



Appeal Decision

Site visit made on 16 November 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/Y3940/W/22/3301605

Land north of Quakers Road, Devizes, Wiltshire SN10 2FH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by The Police and Crime Commissioner for Wiltshire and Swindon against the decision of Wiltshire Council.
- The application Ref 21/02477/OUT, dated 25 February 2021, was refused by notice dated 25 February 2022.
- The development proposed is residential development of up to 57 dwellings together with new vehicular accesses onto Parkfields and Quakers Road, parking, pedestrian links, areas of public open space and landscaping.

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 57 dwellings together with new vehicular accesses onto Parkfields and Quakers Road, parking, pedestrian links, areas of public open space and landscaping at land north of Quakers Road, Devizes, Wiltshire SN10 2FH, in accordance with the terms of application Ref 21/02477/OUT, dated 25 February 2021, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was submitted in outline form with the means of access to be determined at this stage. Therefore, I have treated the drawings showing the layout and scale of the dwellings and landscaping of the site as indicative only. The means of access details and circulation routes within the site contained in those drawings will, nevertheless, form part of my assessment.
3. The appellant has submitted a planning obligation with the appeal. The provisions of the obligation have been subject to change during the appeal and the main parties have been given the opportunity to make comments. This matter will be discussed in greater detail later.

Main Issues

4. The main issues are:
 - the effect of the proposed development, including the associated road layout on the safety of vehicular and pedestrian traffic in the locality; and

- the effect of the proposed development on biodiversity, with particular reference to local badger habitat.

Reasons

Highway safety

5. The appeal site encompasses a large area of green space. It is bound to the north, west and east by the road serving Parkfield's, a modern housing estate comprising in the region of 30 dwellings. The appeal site's southern boundary runs parallel with Quakers Road. The site is largely enclosed by chain link fencing.
6. The indicative layout shows the dwellings broadly split into two areas separated by a central space comprising trees, grassland and connecting footpaths. The northern portion of the site is shown to have 33 units with access obtained directly off Parkfields. Access to the wider road network and the amenities of Devizes would be via Parkfield Terrace and its junction with Roundway Park. A smaller portion of the proposed dwellings are shown to have an access onto Quakers Road. The proposal intends to utilise the existing road layout as well as two new spine roads.
7. The Council's highway safety concerns largely relate to the capacity of the site's road network and surrounding highways to accommodate the additional traffic generated by the proposal while maintaining highway safety. There are also concerns particularly from interested parties regarding alterations to the existing road network and the loss of parking.
8. Core Policy 61 of the Wiltshire Core Strategy (Core Strategy) requires proposals to be served by safe access to the highway network, consider the needs of all transport users and to provide appropriate mitigation measures to offset any adverse impacts on the transport network.
9. TRICS data, included with the appeal, indicates there are currently on average 234 vehicle movements to and from Parkfields over a 24hr period. For the proposed development it is estimated that there would be an additional 183 two-way movements per day. The total number of vehicular movements post development would be in the region of 417.
10. Those movements would be channelled, in part, through Parkfield Terrace. The submitted evidence indicates that the road alignment of Parkfield Terrace and the total vehicle volumes would not exceed the carrying capacity thresholds for a "linked road". Moreover, when spread over the course of a whole day this is not a substantial amount of activity, given the presence of the other residential properties that require access along the road.
11. In the absence of any alternative study, data or evidence of the road network being unable to contain the proposed increase in vehicles accessing the site, I am satisfied that the road layout has sufficient capacity.
12. In terms of the wider road network the appellant's modelling indicates there would be an increase of 0.8% in traffic during the AM and PM peak on the nearby junction between Roundway Park and London Road due to the

proposed development. Similarly at the Quakers Road junction with London Road there would be an increase of 1.25% in traffic during the same times. In both instances the increases to overall traffic volumes at those junctions are considered modest.

13. It is proposed to widen parts of Parkfields from between 4.2 metres and 5.2 metres to 5.5 metres to enable vehicles to improve the space and passing distance along the road. Furthermore, the appellant intends to provide parking restrictions, along Parkfield Terrace to prevent indiscriminate parking that would otherwise narrow the road and obstruct visibility around the junction with Roundway Park and the wider development. A speed restriction of 20mph would be introduced to ensure traffic speeds are appropriate given the site's residential context. Moreover, the existing estate road has a cul-de-sac arrangement and given the residential character of the street, it would be highly unusual for vehicles to be travelling at excessive speeds.
14. Pedestrian facilities would be enhanced through further footways accessible to existing and proposed residents alike. Proposals for a network of paths through a central green space to encourage more journeys by foot would also provide safe walking routes and alternative routes for pedestrians. The final design of those routes would need to be assessed during the reserved matters stage, however, it would be reasonable to suggest that they would be segregated from vehicular carriageways.
15. The accident data for the locality shows that there have been no incidents logged at Parkfields and Parkfield Terrace. This further highlights that existing road conditions are safe. Furthermore, the prospect of a 20mph speed limit would limit the possibility of accidents occurring following the proposal's implementation.
16. Therefore, I am satisfied that the changes to the road layout's alignment, together with new footways, parking and speed restrictions would ensure safe road conditions for pedestrians, cyclists and motorists.
17. There is local opposition to the placing of parking restrictions along Parkfield Terrace. Yet, this would help to improve the efficiency of the road, prevent localised congestion, and remove possible obstructions to visibility. It was evident, during my site visit, that some motorists are parking along this road, and it is likely being used as a parking facility. The additional parking bays proposed a short distance away along Parkfields would provide surplus parking provision and address any shortfall incurred by the proposed restrictions.
18. There are concerns that the loss of pavements and junction widening at Parkfield Terrace would lead to a loss of accessibility and tree root damage. However, the appellant has confirmed that no such work is proposed as part of the Highway improvements. From my assessment of the submitted drawings and inspection of the site I have no reason to disagree.
19. The National Planning Policy Framework (the Framework) requires that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual

cumulative impacts on the road network would be severe¹. The evidence against the proposed scheme falls short of such a threshold.

20. I therefore conclude that the proposal and its associated road layout would provide efficient and safe access for all users along the local road network and would not be contrary to Core Policies 57 and 61 of the Core Strategy. These require proposals to be served by safe access to the highway network, consider the needs of all transport users and should provide appropriate mitigation measures to offset any adverse impacts on the transport network.

Biodiversity

21. Ecological surveys of the site indicate evidence of Badger activity. The proposal would retain an area of green space within the site to protect a known badger sett. A mitigation strategy is proposed outlining measures to protect badgers during site construction and to ensure that their habitat would not be harmed following the scheme's implementation. Strategies include measures to encourage foraging at the site and new access routes to other off-site feeding areas known to be used by Badgers. Those measures can be secured by a planning condition to ensure they are implemented and monitored.
22. The Council's concerns focus on the likely reduction of green space at the site and therefore Badger habitat. The development of up to 57 dwellings would inevitably diminish the green space. However, Badgers are unlikely to use the long-grassed areas at the site for feeding, preferring instead to access shorter amenity grass areas off-site. The survey indicates that Badgers regularly leave the site to feed, therefore the reduction in green space around the Badger sett would not affect their likely feeding grounds.
23. The submitted badger survey has been informed by professional ecological advice, which is in line with Government guidance on badger mitigation. I have no compelling counter evidence indicating the mitigation and monitoring proposals would not accord with that guidance or result in harm to Badger interests at the site.
24. Reference has been made to another housing development in the locality where the scheme's construction resulted in harm to badger habitat. Yet I have no details of that scheme, or whether any mitigation and monitoring was agreed. This matter therefore attracts limited weight.
25. There are concerns that the proposals only mitigate, rather than enhance badger habitat. Notwithstanding this, there would be biodiversity enhancements provided through additional planting, bird and bat boxes within dwellings that would satisfy requirements of the development plan.
26. Wider biodiversity interests include Roundway Down and Covert Site of Special Scientific Interest (SSSI) located some 1.3km from the site. The Council and Natural England have not raised any concerns regarding the scheme's effect on that designation. I have no reasons to disagree with those conclusions.

¹ Paragraph 111, National Planning Policy Framework 2021

27. Therefore, the proposed development would not harm the site's biodiversity interests, with particular regard to local badger habitat. It would accord with Core Policy 50 of the Core Strategy which requires amongst other things, that proposals protect features of nature conservation value and incorporate appropriate measures to avoid and reduce disturbance to species and habitats.

Other Matters

28. Interested parties have raised concerns that the parking bays created would displace green open space currently used by residents. The submitted drawings show that those areas are long and narrow and would remove only a small fraction of the open space areas referred to and still be accessible. Moreover, the proposed central landscaped area would provide new green space provision that could be used by existing residents. This is currently private land enclosed by fencing and cannot be accessed by those living locally. The proposals for this area also include additional planting that would help enhance the site's biodiversity interests.
29. It is acknowledged that an increase in motor vehicles accessing and egressing the site would lead to further emissions and consequential effects upon local air quality. The appellant seeks to address this through improving cycling and walking facilities in the locality. Financial contributions to secure those future upgrades would need to be obtained through a planning obligation as they would likely be outside of the appeal site. There would also be scope to introduce electric charging points at each dwelling to encourage electric vehicle ownership. It is considered that these factors would go some way to positively counteract the expected increase in vehicular emissions.
30. The layout, scale and appearance of the proposed dwellings is a matter reserved for future assessment; therefore, I have not considered the concerns raised in respect of those issues. However, there are no site constraints that would in my view prevent a housing scheme from safeguarding local character and living conditions.
31. The Council indicates that the Neighbourhood Plan encourages housing development on brownfields sites. This is noted; however, the appeal site is near to the town centre in an accessible location close to shops and services. On this basis the proposal is consistent with the settlement hierarchy outlined in the development plan. For that reason, the scheme attracts significant weight.

Planning Obligation

32. The appellant has completed, dated and signed a unilateral undertaking (UU) which includes several obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the CIL regulations). They relate to the following matters.

33. Core Policy 43 of the Core Strategy requires new residential development in this locality to provide 30% of its dwellings as affordable homes. On the evidence before me, it appears that the need for the contribution sought by the Council arises from the development and satisfies the 3 tests in the CIL regulations. The proposal would secure 17 affordable dwellings with 60% of these being 'affordable rent' and 40% 'shared ownership'. The property tenure mix meets the Council's required ratios, while the overall provision of affordable housing accords with Core Strategy Policy 43.
34. Parts of Devizes town centre are in an Air Quality Management Area. Core Policy 55 of the Core Strategy relating to air quality requires proposals, by virtue of their scale, nature or location which are likely to exacerbate areas of poor air quality, to demonstrate that measures can be taken to effectively mitigate emission levels to protect public health, environmental quality, and amenity. Through a financial contribution to improve infrastructure for non-polluting forms of transport such as walking and cycling the obligation would help mitigate emission levels.
35. I am satisfied that through financial contributions the submitted UU would make adequate provision for additional infrastructure to meet the needs arising from the development and address highway safety concerns and waste collection facilities in accordance with the Core Strategy.
36. There is an obligation to provide a financial contribution towards early years education in the locality. It seems to me that this obligation is directly related to the development and is fairly and reasonably related in scale and kind. Thus, it is necessary to make the development acceptable in planning terms.
37. The planning obligation's terms, clauses and definitions are clear and enforceable, while there are details of when the individual obligations take effect. I note the Council requires the developer to pay its legal fees for its input. However, that would be a matter for the main parties to resolve.
38. The Council refers to a clause in the UU where they are required to cancel the completed obligations from the register of local land charges, following written confirmation from the landowner. As the Council is not a signatory of the UU, it would not be obligated to meet that clause. Nonetheless, failure to satisfy those specific terms would not fundamentally prevent paying or implementing the obligations outlined in Schedule 1, or compliance with the CIL's statutory tests. Furthermore, there is no reason why meeting the clause outlined by the Council could not be resolved separately by the parties through other means. Therefore, I have given this matter limited weight.
39. For the above reasons, I am satisfied that the planning obligation would meet the requirements of the Framework and the CIL Regulations. I therefore give it significant weight in the determination of this appeal.

Conditions

40. I have had regard to the Council's suggested conditions, amending them where necessary for clarity and to ensure compliance with the tests set out

in paragraph 56 of the Framework. I also sought agreement from the Appellant to the pre-commencement conditions.

41. I have imposed a condition specifying the approved plans as this provides certainty. A condition setting out open space requirements is also necessary in the interests of character and appearance, the well-being of residents and local biodiversity.
42. Conditions related to the timescale for reserved matters applications and commencement of development to ensure development is carried out in a timely manner, have been attached. A condition is necessary requiring approval of the remaining reserved matters prior to the commencement of development.
43. A construction management plan is necessary to establish safety and environmental procedures for the work phase of the scheme. Accordingly, these measures should be agreed before work begins.
44. Conditions relating to the implementation of surface water management and attenuation at the site are necessary in the interests of public health and the avoidance of surface water flooding. These are required before the commencement of development as they would likely form part of the early works.
45. Conditions that require the proposed new access, parking, turning head and visibility splays are necessary in the interests of highway safety.
46. Making provision for vehicle charging points is required to promote sustainable transport and to meet the expectations of development plan policies.
47. The requirement for parking and speed restrictions along Parkfields and Parkfield Terrace would need to be delivered through a "Grampian" style condition, as those would be on land outside of the appellant's control. The effects of the condition would also preclude the development from being occupied until those restrictions are in place. Given that there was technical officer support in favour of those measures from a highway safety standpoint it would be unlikely that permission for the works would be denied or delayed prior to the development's occupation.
48. A condition is necessary to secure the proposed ecological mitigation, enhancement and monitoring in relation to species present at the site, particularly Badger, Birds and Bats.
49. The site is within an area where archaeological remains are known. Accordingly, it is necessary for a condition requiring a written programme of archaeological excavation along with procedures to follow during the construction phase.
50. It is necessary in the interests of clarity and visual amenity that details of ground floor slab levels are agreed before the development commences.

51. In terms of the appearance of the site and surrounding area, conditions requiring landscaping, tree protection procedures and future management of those features are necessary.

Conclusion

52. For the reasons given and having had regard to all matters raised including the Framework, I conclude that the proposed development would accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal should be allowed.

RE Jones

INSPECTOR

Richborough Estates

Schedule of Conditions:

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:
 - (a) The scale of the development;
 - (b) The layout of the development;
 - (c) The external appearance of the development;
 - (d) The landscaping of the site;The development shall be carried out in accordance with the approved details.
3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
4. The development hereby approved shall make provision for the following –
 - (i) Up to 57 dwellings; and
 - (ii) Approximately 0.75 ha of open space to be located centrally within the site (the 'green lung').'The scale of the development', 'the layout of the development', 'the external appearance of the development' and the 'landscaping of the development' (as to be submitted under condition no. 2) shall accommodate all of the above substantially in accordance with the 'Indicative Coloured Site plan Constraints Diagram' (0202B), the 'Indicative Coloured Site Plan' (0201C), the 'Post developments habitats' plan forming part of the Biodiversity Net Gains Assessment by Applied Ecology Ltd, the 'Landscape Proposals' sheets 1 to 4 (PR123429-11), the 'Soft Landscape Specification' by ACD Environmental dated 23/09/2021, and the 'Design & Access Statement' by Ridge dated 11/2021.
5. 'The means of access' to the site (which for the purposes of this condition includes all planned improvements and works to Parkfield) shall be constructed substantially in accordance with the following drawings:
 - 0201C dated 20/10/2021 (Indicative Coloured Site Plan)
 - 1101 dated 20/10/2021 (Parkfield Highway Improvements [including lay-bys])
 - 1102 dated 20/10/2021 (Quakers Road with Copenhagen Crossing)
 - 0001 Visibility Splays of Accesses and Private Drives) dated 24/08/2021The Parkfield Highway Improvements shall be completed prior to the first occupation of any of the new dwellings to be accessed from Parkfield or in accordance with a programme to be first agreed in writing with the local planning authority.
6. No development shall commence within the application site until:
 - a) A written programme of archaeological excavation, which should include on-site work and offsite work such as the analysis, publishing and archiving

of the results, has been submitted to and approved by the Local Planning Authority;

b) The approved programme of archaeological work has been carried out in accordance with the approved details.

7. Throughout the construction phase the 'Construction Phase' actions for archaeology set out in the 'Action Plan' in the Archaeological Management Plan by Tetra Tech dated 11/2021 shall be fully implemented by the developer/contractors. During the operational phase the 'Operational Phase' actions set out in the 'Action Plan' shall also be implemented by the developer/contractors with, where necessary, details of matters including the residents' information packs and the public information board being first agreed in writing with the local planning authority.
8. The development shall be carried out strictly in accordance with the recommendations of the Ecology Report by Applied Ecology Ltd dated 02/2021, and where necessary the reserved matters applications will be informed by the Ecology Report's requirements, notably in relation to accommodating the badgers, providing nocturnal dark wildlife corridors and achieving biodiversity enhancement.

With regard to biodiversity enhancement, the reserved matters for the planned buildings will make provision for at least ten enclosed bat boxes and at least ten swift bricks. These boxes and bricks will be erected/constructed as approved prior to first occupation of the buildings.

9. The development shall be carried out strictly in accordance with the drainage strategy set out in the Flood Risk Assessment and Drainage Strategy by Ridge dated 21/10/2021.

In support of the reserved matters application(s), full hydraulic modelling will be required taking into account an increase in impermeability as a result of new built development (in line with LASOO guidance). The MADD factor in the hydraulic modelling will need to be set to 0m³/ha in the detailed hydraulic calculations to ensure that the on-site attenuation storage is not overestimated. The hydraulic modelling should then inform the detailed design of the development.

10. No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until a Tree Protection Plan showing the exact position of each tree/s and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations"; has been submitted to and approved in writing by the Local Planning Authority, and;

The protective fencing shall be erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance with British Standard 3998: 2010 "Tree Work – Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority. No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

11. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.
12. No part of the development shall be first occupied until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.
13. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
14. No individual dwelling shall be first occupied until the access, turning area and parking spaces for that dwelling have been completed in accordance with the approved plans. The areas shall be maintained for those purposes at all times thereafter.
15. All visibility splays shall be provided strictly in accordance with the details shown on the 'Visibility Splays of Accesses and Private Drives' drawing (no. 0001 dated 24/08/2021). The visibility splays shall be maintained free of obstruction at all times thereafter.

16. No part of the development shall be first occupied until details of the provision of on-street parking restrictions along Parkfield Terrace have been agreed in writing by the local planning authority. The agreed details shall be implemented and prior to the first occupation of the dwellings and retained thereafter.
17. No development shall commence on site until details of the provision of an electric charging point for each dwelling have been submitted to and approved in writing by the local planning authority. The approved charging points shall be installed prior to the first occupation of the dwellings and shall be retained thereafter.
18. No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.
19. Other than works relating to archaeology and to make the site secure, no development shall commence on site, until a Construction Method Statement - which shall include the following:
 - a) the access for construction traffic (which should be from Quakers Road only);
 - b) the parking of vehicles of site operatives and visitors;
 - c) loading and unloading of plant and materials;
 - d) storage of plant and materials used in constructing the development;
 - e) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - f) wheel washing facilities;
 - g) measures to control the emission of dust and dirt during construction;
 - h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - i) measures for the protection of the natural environment;
 - j) hours of construction, including deliveries (where works and operations are audible at the site boundary the working hours should be limited to between 08:00 and 18:00 on Mondays to Fridays, 08:00 and 13:00 on Saturdays, and at no time on Sundays or Bank holidays);have been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

*****End of Schedule*****