



Appeal Decisions

Site visit made on 9 July 2019

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2019

Appeal A Ref: APP/N1350/W/19/3223152

Land at rear of High Stell, Middleton St George, Darlington DL2 1HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Craig Peterson (Homes by Carlton (MSTG1) Limited) against the decision of Darlington Borough Council.
 - The application Ref 18/00959/CON, dated 15 October 2018, sought approval of details pursuant to conditions No 10, 11 and 18 of a planning permission Ref 15/00976/OUT, granted on 1 July 2016.
 - The application was refused by notice dated 13 November 2018.
 - The development proposed is outline planning permission for residential development up to 200 dwellings including highway improvements, public open space, landscaping and associated works (Revised application).
 - The details for which approval is sought are:
 - Condition 10 – road condition survey
 - Condition 11 – road safety audit
 - Condition 18 – bat risk assessment
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Appeal B Ref: APP/N1350/W/19/3223154

Land at rear of High Stell, Middleton St George, Darlington DL2 1HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Craig Peterson (Homes by Carlton (MSTG1) Limited) against the decision of Darlington Borough Council.
 - The application Ref 18/00922/CON, dated 28 September 2018, sought approval of details pursuant to condition No 2 of a planning permission Ref 17/01151/RM1, granted on 14 March 2018 and condition No 14 of a planning permission Ref 15/00976/OUT, granted on 1 July 2016.
 - The application was refused by notice dated 13 November 2018.
 - The developments proposed are reserved matters relating to details of access, appearance, landscaping, layout and scale, for residential development of 198 no. dwellings pursuant to outline planning permission 15/00976/OUT dated 01 July 2016 (amended access proposed, plans received 11 January 2018) and outline planning permission for residential development up to 200 dwellings including highway improvements, public open space, landscaping and associated works (Revised application).
 - The details for which approval is sought are:
 - Condition 2 of 17/01151/RM1 – phasing of development
 - Condition 14 of 15/00976/OUT – sustainable drainage scheme
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Appeal C Ref: APP/N1350/W/19/3223155

Land at rear of High Stell, Middleton St George, Darlington DL2 1HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Craig Peterson (Homes by Carlton (MSTG1) Limited) against the decision of Darlington Borough Council.
 - The application Ref 18/00921/CON, dated 21 September 2018, sought approval of details pursuant to condition No 3 of a planning permission Ref 17/01151/RM1, granted on 14 March 2018 and condition No 9 of a planning permission Ref 15/00976/OUT, granted on 1 July 2016.
 - The application was refused by notice dated 13 November 2018.
 - The developments proposed reserved matters relating to details of access, appearance, landscaping, layout and scale, for residential development of 198 no. dwellings pursuant to outline planning permission 15/00976/OUT dated 01 July 2016 (amended access proposed, plans received 11 January 2018) and outline planning permission for residential development up to 200 dwellings including highway improvements, public open space, landscaping and associated works (Revised application).
 - The details for which approval is sought are:
 - Condition 3 of 17/01151/RM1 and Condition 9 of 15/00976/OUT – construction management plan
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Decisions

Appeal A

1. The appeal is allowed insofar as it relates to the road condition survey and the road safety audit in relation to The Greenway and Grendon Gardens, submitted pursuant to conditions 10 and 11 attached to planning permission reference 15/00976/OUT granted on 1 July 2016, in accordance with application 18/00959/CON, dated 15 October 2018 and the details submitted with it are approved.
2. The appeal is dismissed insofar as it relates to condition 18 attached to planning permission reference 15/00976/OUT granted on 1 July 2016, in accordance with application 18/00959/CON, dated 15 October 2018 and the details submitted with it are refused.

Appeal B

3. The appeal is allowed and the phasing of development and the sustainable drainage scheme, submitted pursuant to condition 2 attached to planning permission reference 17/01151/RM1, granted on 14 March 2018 and condition 14 attached to planning permission reference 15/00976/OUT granted on 1 July 2016, in accordance with application 18/00922/CON, dated 28 September 2018 and the details submitted with it are approved.

Appeal C

4. The appeal is allowed and the construction management plan, submitted pursuant to condition 9 attached to planning permission reference 15/00976/OUT granted on 1 July 2016 and condition 3 attached to planning permission reference 17/01151/RM1, granted on 14 March 2018, in accordance with application 18/00921/CON, dated 21 September 2018 and the details submitted with it are approved.

Applications for costs

5. Applications for costs were made by Mr Craig Peterson (Homes by Carlton (MSTG1) Limited) against Darlington Borough Council. These applications are the subject of a separate Decision.

Background and Main Issues

6. Outline planning permission was granted for a residential development at the site in July 2016 (Ref 15/00976/OUT) with reserved matters relating to details of access, appearance, landscaping, layout and scale being approved in March 2018 (Ref 17/01151/RM1). Both permissions are subject to a number of conditions requiring additional details to be approved by the Council. It appears from the evidence that details in relation to a number of conditions have been approved by the Council since the permissions were granted, including condition 2 of 17/01151/RM1 which relates to the phasing of the development and the route of construction (Ref 18/01215/CON).
7. Two access points are proposed to serve the development, one off Grendon Gardens and one off High Stell, with both being accessed via residential estates. A previous application for a residential development on the site with only one access off Grendon Gardens was refused in July 2015, partly due to the traffic impacts on local residents (Ref 15/00041/OUT). It appears that the Council's concerns in relation to all three applications the subject of these appeals relate to the fact that only the access off Grendon Gardens is proposed to be used initially, with the access off High Stell proposed to be brought into use once the first 50 dwellings have been constructed on site. The Council states that both accesses are required to be created at the commencement of development in order to reduce the impact of construction traffic and later residential traffic on residents living in the locality. No reference is made on the decision notices to the conditions not relating to the use of the accesses, though the decision notice for 18/00959/CON (Appeal A) states that approval of details is partly refused but does not state what details, if any, are formally approved. The decision notice for 18/00922/CON (Appeal B) makes no reference to condition 14 of 15/00976/OUT despite details in relation to this condition being submitted as part of the application.
8. Having regard to the background to the applications and to the imposition of the conditions, I consider that the main issues are:
 - whether the details submitted in relation to conditions 9, 10 and 11 of 15/00976/OUT and conditions 2 and 3 of 17/01151/RM1 are acceptable having particular regard to the living conditions of the occupiers of nearby residential properties (Appeals A, B & C);
 - whether the details submitted in relation to condition 18 of 15/00976/OUT are acceptable having regard to protected species (Appeal A);
 - whether the details submitted in relation to condition 14 of 15/00976/OUT are acceptable having regard to the interests of promoting sustainable development (Appeal B).

Reasons

Appeals A, B & C

Conditions 9, 10 & 11 of 15/00976/OUT and conditions 2 and 3 of 17/01151/RM1

9. It appears from the submissions that the appellant intends to create and use one access point off Grendon Gardens for the first phase of the development and to not form the second access off High Stell until such time that 50 dwellings have been constructed. The details submitted to discharge the conditions relating to phasing, construction management plan, road condition and road safety consequently reflect this.
10. Though the Council state that Planning Committee Members expected two accesses to be provided and that these are required at the beginning of the development, this is not explicitly stated within either the outline or reserved matters permissions. Moreover, the wording of condition 2 of 17/01151/RM1 requiring details of the house build trigger point for the creation of the access off High Stell appears to imply that the High Stell access would not be created at the beginning of the development.
11. Following the refusal of the applications the subject of these appeals, in January 2019 the Council formally approved the discharge of condition 2 of 17/01151/RM1 relating to the phasing of the development and route of construction (Ref 18/01215/CON). The decision notice refers to the approved details being "your communication dated 17 December 2018", though I do not appear to have been provided with a copy of the information submitted to discharge this condition. The appellant states that two of the documents approved under application Ref 18/01215/CON (Revised Phase 1 Traffic Management Plan & Revised Phase 1 Traffic Management Plan Drawing Rev C) form core documents associated with the submitted Construction Management Plan refused under application references 18/01159/CON and 11/01160/CON. This has not been disputed by the Council. These approved documents relate to Phase 1 of the development and show a single access point off Grendon Gardens with no access off High Stell.
12. The Council's Highway and Environmental Health departments were consulted on the discharge of condition applications and I have been provided with a copy of their responses. No objections are raised to the submitted details by the Environmental Health department having regard to dust and noise mitigation associated with Phase 1 of the development, though some concerns were raised about whether approval of the details might set a precedent for the remainder of the development.
13. Whilst the Highway department noted that previous concerns regarding access primarily related to residential amenity, the Councils' Highway Engineer also noted that two accesses would resolve practical issues relating to any conflict of large vehicles trying to pass each other on narrow residential streets. For that reason, amendments were sought to the submitted Construction Management Plan. In March 2015 the Highway department consultation response in relation to application Ref 15/00041/OUT stated that it would be difficult to recommend refusal of the residential development based on generated traffic given the carriageway width and number of existing dwellings

on Grendon Gardens and The Greenway but noted concerns about the impact of using one access on residential amenity.

14. Notwithstanding the concerns raised by the Council and the Parish Council regarding the proposed access arrangements, having regard to the fact that no objections to the submitted information have been raised by the Council's Environmental Health department and to the Highway departments previous comments in relation to highway capacity together with the approval by the Council of application Ref 18/01215/CON for the same phasing, I consider that the details submitted are acceptable to discharge the highways related conditions having particular regard to the living conditions of the occupiers of nearby residential properties. However, condition 10 of 15/00976/OUT is only partly discharged as no road condition survey of High Stell has been carried out as required by the condition.

Appeal A

Condition 18 of 15/00976/OUT

15. Condition 18 of 15/00976/OUT requires an assessment of trees on the site for bat roosts within one month of the planned commencements of works. An Updated Bat Risk Assessment dated October 2018 was submitted with the discharge of conditions application reference 18/00959/CON and provides details in relation to a survey carried out 10 October 2018. Although the Council's Ecology Officer considered the submitted assessment to be adequate, the particular wording of the condition means that the assessment carried out in October 2018 no longer satisfies the requirements of the condition in that it was carried out some time ago and not within one month of the planned commencement of works. Consequently, the details submitted are not acceptable having regard to protected species.

Appeal B

Condition 14 of 15/00976/OUT

16. Condition 14 of 15/00976/OUT requires details of a sustainable drainage system to be submitted. A SUDS Management Plan (Rev A) was submitted with the discharge of conditions application reference 18/00922/CON. At the time of determining the application, the Parish Council commented that the submissions appeared to be incomplete and the Council stated that as no comments had been received from the Local Flood Authority then this condition could not be discharged. No further comments have been received during the course of the appeal from the Council in response to the appellant's submissions.
17. The fact that the Council has not received a consultation response from the Local Flood Authority is not a sufficient reason in itself to refuse to grant approval for the submitted details relating to sustainable drainage. Whilst I note the comments made by the Parish Council in relation to the submitted details and request for a signed agreement, no such agreement is required by the condition and in the absence of any substantive evidence from the Council or others questioning the content of the submitted SUDS Management Plan, I am satisfied that the details submitted are acceptable having regard to the interests of promoting sustainable development.

Other Matters

18. In reaching my decisions I have had regard to the representations made by the Parish Council and interested parties, including reference to legal judgements and appeal decisions.
19. As planning permission has already been granted for the development of the site for housing, any comments made in relation to the principle of the development are not relevant in relation to these appeals which relate solely to the discharge of conditions.
20. I note that the development and the various applications have generated a significant amount of interest locally with a number of concerns having been raised. Though I have had regard to the concerns raised regarding access, for the reasons stated above, it appears to me that it was always the intention that the development would be phased and indeed it seems that condition 2 of 17/01151/RM1 relating to the phasing of the development and route of construction has already been approved by the Council under application reference 18/01215/CON (January 2019).
21. Subject to compliance with the submitted details, I am satisfied that the proposal is unlikely to be materially harmful to highway or pedestrian safety or to living conditions having regard to noise and air quality.
22. Works affecting public rights of way will need to be subject to separate applications under different legislation.

Conclusions

23. For the reasons given above and having regard to all matters raised, I conclude that Appeals B and C are allowed and that Appeal A is allowed insofar as it relates to conditions 10 and 11 and is dismissed insofar as it relates to condition 18 of 15/00976/OUT.

Beverley Wilders

INSPECTOR