



Appeal Decision

Site visit made on 15 November 2022

by **J Downs BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/V2635/W/22/3292992

Land West of 23 to 37 and North and West of 52 Benns Lane, Terrington St Clement, Kings Lynn PE34 4JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by FGSPV 3 Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 21/00589/RMM, dated 12 March 2021, sought approval of details pursuant to condition No 1 of planning permission Ref 16/02230/OM, granted on 4 April 2018.
 - The application was refused by notice dated 20 January 2022.
 - The development proposed is Demolition of existing structures and for the erection of 43 dwellings (Use Class C3) with means of site access from Benns Lane.
 - The details for which approval is sought are appearance, landscaping, layout and scale.
-

Decision

1. The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout and scale details submitted in pursuance of condition No 1 attached to planning permission Ref 16/02230/OM dated 4 April 2018 subject to the schedule of conditions at the end of this decision.

Application for costs

2. An application for costs has been made by FGSPV3 Ltd against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application form refers to 44 dwellings, however the appeal documentation sets out that the application was revised to amend the number of dwellings to 43. I have amended the description of development to reflect this.
4. The appellant has submitted plans as part of this appeal which were not presented to the Council and so did not form part of their decision. There were revisions during the application process so I have used the plans listed in the Council's committee report as the basis for comparison. The updated plans comprise of:
 - an updated hard landscaping plan (2021-01 – 0451 Rev F) which has amended the fencing proposed around the attenuation pond from a 1.2m timber post and rail fence to a 1.2m metal bow top fence, amended the layout of the footpath adjacent to the attenuation pond and removed a gate from the playground at the point closest to the attenuation pond.

This has resulted in an updated playground layout plan (2021-01-0460 Rev C), showing the removal of the gate and a path that led through the playground to it;

- an updated external materials board Rev B which specifies the bricks and roof tiles to be used in the development rather than generic colour references.
 - biodiversity enhancements (2021-01-0452) which were not submitted as part of the application.
5. This necessitated changes to several other plans (Development Plan, Dwg No. 2021-01-0200 Rev L; House Type Plan, Dwg No. 2021-01-0250 Rev S, External Works – Soft Landscaping, Landscape Spec & Details, Dwg No. 2021-01-0450 Rev E. A generic section through the attenuation basin (2021-01-0453) has also been submitted.
 6. The Planning Inspectorate’s guidance¹ advises that the appeal process should not be used to evolve a scheme and a fresh application should be submitted if amended proposals could overcome the reason for refusal. In considering if amended plans should be accepted, I am mindful of the Wheatcroft Principles² and of allowing interested parties the opportunity to comment in the interests of fairness.
 7. None of the proposed amendments substantially alters the development as proposed, nor materially alters its nature. I therefore consider that no party would be prejudiced were I to consider these plans and I therefore accept the revised plans and determine the appeal with regard to them.

Background and Main Issue

8. Outline planning permission (application reference 16/02230/OM) was granted for demolition of existing structures and for the erection of up to 44 dwellings (Use Class C3) with means of site access from Benns Lane whilst reserving appearance, landscaping, layout and scale for future approval (the Reserved Matters). The site therefore benefits from planning permission for residential development and there is no scope to reconsider matters that were dealt with at the outline stage. It is the Reserved Matters for which approval is now sought.
9. The main issue is whether the proposed development provides an acceptable layout with regard to safety arising from the position of the play area in relation to the attenuation pond.

Reasons

10. The site layout shows an equipped play area in close proximity to an attenuation pond. There would be a pedestrian footpath which would lead from the play area and would pass the attenuation pond. It is proposed to site a fence alongside this path where it is adjacent to the attenuation pond. I note this would not extend beyond the path and around the site perimeter, however as the Council is minded to grant outline permission for residential

¹ Procedural Guide – Planning appeals – England (updated 12 April 2022) - Annex M

² Derived from *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harborough DC* (1982) P&CR 233

development adjacent to this boundary of the site, it is a matter that could be addressed when the landscaping and layout of that site fall to be considered.

11. Equipped play areas are intended for use by younger children who are likely to be supervised. The plans show a 1.2m bow top fence around the play area. The revised plans submitted at the appeal stage remove a gate which was in proximity to the attenuation pond. Access to the play area would only be taken from a point which would be away from the attenuation pond. The plans also show the proposed post and rail fencing separating the footpath from the attenuation pond replaced with bow top fencing as shown around the play area.
12. The Council has confirmed in its statement that the removal of the gate and alterations to the fencing around the attenuation pond has partially addressed its safety concerns. However, no substantiating evidence has been provided regarding any other safety concerns or what measures it considers necessary to ensure a safe development.
13. I note that the Council's greenspace officer in his initial comments suggested measures related to safety, most notably that a fence should be provided around any areas of open water where unsupervised young children are likely to access the water. It should be between 600mm and 750mm high and of vertical pole construction to not be easily climbable. These comments were not reiterated in the subsequent consultations. While this is not from any adopted planning documents, it nonetheless establishes that the proposed safety measures of two fences at 1.2m high are likely to be robust.
14. In relation to this main matter, I conclude that the proposed development would provide an acceptable layout with regard to safety arising from the position of the play area in relation to the attenuation pond. It would be in accordance with the Site Allocations and Development Management Policies Plan Adopted September 2016 (SADMP) Policy DM15 which requires development to avoid having a significant adverse impact on the amenity of others or being of a poor design and the King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy adopted July 2011 Policy CS08 which requires developments to be safe. Safe green infrastructure would be provided in accordance with Paragraphs 92c), 97 and 130 of the National Planning Policy Framework.

Other Matters

15. The appellant has submitted a wildlife enhancement plan as part of the appeal documentation. The Council in its appeal statement noted this but did not comment further. It's committee report noted that ecology had been considered at the outline stage and conditions were imposed with regard to water voles, but no further ecological enhancement was proposed. The submitted plan shows the provision of hedgehog holes, bird boxes, bat boxes and bee bricks to each property on the proposed development which can reasonably be considered to be related to the landscaping and appearance of the site. This is an issue which was raised in many of the comments from surrounding residents and would partially, although not fully, address those concerns. This would be in accordance with paragraph 174 of the National Planning Policy Framework which advises planning decisions should contribute to the natural and local environment.

16. I note condition 24 of the outline permission requires the reserved matters details to include the provision of an attenuation pond, gapping up of hedgerows and the provision of native trees and shrubs. I note the details contained on drawing number 2021-01-0450 E which provide for this.
17. The Council is not satisfied with the proposed use of Wrekin Dark Reds bricks and I accept their concerns given that it is proposed for the entire development to use this material. The appellant has indicated it would accept a condition for different materials to be agreed.
18. Concern has been expressed by third parties that excess levels of parking are being provided to some plots. However no concerns have been raised by the local highways authority and the Council consider parking provision to be in accordance with SADMP Policy DM 17 which I note sets minimum parking standards. The layout does include footpaths which run to the boundary of the site to the neighbouring site where the Council are minded to grant outline planning permission. The layout of this site is therefore reasonable in making provision to allow the site to connect to wider networks for sustainable travel such as cycling.
19. Issues around anti-social behaviour have been raised, although in more general terms rather than specific to the reserved matters on this site. However neither the Council nor the police have raised any concerns and there is no evidence before me that would lead me to a different conclusion.
20. I note the views of the Council regarding designated heritage assets. However, the Council's report into the outline application accepted that the Grade I Listed Church of St Clement and its associated Grade I Listed Tower would not be affected by the proposal. The report acknowledged the position of the Terrington St Clement Conservation Area but did not identify any interactions between it and the site. As no effect on any heritage asset or its setting was found at the outline stage, it should not be introduced at the reserved matters stage.
21. The Council has commented that, contrary to the statement of common ground, there are further issues to be resolved with regard to surface water drainage and maintenance of the surface water drainage and the playspace. However as these issues are controlled through the outline permission, they do not fall to be considered in this appeal.
22. Other concerns have been expressed locally. However, the site has planning permission granted through the outline and I can only consider the acceptability of the reserved matters which are before me. As such, concerns regarding the loss of agricultural land, the effect of the development on the operation and safety of the surrounding highway network, flood risk, drainage, the ability of the physical and social infrastructure of Terrington St Clement to meet the needs of more people, the effect of more people on the character of the settlement, the need for housing, employment provision, potential for pollution, density, and amount of affordable housing were all issues considered at the outline stage and do not fall to be considered as part of this appeal.
23. The effect of the development on property values and the potential for reductions in council tax are not material to the determination of this appeal.

Conditions

24. The Council has suggested several conditions should the appeal be allowed. I have had regard to these in light of the advice contained within the National Planning Policy Framework and the Planning Practice Guidance. I have made minor amendments to conditions 2, 3 and 5 in the interests of precision.
25. I have imposed the approved plans condition to define the terms of the permission and have edited some plan numbers in the interests of accuracy. I have included Material Board B as part of the approved plans to secure the external materials other than the facing bricks. I consider that a condition seeking the use of different brick is reasonable and necessary for the reasons I have given above, and Condition 2 secures this.
26. Condition 3 is necessary to ensure the landscaping of the development is provided. While I acknowledge this allows for some flexibility in the delivery of the landscaping, this is reasonable given the effects of different seasons on the successful delivery of a landscaping scheme. Condition 4 is reasonable and necessary to ensure appropriate car parking provision is provided for occupants and I have made amendments in the interests of clarity and precision. Conditions 5 and 6 are necessary and reasonable to ensure the necessary infrastructure on site is delivered.
27. I have found that reasonable measures to restrict access to the attenuation pond by children have been proposed by the appellant. Furthermore, the attenuation pond and wider sustainable drainage system will have to comply with any appropriate health and safety regulations regarding its design and operation and the planning system should not seek to duplicate these controls. However, I do consider it reasonable and necessary to ensure the proposed fencing is in place prior to the first occupation of any dwelling on the site and that they are retained. I have amended the proposed condition to secure these measures.

Conclusion

28. For the reasons given I conclude that the appeal should succeed, subject to the conditions attached and those imposed at the outline stage.

J Downs

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 2021-01 0200 L Development Plan
 - 2021-01 0250 S House Type Plan
 - 2021-01 0450 E External Works - Soft Landscaping, Landscape Spec & Details
 - 2021-01 0451 F External Works - Hard Landscaping
 - 2021-01- 0452 External Works – Biodiversity Enhancements Materials Board Rev B
 - 2021-01 0460 C Playground Layout
 - 2021-01 2101 F House Type A [Plot 1]
 - 2021-01 2101.1 House Type A [Plots 39 & 40]
 - 2021-01 2102 D House Type B [Plot 43]
 - 2021-01 2103 F House Type C [Plots 20, 27 & 35]
 - 2021-01 2103.1 House Type C1 [Plot 36]
 - 2021-01 2104 E House Type D [Plot 13]
 - 2021-01 2105 G House Type E [Plot 07]
 - 2021-01 2106 G House Type F [Plots 06 & 12]
 - 2021-01 2106.1 A House Type F1 [Plot 22]
 - 2021-01 2106.2 House Type F [Plot 24]
 - 2021-01 2106.3 House Type F [Plot 32]
 - 2021-01 2107 F House Type G [Plots 02 & 03]
 - 2021-01 2107.1 House Type G [Plots 14, 15, 33 & 34]
 - 2021-01 2108 G House Type H [Plots 37 & 38]
 - 2021-01 2108.1 House Type H [Plots 04 & 05]
 - 2021-01 2109 F House Type J [Plots 10, 11, 25, 26, 30 & 31]
 - 2021-01 2109.1 House Type J [Plots 18, 19, 28 & 29]
 - 2021-01 2110 A Garages
 - 2021-01 2111 F House Type K [Plot 08]
 - 2021-01 2111.1 A House Type K [Plots 21, 23 & 41]
 - 2021-01 2111.2 A House Type K [Plots 09 & 42]
 - 2021-01 2112 E House Type L [Plots 16 & 17]
- 2) Notwithstanding the submitted External Materials Board Rev. B, prior to the commencement of development on any external surface of the development hereby permitted, full details of the type, colour and texture of the facing bricks to be used for the external surfaces of the buildings shall be submitted to, and agreed in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 3) Prior to the first occupation of any dwelling hereby permitted or in accordance with a programme to be agreed in writing with the Local Planning Authority, all associated hard and soft landscape works shall be carried out in accordance with the approved details. Any trees or plants that within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation.
- 4) Prior to the first occupation of each dwelling hereby permitted the proposed car parking / turning area for that specific dwelling shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plans and shall thereafter be retained available for that specific dwelling.

- 5) All road, footways/cycleways, foul and surface water sewers works shall be carried out in accordance with a specification which shall have been first approved in writing by the Local Planning Authority. All road, footways/cycleways, foul and surface water sewers works shall be completed in accordance with the approved specification prior to the occupation of the 40th dwelling.
- 6) Prior to construction work above Finished Floor Levels, details of the foot/cycleway bridging point over the land drain shall have been submitted to, and agreed in writing by, the Local Planning Authority. It shall be implemented as agreed and all foot/cycleways constructed to the edges of the site (as per approved plan Drawing No. 2021-01 0200 L) prior to occupation of the 40th dwelling.
- 7) Prior to the first occupation of any dwelling hereby permitted, the attenuation pond shall be enclosed with the boundary treatment as per the approved plans Drawing No. 2021-01-0451 F. The boundary treatment shall thereafter be retained.

[ENDS]