



Appeal Decisions

Hearing held on 15 October 2024

Site visits made on 11 June, 9 July and 15 October 2024.

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal A: Ref: APP/R1038/W/23/3324560

Land South of Hallfieldgate Lane, Shirland, Derbyshire DE55 6AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Trustees of Ted Speed and Pauline Speed Hallfield Trust against the decision of North East Derbyshire District Council.
 - The application Ref is 21/01376/OL.
 - The application sought outline planning permission for up to 90 new residential units and site access without complying with conditions attached to planning permission Ref 19/00335/OL, dated 22 January 2021.
 - The conditions in dispute are Nos 4, 16 and 17 which state that:
 - 4 *The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No 07/1657/LP Rev N; and Proposed Site Access Drawing No JD119 – Figure 3.1 Rev C.*
 - 16 *No development shall take place until a temporary access for construction purposes has been provided to Hallfieldgate Lane, generally in accordance with drawing No JD119 – Figure 3.1 Rev C and provided with visibility splays measuring 2.4m x 54.0m to the east and 2.4m x 47.0m to the west. The area in advance of the sightlines shall remain free from any obstructions to visibility over 1.0m high, relative to the nearside carriageway channel level, for the time over which the temporary access is in use. The temporary access shall be retained for the duration of the construction phase or until such time as it is replaced by the permanent access.*
 - 17 *No development above ground level shall take place until a detailed scheme of highway improvement works for the provision of a new estate street junction formed to Hallfieldgate Lane has been submitted to, and approved in writing by, the local planning authority. The scheme shall provide for: a minimum 5.5m carriageway, 2.0m footway and 1.0m margin; a maximum gradient of 1:30 for the first 15.0m and 1:20 beyond; visibility splays measuring 2.4m x 54.0m to the east and 2.4m x 47.0m to the west; and shall include highway works for the realignment of the carriageway, bus stop provision, relocation of existing parking bays and tactile crossing adjacent to the site, in accordance with submitted drawing JD119 Figure 3.1 Rev C, together with a programme for the implementation and completion of the works. The highway works shall be implemented in accordance with the details and programme as approved. The visibility splays shall thereafter be maintained free from obstruction over 1.0m high relative to the nearside carriageway channel level.*
 - The reasons given for the conditions are:
 - 4 *To provide certainty.*
 - 16 *Highway safety.*
 - 17 *Highway safety.*
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Appeal B: Ref: APP/R1038/W/23/3324561

No. 43 Hallfieldgate Lane, Shirland, Derbyshire DE55 6AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Friar 2019 Ltd against the decision of North East Derbyshire District Council.
 - The application Ref is 22/00185/FL.
 - The development proposed is proposed footway extension to the north side of No.43 Hallfieldgate Lane, Shirland.
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Decisions

Appeal A: Ref: APP/R1038/W/23/3324560

1. The appeal is allowed and planning permission is granted for up to 90 new residential units and site access at Land South of Hallfieldgate Lane, Shirland, Derbyshire DE55 6AA in accordance with the application Ref 21/01376/OL, without compliance with condition numbers 4, 16 and 17 previously imposed on planning permission Ref 19/00335/OL dated 22 January 2021 and subject to the conditions in the attached schedule.

Appeal B: Ref: APP/R1038/W/23/3324561

2. The appeal is allowed and planning permission is granted for proposed footway extension to the north side of No.43 Hallfieldgate Lane, Shirland, Derbyshire DE55 6AA in accordance with the terms of application Ref 22/00185/FL; subject to the conditions in the attached schedule.

Application for Costs

3. An application for costs in respect of both appeals was made by the Trustees of Ted Speed and Pauline Speed Hallfield Trust and Friar 2019 Ltd against North East Derbyshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The proposals are located adjacent to each other and relate to the same housing development. I have therefore considered the appeals in a single decision letter to avoid repetition. However, I have considered each appeal on its individual merits.
5. Prior to the Hearing I visited the site on separate dates. However, insufficient evidence had been provided on a number of issues to enable me to consider the appeals; including in respect of site levels, design of embankments and barriers, and protected trees. It was not possible to address these issues at the site visits and I therefore changed the appeals procedure to a Hearing. The appellant has submitted further evidence on these issues. Further consultation has been undertaken in respect of that evidence and the change of procedure, and both main parties have had the opportunity to respond on these matters.
6. In respect of Appeal A, a Unilateral Undertaking (UU) has been submitted which provides for contributions towards education provision and the provision of affordable housing. The Council has confirmed that the UU is acceptable should the appeal be allowed. The UU meets the tests set out in paragraph 57

of the National Planning Policy Framework (the Framework) and I have had regard to it accordingly.

7. Prior to the Hearing, the Shirland and Higham Parish Neighbourhood Plan (SHNP) successfully passed its referendum and is now part of the development plan. The Council has indicated which policies of the SHNP it considers to be relevant to these appeals, and the appellants have had the opportunity to address this at the Hearing.
8. There is a row of mature trees running adjacent to Hallfieldgate Lane which are protected by a Tree Preservation Order (TPO 104). There has been some uncertainty as to whether this TPO applies to a tree which may be affected by the proposals. The Council has issued a further TPO dated 22 August 2024 (TPO 302/2024) which includes the most easterly Sycamore of the row of trees, together with a group of trees along the boundary with No 43 and also elsewhere within the site of Appeal A. The Statement of Common Ground (SoCG) specifies that the Council is yet to consider an objection to the TPO 302/2024 so, whilst made, the TPO was not at the time of completion of the SoCG confirmed. However, I have proceeded to determine this appeal giving full weight to the made TPO 302/2024 in the absence of evidence to demonstrate that it has not been formally confirmed.

Background and Main Issues

9. Outline planning permission for up to 90 new residential units and site access was granted by a previous Appeal Decision¹ in January 2021. That outline permission was granted with access only to be determined at that stage, with details of appearance, landscaping, layout and scale to be determined as reserved matters. The access in respect of the outline permission was located further to the west than that of the appeals before me. In effect, the current appeals relate to the relocation of the access to the east closer to 43 Hallfieldgate Lane as well as associated works including a footway extension.
10. I have had regard to the extant outline permission as a potential 'fallback' scheme. In the SoCG, the Council's position is that the approved western access is dependent upon the extension of the parking bay depth to the opposite side of the road which has not progressed to date. The Council considers that the approved western access appears to be no more than a theoretical possibility and, as a fallback position, carries little weight.
11. However, as was explained by the main parties at the Hearing, the progression of matters regarding the parking bays has foundered due to a land valuation issue, in effect a 'ransom strip' situation. Although a deal for the land has not been completed, the Council confirmed it remains open to discussions, and the appellants indicated that discussions were on hold pending the determination of the appeals before me. There is therefore a greater than theoretical possibility that the fallback scheme could be implemented, even allowing for outstanding issues such as a land deal and the reserved matters on the outline permission. On that basis, I give the fallback scheme of the existing outline permission significant weight in my consideration of this appeal.

¹ Appeal Ref: APP/R1038/W/20/3259758, Application Ref 19/00335/OL

12. The main issues are the effect of the proposal on:

- The character and appearance of the area (Both Appeals), with due regard to protected trees (Appeal A); and
- Highway Safety (Appeal A).

Reasons

Character and Appearance

13. The reason for refusal on this issue in respect of Appeal A refers to the proposal being a major change in the approved plans. However, the scope of a Section 73 application is not limited to minor material amendments, and the appeal proposal can therefore be determined under this procedure.
14. In respect of Appeal B, the proposal would result in the loss of a hedge that runs along the boundary between No 43 and Hallfieldgate Lane as well as non-protected trees. The proposed footway would also replace an extent of grassed verge with hard surfacing. Although these would be urbanising features, they would appear as a logical extension of the streetscape of this part of the village. The proposed retaining wall would be largely screened by a landscaped bank, and in any event would only be readily visible from within the garden of No 43 rather than the wider public realm. Further mitigation by landscaping can also be secured by condition.
15. In respect of Appeal A, the access would be located closer to the edge of the built extent of the village on the south side of Hallfieldgate Lane compared to the fallback scheme. Therefore, in general landscape impact terms, it would appear as a more logical extension of the village compared to that which has previously been permitted. This would represent a material improvement in character and appearance. The proposal would include pedestrian barriers, but these would not be incongruous or obtrusive features given the existing means of enclosure on this part of the streetscape.
16. Both Appeal proposals would include extents of retaining walls. The details originally provided for Appeal A indicated that these would include significant extents of exposed structures. However, further details have been provided which clarify the extent of banking around the junction which would mitigate the potentially stark and engineered features of the proposed works, and which also provide further opportunity for landscaping. Although the details of the embankments are of a relatively basic form, this gives sufficient certainty that the effect of engineering works can be mitigated, including through the landscaping and appearance reserved matters relating to Appeal A. Conditions would also enable details of the elevations and facing materials of the retaining walls to be provided in the interests of character and appearance.
17. However, in respect of Appeal A, the effect on a Sycamore included within TPO 302/2024 is a significant concern. This protected tree is at the end of a line of other protected trees which make a significant contribution to the streetscape along Hallfieldgate Lane. The proposed access would affect the Root Protection Area (RPA) of the tree, and the Council's Officer report indicates that this may have a detrimental impact on the tree and would normally be avoided. The appellant refers to potential technical solutions to address this, but these are set out in general terms and there is no certainty that they would be successful.

18. However, the Council's Arboricultural Officer has also identified concerns of the effect of the fallback scheme on other trees within this important linear group. They identify that an existing access has resulted in damage being sustained to protected trees on either side of it. The fallback scheme would result in the widening of this access, and the Arboricultural Officer considers that this will cause significant damage to both of the trees. This was emphasised in the Council's Officer report and was reiterated at the Hearing. The damage and potential loss of these 2 trees would create an obvious gap in this important line of protected trees, with significant harm to its amenity value.
19. The tree affected by the appeal before me is located at the end of the line of trees. Although it is an integral part of this important feature, the loss of a single tree at the end of this line would be materially less harmful than the loss of 2 trees within it.
20. When granting permission for the fallback scheme, the Inspector considered that the trees fronting Hallfieldgate Lane would all be retained. However, I must reach my decision based on the evidence before me, which shows that there is a significant possibility that the widening of the existing access would lead to great harm to 2 trees and their potential loss.
21. Although there is some uncertainty about the effectiveness of the technical solutions referred to by the appellant to protect the tree, it may be that they could be demonstrated to be effective. If that is not the case, compensatory planting may provide at least some mitigation for the loss of the tree. These are matters that could be addressed by condition.
22. On balance, and mindful of the fallback scheme, I consider that the effect of the relocated access on a protected tree is not sufficient to warrant the dismissal of the appeal. Nevertheless, due to the potential loss, damage or threat to the well-being of a protected tree which is part of an important landscape feature, the development which is the subject of Appeal A would be contrary to Policies SS9, SDC2, SDC3, and SDC12 of the North East Derbyshire Local Plan 2021 (the Local Plan); and Policies 3, 4 and 7 of the SHNP. However, due to the weight given to the fallback scheme and the greater harm to protected trees and the landscape likely to arise from it, there are material considerations that indicate Appeal A should be determined other than in accordance with the development plan.
23. More generally on this main issue, I conclude that both Appeal A and Appeal B would not harm the character and appearance of the area compared to the fallback scheme, and in some aspects they would represent an improvement compared to that which has been approved previously. Notwithstanding my conclusions in respect of protected trees, in general terms the proposals would not conflict with Policies SS9, SDC3, and SDC12 of the Local Plan; and Policies 3, 4 and 7 of the SHNP with regards to design, landscape character and place-making considerations for development in the countryside.

Highway Safety

24. The Council has raised no comments on the technical aspects of the design of the proposal, and states that the Highway Authority raise no objection in principle to the technical aspects of the design of the new access, its geometry, retaining walls and pedestrian guard rail.

25. However, the Council refers to more general concerns about the access. This includes the width of the road which is further affected by on-street parking. In that respect, Map 9b of the SHNP identifies the east extent of Hallfieldgate Lane as an area where on-street parking is prevalent. The Council also refers to comments from local people about regular minor accidents. However, although I am mindful that local knowledge can be important, the comments are of an anecdotal nature and do not provide substantive evidence of unacceptable highway safety in the vicinity of the proposed junction. In contrast to the detailed evidence provided by the appellant, it has not been demonstrated that the Council's concerns would materially affect the safety of the junction.
26. Reference is also made to limited visibility near the junction. However, detailed evidence has been provided that demonstrates that suitable visibility splays can be provided, and I saw that the location of the junction had good visibility along the highway at my visit. This would be the case even allowing for the topography of the area and the incline of the road within the appeal site leading to the junction. In any event, the existing and proposed inclines are not of a degree that would lead to awkward vehicle movement. The Council refers to limited streetlighting, but the junction would provide suitable visibility during the hours of darkness and in any event I saw that there were lighting columns along the highway in the vicinity of the site.
27. The proposed access would be located close to the junction with Lilac Way on the opposite side of Hallfieldgate Lane. Concern has been expressed about the offset nature of these junctions, but there is no substantive evidence that this is fundamentally unsuitable in terms of highway safety.
28. Concerns about the extent of the footway further along Hallfieldgate Lane was also raised at the Hearing, and that pedestrians would have to cross the road at some point due to the termination of the footway within the village. However, even on that basis, the proposed relocated access and the extended footway would provide more convenient access into the village compared to the fallback scheme. In the latter, pedestrians would have to cross Hallfieldgate Lane in the immediate vicinity of the new junction, rather than having the option to pass along the footway into the village as would happen with the appeals before me.
29. In my consideration of highway safety, I am mindful that the Highway Authority has not objected to the proposal, and it is evident that it has thoroughly assessed the scheme. The appellant has provided detailed evidence which is based on an updated vehicle speed survey, and which concludes that there is not a significant road safety problem in this area and that the proposal is acceptable in transport terms. Although the highways data provided by the appellant may be for an extended period of time, this does not mean that recent changes in traffic movements have not been appropriately assessed. There is no substantive evidence before me that demonstrates that the conclusions of the appellant's highways evidence or those of the Highways Authority are incorrect.
30. Based on what I have seen and read, the proposals would not have an unacceptable impact on highway safety. The proposal would therefore not conflict with the highway safety requirements of Policy ID3 of the Local Plan or Aspirational Policy 1 of the SHNP.

Other Matters

31. The Hallfieldgate Conservation Area (CA) is located beyond the western boundary of the site of Appeal A. The relocated access would be sited further away from the CA boundary than that of the fallback scheme, and would therefore reduce any potential impact on this designated heritage asset. I am also mindful that, when granting outline permission for the fallback scheme, the previous Inspector concluded that the proposal would preserve the setting of the CA. On that basis, the appeal proposals preserve the character and appearance of the CA.
32. I have had regard to comments raised by third parties in respect of the proposal. With regards to pressure on local services and infrastructure, the amount of housing on the site has been established by the permitted fallback scheme, and the appeal proposals would not increase demand beyond that already permitted, including in respect of doctors surgeries, schools and sewerage. Similarly, the proposal would not affect the availability or access to public transport compared to the fallback scheme.
33. The internal layout of the site and the form of proposed dwellings fall within the remit of the reserved matters, including consideration of the effect on the CA and listed buildings. The proposal would also not materially alter the effect on wildlife compared to the fallback scheme.
34. There is a watercourse running close to the boundary between the site of Appeal A and No 43, which runs through a culvert under Hallfieldgate Lane and discharges to the watercourse to the south. Reference has been made to recent flooding in the area. However, it has not been demonstrated that the extent and form of flooding was of a nature that would directly affect the proposed junction. Further details about the levels of the culvert and watercourse and the relationship with the proposals was provided as part of the appeal process and were subject to further consultation. In response to this, no objections were received from the Flood Risk consultee, the Highway Authority or the Environment Agency. Based on the evidence before me, it has not been demonstrated that flood risk represents sufficient reason to withhold planning permission for the appeals.

Conditions

35. A list of conditions agreed by both main parties has been provided in the SoCG for both Appeal A and Appeal B. An agreed amended wording for suggested condition 8 of Appeal A has also been provided.
36. In respect of **Appeal A**, I have reviewed the conditions and the reasons for them as given in the previous Appeal Decision, albeit within the circumstances of the appeal before me.
37. In addition to the implementation and reserved matters conditions, to provide certainty it is necessary to define the plans with which the scheme should accord, and to control the maximum number of houses that can be built. The timescale for the submission of an application for the reserved matters reflects the circumstances of Appeal A.
38. In the interests of the character and appearance of the area conditions are necessary to set out matters that should be covered in the landscaping and the appearance reserved matters submissions. Further in the interests of character

- and appearance, a condition is required to ensure the protection of the trees that are to be retained and compensatory planting if necessary.
39. For nature conservation reasons conditions are necessary to ensure biodiversity enhancements are carried out as part of the development and to protect nesting birds.
 40. To ensure the satisfactory drainage of the site conditions are required to control foul and surface water drainage of the site during construction and when developed.
 41. A condition requiring the submission of a construction management plan is necessary to protect the living conditions of residents and for highway safety. Also for highway safety, conditions are necessary relating to the provision of the access for both construction traffic and the completed development. Further in respect of highway safety, a condition is necessary requiring the provision of visibility splays, guardrails and footways. To promote sustainable means of transport a condition is needed to ensure the submission of a Travel Plan.
 42. It is appropriate to have conditions to ensure further investigations are carried out, and to outline measures of how any contamination would be dealt with.
 43. A condition requiring a scheme of investigation is necessary to ensure the recording of any archaeological remains. As the construction phase is cited as an economic benefit of the scheme a condition to maximise training and employment during this stage is necessary.
 44. In respect of **Appeal B**, in addition to the standard 3 year time limitation for commencement, a condition requiring the development to be carried out in accordance with the submitted plans is required in the interests of certainty.
 45. An Arboricultural Method Statement (AMS) and landscaping scheme are necessary in the interests of character and appearance. The AMS should be submitted to and approved by the local planning authority at the pre-commencement stage as it relates to matters which need to be established before the commencement of development. A condition requiring the provision of a guardrail is required in the interests of highway safety.
 46. In respect of both **Appeal A and Appeal B**, a further condition has been suggested in the SoCG relating to details of the elevations and facing materials for retaining walls. I consider that this condition is necessary in the interests of character and appearance. Reference has been made to seeking the views of the Highway Authority, but this can be addressed as part of the local planning authority's consideration of the details required by the condition.

Conclusion

47. For the reasons given above I conclude that **Appeal A** should succeed. I will grant a new planning permission without the disputed conditions but substituting and adding others, and restating those undisputed conditions that are still subsisting and capable of taking effect.
48. For the reasons given above I also conclude that **Appeal B** should be allowed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

John Dickinson	Dickinson Planning Limited
Gary Holliday	FPCR Environment & Design Limited
Mike Kiss	Thompson Tree Services (UK) Limited
Jon Stokes	Armstrong Stokes and Clayton Limited

FOR THE COUNCIL

Susan Wraith	Planning Consultant
Philip Slater	Principal Planning Officer
David Cunningham	Arboricultural Officer
Adeel Nawaz	Highway Development Control

Interested Person
Councillor Heather Liggett

Documents Submitted at the Hearing

1. Arboricultural Report: Tree Condition Quantified Tree Risk Assessment (QTRA), Thompson Tree Services (May 2022); Tree Location Plan; and QTRA: Tree Schedule.

Documents Submitted Following the Hearing

1. BS5837 Tree Survey, C B E Consulting (07 March 2019).
2. Revised draft Condition 8.

Conditions Schedule - Appeal A

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development takes place 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 not later than three years from 22 January 2021.
- 3) The development hereby permitted shall take place not later than 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:
 - i) Drawing No. 07/1657/LP revision N Location Plan
 - ii) Drawing No. 0720 revision P04 Modified Site Access Visibility Splays
 - iii) Drawing No. JD119A/1000/P Sections thro. New Development Access
 - iv) Drawing No. 07739-FPCR-XX-XX-DR-L-0008 Pedestrian Guardrail Detail
- 5) No more than 90 dwellings shall be built on the site.

- 6) Before first occupation of any dwelling a scheme for the delivery and future management and maintenance of all on-site open space, including a Landscape Management Plan and a timetable for implementation shall have been submitted to and approved in writing by the local planning authority. The approved scheme of open space shall be implemented in full in accordance with the approved timetable and shall be managed and maintained in accordance with the approved scheme thereafter.
- 7) The details to be submitted to, and approved in writing by, the local planning authority as part of the appearance reserved matters shall include a scheme for mitigating climate change through sustainable design and construction of the dwellings. The dwellings shall be constructed in accordance with the approved climate change scheme.
- 8) No development, (including demolition and all preparatory work including access facilitation pruning), shall take place until a detailed Arboricultural Method Statement and Tree Protection Plan, in accordance with BS 5837:2012, have been submitted to and approved in writing by the local planning authority.

The Arboricultural Method Statement shall be informed by a feasibility study of technical solutions for the construction of the proposed new access road in a manner that minimises impact on existing trees, including provision for soil amelioration mitigation. In the event that the feasibility study for the installation of the new site access east and south east of sycamore tree T12, as shown on the BS5837 Tree Retention & Removal Plan at Appendix 3 of the Appraisal of Proposed Revised Access & Extension of Footpath No. 43: Preliminary Arboricultural Impact Assessment (Thompson Tree Services, 17 June 2023), concludes that such technical solutions shall necessitate the pruning of tree T12 roots in excess of 25mm in diameter or precludes the use of technical solutions, then the Arboricultural Method Statement shall provide for a dynamic or static load stability test of tree T12 and if the results conclude that it is necessary to remove this tree then compensatory tree planting shall be provided in accordance with details included within the Arboricultural Method Statement. The development shall take place in accordance with the Arboricultural Method Statement as approved and the details for construction of the access and retaining walls as approved therein.

The Tree Protection Plan shall be dimensioned, and show the positions, species, RPAs and crown spread of trees to be retained within, and adjacent to, the application site together with measures for their protection for the duration of the works. The means of protection shall be installed in accordance with the approved scheme before any works commence on site and shall be retained in position until all the building works hereby approved have been completed. The area within the fenced/protected area shall not be used for storage or the parking of machinery or vehicles and the ground levels shall not be altered.

The Tree Protection Plan shall be dimensioned, and show the positions, species, RPAs and crown spread of trees to be retained within, and adjacent to, the application site together with measures for their protection for the duration of the works. The means of protection shall be installed in accordance with the approved scheme before any works commence on site and shall be retained in position until all the building

works hereby approved have been completed. The area within the fenced/protected area shall not be used for storage or the parking of machinery or vehicles and the ground levels shall not be altered.

- 9) No vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist and the survey report shall first have been submitted to, and approved in writing by, the local planning authority. If nesting birds are present, the report shall include details for an appropriate exclusion zone which will be implemented prior to the commencement of vegetation clearance and which shall remain in place until the chicks have fledged. No works shall be undertaken within the exclusion zone(s) whilst nesting birds are present.
- 10) No development above ground level shall take place until a Biodiversity Enhancement Plan has been submitted to, and approved in writing by, the local planning authority to achieve a net gain in biodiversity. The plan shall provide for (although shall not necessarily be limited to) the following measures and their ongoing management and maintenance all with timescales:
- Integrated bat boxes in 25% of dwellings clearly shown on a plan (positions/ specification/numbers);
 - Bird boxes (including swift boxes) in 25% of dwellings clearly shown on a plan (positions/specification/numbers);
 - Insect bricks in 10% of dwellings clearly shown on a plan (positions/ specification/numbers);
 - Measures to maintain connectivity for hedgehogs clearly shown on a plan (fencing gaps 130mm x 130mm and/or railings and/or hedgerows); and
 - Summary of ecologically beneficial landscaping (full details to be shown in Landscape Plans).

Thereafter the measures shall be implemented, managed and maintained in accordance with the details and timescales as approved.

- 11) No development shall take place until drainage details for the disposal of foul sewage and a timetable for implementation have been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented in full and in accordance with the approved details and timetable and shall be retained as such thereafter.
- 12) No development shall take place until a detailed design and associated management and maintenance plan, with timescale(s), for the surface water drainage for the site, (including highways surface water) has been submitted to, and approved in writing by, the local planning authority. This shall be in accordance with the principles outlined within:
- a. Land at Hallfieldgate Lane, Shirland, Derbyshire Flood Risk Assessment, (March 2019 by Armstrong Stokes & Clayton Ltd) and also including any subsequent amendments or updates to this document as approved by the Flood Risk Management Team; and
 - b. DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015).

The approved surface water drainage system shall be implemented in accordance with the approved detailed design prior to occupation of any

dwelling and shall be retained, managed and maintained thereafter in accordance with the details and timescales approved.

- 13) No development shall take place until a detailed assessment has been provided to, and approved in writing by, the local planning authority to demonstrate that the proposed destination for surface water accords with the hierarchy of drainage options.
- 14) No development shall take place until a scheme has been submitted to, and approved in writing by, the local planning authority giving details for how surface water run-off from the site shall be avoided during the construction phase. The details may include arrangements for collection, balancing and/or settlement systems for these flows. The approved system shall be implemented and operating before the commencement of any works which would lead to increased surface water run-off from the site during the construction phase.
- 15) No development shall take place until a construction management plan or construction method statement has been submitted to, and approved in writing by, the local planning authority. The approved plan/method statement shall be implemented prior to the commencement of any works and adhered to throughout the construction period. The statement shall provide for:
 - the parking of vehicles for site operatives and visitors;
 - routes for construction traffic, including abnormal loads/cranes etc;
 - hours of operation;
 - methods for the prevention of debris being carried onto the highway;
 - pedestrian and cyclist protection; and
 - any proposed temporary traffic restrictions.
- 16) No development shall take place until a temporary access for construction purposes has been provided to Hallfieldgate Lane, generally in accordance with Drawing No Drawing No. 0720 revision P04 and provided with visibility splays measuring 2.4m x 54.0m to the east and 2.4m x 47.0m to the west. The area in advance of the sightlines shall remain free from any obstructions to visibility over 1.0m high, relative to the nearside carriageway channel level, for the time over which the temporary access is in use. The temporary access shall be retained for the duration of the construction phase or until such time as it is replaced by the permanent access.
- 17) No dwelling shall be occupied until the access hereby approved, including its visibility splays, pedestrian guardrail and footpath to the front of no.43 as shown on Drawing No 0703 revision P01 Proposed Footway Improvement Across Frontage of Plot 43, has been laid out, constructed and provided. The access as approved, laid out, constructed and provided shall thereafter be retained as such.
- 18) Within 28 days of the permanent access being constructed and brought into use any works comprised in the temporary access to Hallfieldgate Lane, not incorporated into the permanent access, shall be removed and the highway shall be reinstated in accordance with a scheme that shall first have been submitted to, and approved in writing by, the local planning authority.
- 19) The details to be submitted with the layout reserved matters shall include details of:

- The design and layout of internal roads which shall accord with the guidance contained in the “Manual for Streets” and Derbyshire County Council’s residential design guide;
 - arrangements for the parking and manoeuvring of residents and visitors’ vehicles, together with secure cycle parking;
 - suitable turning arrangements to enable service and delivery vehicles to turn; and
 - arrangements for bin storage and collection. The development shall take place in accordance with the approved details.
- 20) Prior to the first occupation of any dwelling a Travel Plan shall have been submitted to, and approved in writing by, the local planning authority. The Travel Plan shall set out proposals (including a timetable), to promote travel by sustainable modes, and shall be implemented in accordance with the timetable set out therein. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually, on each anniversary of the date of the Travel Plan being approved, to the local planning authority for approval for a period of five years from the first occupation of the development.
- 21) No development shall take place until further works deemed necessary in the DAB Geotechnics Ltd report ‘Phase 1 Contamination Assessment Proposed Residential Development of Land to the South of Hallfieldgate Lane Shirland (Ref: DABGeot/17005/Final; dated 4th March 2019)’ have been undertaken by a competent person in accordance with good practice guidance for the investigation and assessment of land contamination; and a report of that investigation and assessment has been submitted to, and approved in writing by, the local planning authority.
- Where the site investigation identifies unacceptable levels of contamination, no development shall take place until 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 and a timetable for implementation has been submitted to, and approved in writing by, the local planning authority. The scheme shall have regard to CLR 11 and other relevant current guidance and shall include a timetable for implementation. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall 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. The scheme shall be implemented in accordance with the details and timetable as approved. At least 14 days’ written notice shall be given to the local planning authority prior to commencing works in connection with the remediation scheme and no dwellings shall be occupied until the approved remediation works have been carried out in full in compliance with the approved methodology and good practice guidance.
- 22) If during the construction associated with the development hereby approved any suspected areas of contamination are discovered, then all works shall be suspended until the nature and extent of the contamination is assessed and a report has been submitted to, and approved in writing by, the local planning authority. The local planning

authority shall be notified as soon as is reasonably practicable following the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in the Phase I report (DAB Geotechnics Ltd 'Phase 1 Contamination Assessment Proposed Residential Development of Land to the South of Hallfieldgate Lane Shirland (Ref: DABGeot/17005/Final; dated 4th March 2019)) submitted with the application and through the process described in condition 21 above. Upon completion of the remediation works a validation report prepared by a competent person shall be submitted to, and approved in writing by, the local planning authority before any particular dwelling is occupied. The validation report(s) shall include details of the remediation works and Quality Assurance/ Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.

- 23) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to, and approved in writing by, the local planning authority, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
- 1) The programme and methodology of site investigation and recording;
 - 2) The programme for post investigation assessment;
 - 3) Provision to be made for analysis of the site investigation and recording;
 - 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - 5) Provision to be made for archive deposition of the analysis and records of the site investigation; and
 - 6) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Archaeological Written Scheme of Investigation.

No dwelling shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Archaeological Written Scheme of Investigation and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

- 24) No development shall take place until a scheme to enhance and maximise employment and training opportunities during the construction stage of the development, including a timetable for implementation, has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall then be implemented in full and in accordance with the approved details and timetable.
- 25) No works for the construction of the access retaining walls shall commence until details of the elevations of the retaining walls and facing materials to be used have been submitted to and approved in writing by the local planning authority. The retaining walls shall be constructed and

finished in accordance with the approved details and retained as such thereafter.

Conditions Schedule - Appeal B

- 1) The development hereby permitted shall begin no later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - i) Drawing No. 07/1657/LP (O) Location Plan
 - ii) Drawing No 0720 revision P04 Modified Site Access
 - iii) Drawing No 0703 revision P01 Proposed Footway Improvement Across Frontage of Plot 43
 - iv) Drawing No. 07739-FPCR-XX-XX-DR-L-0008 Pedestrian Guardrail Detail
- 3) No development shall commence until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the Arboricultural Method Statement as approved.
- 4) Within the first planting season following completion of the footpath and retaining wall a scheme of landscaping, including landscaping within the adjacent garden area at Number 43, shall have been implemented in accordance with a landscaping scheme that shall first have been submitted to and approved in writing by the local planning authority. Thereafter, the landscaping scheme as approved shall be retained. If any trees or plants die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of the same or similar size and species.
- 5) Before the footpath is brought into use a pedestrian guardrail in accordance with the detail hereby approved shall have been erected to the south boundary. The pedestrian guardrail as erected and approved shall thereafter be retained.
- 6) No works for the construction of the access retaining walls shall commence until details of the elevations of the retaining walls and facing materials to be used have been submitted to and approved in writing by the local planning authority. The retaining walls shall be constructed and finished in accordance with the approved details and retained as such thereafter.

End of Schedules



Costs Decisions

Hearing held on 15 October 2024

Site visits made on 11 June, 9 July and 15 October 2024.

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal A:

**Costs application in relation to Appeal Ref: APP/R1038/W/23/3324560
Land South of Hallfieldgate Lane, Shirland, Derbyshire, DE55 6AA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Trustees of Ted Speed and Pauline Speed Hallfield Trust for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of to grant planning permission for up to 90 new residential units and site access without complying with conditions attached to planning permission Ref 19/00335/OL, dated 22 January 2021.
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Appeal B:

**Costs application in relation to Appeal Ref: APP/R1038/W/23/3324561
No.43 Hallfieldgate Lane, Shirland, Derbyshire, DE55 6AA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Friar 2019 Ltd for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for proposed footway extension to the north side of No.43 Hallfieldgate Lane, Shirland.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Although both appeals have some issues in common, in respect of this Costs Decision I will initially address them separately, but will then turn to procedural matters.

Appeal A – S.73

Highway Safety

4. The Council's first reason for refusal in respect of Appeal A related to highway safety. It refers to the formation of a new access in a location with poor visibility and the creation of a virtual crossroads. However, the appellants have

provided a detailed Transport Assessment which concluded that visibility splays can be provided in accordance with the Manual for Streets methodology. The proposal would create a junction relatively close to another on the opposite side of Hallfieldgate Lane, but the Council has not substantiated its concerns on this issue, particularly given the lack of objection from the Local Highway Authority (LHA)

5. The Council's reason for refusal on this issue also questions whether the Transport Assessment submitted at the application stage was up to date, and reference has been made to recent residential development in the area. However, the Council's concerns on this issue were not based on robust reasoning in respect of the scale of recent residential development and the effect on the highway network. This should also be viewed within the context of a lack of objection from the LHA.
6. On receiving an updated Transport Assessment and Road Safety Audit as part of the appeal, the Council has confirmed that it does not take issue with the technical aspects of the Assessment (such as junction design and geometry). But it has not justified why these conclusions could not have been reached on the evidence submitted with the application.
7. The Council has continued to express concerns on various aspects of highway safety; including on-street parking and the effect on carriageway width, limited visibility, the proximity of Lilac Way, and evidence from local people about minor accidents. But these concerns are only set out in general terms, and do not represent a robust rebuttal of the evidence provided by the appellants. Furthermore, during the course of the appeal, the LHA maintained its stance that it does not object to the proposal.
8. While planning committee members are not bound by the recommendations made to them by Council officers or consultees, highway safety is a technical matter and any departure from the advice of officers and consultees should be robustly justified.
9. I am therefore of the opinion that the refusal of planning permission in respect of highway safety on Appeal A was ill-founded, and that the decision was based on vague and inaccurate assertions unsupported by an objective analysis of the evidence available prior to the planning application's determination. I therefore consider that the reason for refusal on the grounds of highway safety amounted to unreasonable behaviour with regards to the Guidance.

Character and Appearance

10. The appellants submit that the Council does not include any objective technical landscape and visual impact evidence on this issue. However, in this case, the evaluation of character and appearance is primarily an exercise in planning judgement. I am also mindful that the plans originally submitted by the appellants in respect of Appeal A indicated that significant extends of exposed retaining structures would be visible around the access. Given that evidence, the Council could not have expected its concerns to have been addressed as part of the consideration of the Reserved Matters.
11. On the basis of the evidence available to the Council at the time it made its decision, I consider that its concerns on the issue of character and appearance were justified.

12. In respect of concerns regarding a protected tree, the arboricultural evidence is not as clear cut as is indicated by the appellants. The appellants' arboricultural evidence refers to potential technical solutions to address detrimental impacts on the tree, but these are of a non-specific nature and there is no certainty that they would be successful. In comparison, the evidence of the Council's Arboricultural Officer was robust and thorough in expressing concern about the effect of the proposal on this tree. Although I have allowed the appeal, this is only on the basis that it is the 'least worst' option compared to a fallback scheme which may lead to harm to 2 protected trees. The consideration of the harm to the protected tree is in effect a planning balance, and I do not consider that the Council has behaved unreasonably in reaching its conclusion on this issue.
13. In conclusion on the matter of character and appearance in respect of Appeal A, I do not consider that the Council has behaved unreasonably in its consideration of this issue.

Appeal B – No. 43

14. The sole reason for refusal of Appeal B relates to the issue of character and appearance. In comparison to Appeal A, the plans before the Council in respect of Appeal B provided sufficient information to indicate the nature of the appeal proposal.
15. However, the proposal would lead to the extension of a footway on the edge of the village, leading to an engineered feature projecting onto a grassed verge with the associated loss of hedging and non-protected trees. The appellants have provided detailed evidence on this issue, but the consideration of character and appearance in respect of Appeal B is basically a matter of planning judgement. Although I have allowed the appeal, the Council's conclusions on this issue were not so unfounded or without substantiation as to represent unreasonable behaviour.

Procedure

16. Both appeals were initially to be determined via written representations. However, insufficient evidence had been provided on a number of issues to enable me to consider the appeals; including in respect of site levels as well as the design of embankments and barriers. It was not possible to address these issues at the site visits and I therefore changed the appeals procedure to a Hearing. I raised this matter at the Hearing, and I have had regard to the comments made.
17. The uncertainty on these issues was not the Council's responsibility. Although I am mindful that the Hearing has led to extra costs to the appellants in respect of both appeals, it would not be appropriate to award these costs against the Council as the need for the Hearing arose due to matters beyond its control.
18. There was also some uncertainty about the status of the tree potentially affected by Appeal A. The Council has subsequently sought to address this by issuing a further Tree Preservation Order (TPO). However, the tree is part of an important landscape feature, and I would have considered the effect of the proposal on it in any event. Evidence was provided by both main parties as part of the initial appeal process, and even allowing for the recently issued TPO, I consider that Appeal A could have progressed via written

representations. Although further clarification was provided at the Hearing in respect of this protected tree, the uncertainty about its status taken by itself would not necessarily have led to a Hearing.

19. As the reasons for the Hearing related to matters beyond the Council's control, I consider that any award of costs should relate only to the written representations stage and not the Hearing process.

Conclusion

20. Notwithstanding my conclusions in relation to the consideration of character and appearance in respect of Appeal A and Appeal B, I conclude that in respect of Appeal A that the Council has behaved unreasonably in respect of its consideration of highway safety, with the result that the applicants have directly incurred unnecessary and wasted expense in addressing this issue.
21. Having regard to the provisions of the Guidance, a partial award of costs in respect of Appeal A is therefore justified. However, for the reasons stated previously this should be limited to costs incurred during the written representations stage of the appeal.

Costs Order

22. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North East Derbyshire District Council shall pay to Trustees of Ted Speed and Pauline Speed Hallfield Trust, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing highway safety in respect of Appeal A as part of the written representations stage of the appeal process; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to North East Derbyshire District Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cross

INSPECTOR