space, and had been for over twenty years. Notwithstanding that it was privately owned, and that no public rights of way across the land have been established, it was maintained by the Council as open space until it was fenced off to prevent public access. This seems to have occurred in 2014.

History

7. Outline planning permission was granted in March 2008 for residential development of the main area of the site south of the Black Drain with access proposed from the south by means of a bridge over the Gaywood River. The permission was renewed in 2012 but has now expired. A further outline application for up to 95 dwellings was made in November 2013 (Ref 13/01675/OM). This was on the basis of access from the north as is now proposed.
8. The application was refused, the sole reason being that '*The construction of an access road through this locally important open space would result in the loss of amenity use for local residents contrary to policy 4/21 of the King's Lynn and West Norfolk Local Plan (1998), policy CS 08 of the adopted Core Strategy (2011) and the provisions of paragraph 74 of the NPPF*'.
9. At appeal (APP/V2635/A/14/2219721) in October 2014 the previous Inspector defined the main issue as being the effect of the proposal on the provision of open amenity space for residents living nearby on the Reffley Estate. Whilst considering a number of other matters she found there would be no unacceptable harm to the amenity and quality of life of residents from the proposal, including the proposed access, in respect of the impacts of construction traffic and the additional traffic and activity generated by the proposed new housing development. As to issues regarding flood risk, biodiversity, provision of affordable housing and mitigation of the effect of the development on social infrastructure she found these had been addressed. She considered that the requirements of the relevant development policies could be secured by planning conditions and an Obligation under the provisions of Section 106 of the Town and Country Planning Act 1990.

10. However, in respect of the main issue she found that as a result of no provision having been made within the development proposals for the replacement of the open space between Nos. 50 and 51 Russett Close, that would be lost by the provision of the access, there would be a conflict, in that respect, with Policy CS08 of the Council's Core Strategy. Also that insufficient account had been taken of the amenity value of the land to the community and its use over a very substantial period of time as open space. She considered that the residents in the locality would, as a result, experience some harm to the quality of their environment and that to compensate for the harm replacement open space should be provided as part of the new housing development. As no such provision had been included in the proposals she concluded that the social role of the development in respect of the existing community had not been sufficiently addressed and dismissed the appeal for that sole reason.

The present application

11. The application the subject of this appeal differs from that the subject of the previous appeal only in respect of fewer houses now being proposed (up to 81 as opposed to up to 95 previously) and additional open space being proposed with a view to overcoming the previous Inspector's reason for dismissing the 2014 appeal. In addition, since the previous appeal the open space has been registered as an Asset of Community Value, confirming that the land has had an agreed local community use. This is consistent with the previous Inspector's findings. Apart from the changes described above no other material changes in circumstances since the previous appeal have been brought to my attention which could lead me to any conclusions other than those of the previous Inspector in respect of those aspects of the present proposals which remain the same as were considered at the 2014 appeal.
12. The statutory period for determination of the application ended on 26 February 2015. The appeal was submitted the day after. The officer's report in respect of the application had been prepared and published on the agenda for the Council's Planning Committee meeting on scheduled for 2 March. The submitted minutes of that meeting, whilst recording that in the light of the appeal the Council could no longer determine the appeal, recorded the Committee's resolution objecting to the application for the reasons set out in the officer's report.
13. The officer's report acknowledges that the previous Inspector's concern regarding the failure to provide replacement open space has been addressed in the present proposal. However the report states that the reasons that the previous application and appeal were refused and dismissed respectively included harm to the visual amenity of the area and recommended the application now be refused for that reason. Reference is made to the visual break to the developed street frontage provided by the existing amenity area and the claim made that the proposed access road would substantially change the character and appearance of the land causing harm to the quality of the environment.
14. At the previous appeal the Inspector identified that the open land interrupts the developed street frontage, providing visual relief and green space in the built environment; that it contributes to the visual and general amenity of the residential area; and that the effect of using the land to provide access would be to substantially change its character and appearance. She concluded

however that whilst there would be some harm to residents' amenity from the proposed changes the effects would not be unacceptable. They were not a reason for her dismissal of the appeal which was the effect of failure to provide replacement open space for that which would be lost as a result of the proposals.

15. I agree with the previous Inspector's conclusions in the above respects and note that notwithstanding the proposed access road the break in housing between Nos. 50 and 51 would still remain along with part of the present grassed area which, as mentioned in the officer's report, could be planted or landscaped if required. I therefore conclude that the main issue for this appeal is the same as that for the previous appeal as I have stated above.
16. The open space proposed in the previous scheme was only sufficient to satisfy the Council's requirements in respect of new housing, this being not less than 20sqm per dwelling. The officer's report records the applicant's present undertaking to provide a minimum of 1700sqm of open space to satisfy the maximum of 81 new houses and an additional 800sqm as compensation for the open space that would be lost as a result of the proposed access road. The appellant's estimate that the area to be taken by the access road would be 450 sqm has not been disputed by the Council. The open space to be provided is to be in a location to be agreed with the Council and is covenanted to that effect in the submitted completed Unilateral Undertaking. I consider the covenant sufficient to ensure that the open space to be provided would be in useable areas.
17. I note that concern has been expressed by third parties as to the safety and ease of access to the replacement open space. I agree with the officer's report that open space, at least as safe as the area that would be lost as a result of the proposed access, could be provided. I note that the 'village green/play area' shown on the Concept Plan is shown as being located at the nearest possible point to the displaced open space. Final details of the landscaping, the extent of the bridge across the Black Drain, and location of the open space would be determined at reserved matters stage.
18. In the light of the above I conclude that amount of open amenity space covenanted to be provided within the proposed development would be sufficient to compensate for the area to be lost by the proposed access from Russett Close. It would overcome the conflict with Core Strategy Policy CS08 identified by the previous Inspector as the reason for refusal. There would be no unacceptable harm in respect of loss of amenity space resulting from the proposed development.
19. I have taken account of all the matters raised in the evidence but have found nothing to outweigh my conclusion in respect of the main issue. For the reasons given above I conclude that the appeal should succeed.
20. I have considered the conditions suggested by the Council in the light of the Government's Planning Practice Guidance and Appendix A of Circular 11/95. I consider the conditions in the attached schedule to be reasonable and necessary – they deal with:
 - submission of details of existing and proposed levels, roads, footways, cycleways, foul and surface water drainage, flood resilient construction and

street maintenance in the interests of satisfactory construction and highway safety;

- location of the access from Russett Close to ensure that the development is carried out as hereby permitted;
- ground investigation and remedial works, flood resilient construction and provision of fire hydrants in the interests of public safety;
- landscaping, external lighting, site clearance, further survey work and biodiversity enhancement in the interests of assimilation into the surrounding area and protection of wildlife.

R.T.Boyd

Inspector

Richborough Estates

Schedule of conditions

- 1) Approval in writing of the details of the means of access, layout, scale, appearance and landscaping of the site (hereinafter called 'the reserved matters') for any phase of the development shall be obtained from the local planning authority before any development is commenced. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission. The development shall be carried out as approved.
- 2) The development hereby permitted shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the latest such matter to be approved.
- 3) Prior to the commencement of any development details of existing and proposed levels, including finished floor levels of all buildings or structures and any changes in levels proposed to the site, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details unless otherwise agreed in writing by the local planning authority.
- 4) Prior to the commencement of groundworks, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
 - a survey of the extent, scale and nature of contamination;
 - an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;
 - an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 5) Prior to the commencement of groundworks, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works, and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental

Protection Act 1990 in relation to its intended use after remediation.

- 6) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of groundworks, other than those required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.
- 7) No development shall commence until full details of the foul and surface water drainage arrangements for the site have been submitted to and approved in writing by the local planning authority. These details shall include details of any alterations to watercourses, land raising and access for drain maintenance operations, full details of the surface water disposal methods and drainage systems (including the adoption/future maintenance regime of any SuDS) and appropriate compensatory flood storage measures. The drainage details shall be constructed as approved before any part of the development hereby permitted is brought into use.
- 8) Prior to the occupation of the development a landscape maintenance scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall provide for the maintenance of all landscaped areas for a minimum period of 5 years and specify the maintenance responsibilities and arrangements for its implementation. The landscape maintenance scheme shall be carried out as approved.
- 9) Prior to the first occupation of the development hereby approved, a detailed outdoor lighting scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the type of lights, the orientation/angle of the luminaries, the spacing and height of the lighting columns, the extent/levels of illumination over the site and on adjacent land, the measures to contain light within the curtilage of the site and a programme for implementation. The scheme shall be implemented as approved and thereafter maintained and retained as agreed.
- 10) No development shall commence on site until a scheme has been submitted to and approved in writing by the local planning authority that provides for the suppression of dust during the period of construction. The scheme shall be implemented as approved throughout the period of construction unless otherwise agreed in writing by the local planning authority.
- 11) No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the hours of 0700 - 1800 on weekdays 0800 - 1300 on Saturdays not at any time on Sundays, Bank or Public Holidays
- 12) No development shall commence until details of the proposed arrangements for future management and maintenance of the proposed streets 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 an agreement has been entered

into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company established).

- 13) No works shall commence on the site until such time as detailed plans of the bridge over the Black Drain, roads, footways, cycleways, foul and surface water drainage have been submitted to and approved in writing by the local planning authority. All construction works shall be carried out in accordance with the approved plans.
 - 14) No works shall be carried out on the bridge over the Black Drain, roads, footways, cycleways, foul and surface water sewers otherwise than in accordance with the specifications of the local planning authority.
 - 15) Before any dwelling is first occupied the roads, footways and cycleways shall be constructed to binder course surfacing level from the dwelling to the adjoining County road in accordance with the details to be approved in writing by the local planning authority.
 - 16) Means of vehicular access to and egress from the development hereby permitted shall be derived from Russet Close where the estate road junction shall be laid out to accord with the submitted drawing 1051-03 Rev E.
 - 17) The development shall be carried out in accordance with the recommendations set out in the Water Vole, Reptile and Amphibian Survey Report conducted by Hillier Ecology dated May 2013, unless otherwise agreed in writing by the local planning authority prior to commencement of development. These recommendations include further survey work of the Black Drain regarding water voles and the presence of an experienced herpetologist to assess for reptile and amphibians.
 - 18) No development shall commence until details of opportunities to enhance biodiversity on the site, including opportunities to incorporate features into the design which are beneficial to wildlife, have been submitted to and approved in writing by the local planning authority.
 - 19) Any tree or scrub removal shall be carried out outside the bird nesting season which is hereby defined as being between 1st March and 31st August.
 - 20) Prior to construction of the first dwelling pursuant to any reserved matters approval a scheme for the provision and implementation of flood resilient construction/materials shall be submitted to and approved in writing by the local planning authority. The scheme shall be constructed and completed as approved.
 - 21) No development shall commence on site until a scheme has been submitted to and approved in writing by the local planning authority for the provision of one fire hydrant (served by mains water supply) for every 50 dwellings forming part of the development hereby permitted. Such scheme shall provide a minimum of two fire hydrants and no dwelling shall be occupied until the hydrants have been provided in accordance with the approved scheme to the satisfaction of the local planning authority.
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