The Planning Inspectorate

Appeal Decision

Site visit made on 25 April 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 7th June 2017.

Appeal Ref: APP/B3438/W/17/3168607
Land Adjacent 3 Meadow Drive, Cheadle, Staffordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Steve Swann of Wrekin Housing Trust against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2016/0400, dated 28 June 2016, was refused by notice dated 20 January 2017.
- The application sought planning permission for "Redevelopment of redundant allotment land and buildings to affordable housing, consisting of 42 dwellings (30 new builds and conversion of 5-7 Bank Street into 12 flats). Demolition of redundant workshops." without complying with conditions attached to planning permission Ref SMD/2014/0471, dated 26 February 2015.
- The conditions in dispute are Nos 2, 6, 11, 12, 13, 15 and 18 which state that:

  (No 2) "The development hereby approved shall be carried out in accordance with the following submitted plans: 105-14-01 Rev B, 105-14-02 Rev A, 2263-100 Rev D, 2263-101 Rev A, 2263-102 Rev B, 2263-103 Rev A, 2263-104, 2263-105, 2263-106, 2263-107 Rev A, 2263-108 Rev A, 2263-109, 2263-110 Rev A, 2263-111 Rev A, 2263-112 Rev A, 2263-115 Rev C, 2263-10 Rev A ";

  (No 6) "Notwithstanding approved drawing number 2263-115 Rev C, details of frosted/obscure and non-opening glazing for the following windows/openings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out fully in accordance with the approved details, completed prior to first occupation of the apartments hereby approved and retained for the lifetime of the development;
  - Apartment No. 06. Bedroom No.01, rear gable window as shown on Elevation No. 4,
  - Apartment No. 08. Hall and Kitchen windows as shown on Elevation No. 2.
  - Apartment No. 10. Bedroom No. 01 rear gable window as shown on Elevation No. 4,
  - Apartment No. 12. Hall and Kitchen windows as shown on Elevation No. 02";

  No (11) "The development hereby permitted shall not be commenced until the detailed design of the following off site highway works, generally in line with approved drawing 2263-100D but to adoptable standards, have been submitted to and approved in writing by the Local Planning Authority:
  - access off Bank Street to include adequate offsets from existing boundaries;
  - revisions to Meadow Drive turning head including boundary details;
  - emergency access from Meadow Drive to the proposed development;
  - means to discourage/prevent through access from Meadow Drive to Bank Street and vice versa, including a method of screening/protecting number 10 Meadow Drive from vehicular headlights leaving the site";

No (12) "The off-site highway works shall thereafter be constructed in accordance with the approved details prior to the residential development being commenced";

No (13) "Before the proposed development is commenced, details of measures to secure the rectification of any damage to the highway during site construction works shall be submitted to and approved in writing by the Local Planning Authority. The rectification works shall be completed prior to first occupation of the development.

No (15) "Notwithstanding any details shown on the approved plans no development shall be commenced until revised access details indicating the following have been submitted to and approved in writing by the Local Planning Authority:
- a minimum offset of 0.5m from the boundary wall of number 21 Bank Street.
The access shall thereafter be carried out in accordance with the approved details and be completed prior to first occupation.

No (18) "The planting plan shown on Brian Evans Landscape Design Studio Ltd Tree Plan Drg. No. 105-14-01 Rev B and Planting Plan Drg No. 105-14-02 Rev A, shall be fully implemented before the end of the first available dormant season (November to February inclusive) following completion of the development hereby approved. The trees, shrubs and grass planted in accordance with this landscaping scheme shall be properly maintained for a period of 5 years following planting. Any plants which within this period are damaged, become diseased, die, are removed or otherwise fail to establish shall be replaced during the next suitable season.

- The reasons given for the conditions are: (no 2) "To ensure that the development is carried out in accordance with the approved plans, for clarity and the avoidance of doubt"; (No 6) "In the interests of neighbour amenity"; (Nos 11, 12, 13 and 15) "In the interests of highway safety" and; (No 18) "In the interests of visual amenity".

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Steve Swann of Wrekin Housing Trust against Staffordshire Moorlands District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The address of the site given on the application form is Bank Street, Cheadle ST10 1NR. However, the address given on the decision notice is Land Adjacent 3 Meadow Drive, Cheadle, Staffordshire, and this was used on the appeal form. I have used the latter address for consistency.

4. Planning permission has been granted for the redevelopment of the appeal site and the conversion of Nos 5 to 7 Bank Street. The approved scheme included a new access onto Bank Street to connect the site directly with the town centre one-way system. The appellant is now seeking a "minor material amendment" to the approved scheme, which includes a proposal to access the site from the turning head at the end of Meadow Drive.

5. Third parties have commented that the proposal is not a minor material amendment and their interests have been prejudiced due to a lack of public consultation. In response, the Council has advised that both the approved

scheme and the amended scheme were for 42 affordable units and the changes relate only to access, minor changes to parking, layout and elevational details. The Council considers that the scale and nature of the amendments would not result in a development which would be substantially different from the one that has been approved. Consequently, the Council maintains that it was appropriate to treat the proposal as a minor material amendment.

6. Although the position of the access has generated considerable local interest, the access in itself is not a substantial part of the scheme. Therefore, I agree with the Council that it was not acting improperly when it considered the application under Section 73 of the Town and Country Planning Act 1990.

7. The Council has also provided evidence to demonstrate that it carried out the same publicity and consultation on the Section 73 planning application that it would have carried out had an entirely fresh planning application been submitted. On this basis, I am satisfied that the interests of third parties have not been prejudiced.

Background and Main Issues

8. The appellant is seeking the removal / variation of conditions in order to amend the approved scheme. The Council has confirmed that its objections relate to the revised access arrangements only.

9. The planning permission was granted subject to the appellant entering into a planning obligation, made under Section 106 of the Town and Country Planning Act, to secure the provision of affordable housing. A signed and executed Section 106 Agreement, dated February 2015, is in place. However, the Planning Officer's report to the Planning Committee states that: "Because this is a S73 application it will result in the issue of a fresh planning permission and therefore a simple deed of variation will need to be raised to ensure that the terms of the existing S106 which is tied to the previous planning permission are complied with". I am not in receipt of any deed of variation, which I understand has not yet been agreed.

10. If I were minded to allow the appeal it would result in a separate planning permission for the whole development proposal, and there is doubt as to whether the planning obligation could be enforced as it is tied to the previous permission. In view of this, and notwithstanding that this matter did not form part of the Council's reasons for refusal, I have elevated it to a main issue in the appeal. Therefore, the main issues are:

- Whether a Section 106 planning obligation is necessary to secure the provision of affordable rented housing and;

- The effect that removing / varying the conditions would have on highway safety, with regard to the traffic flow, congestion, and other users of the highway.

Reasons

Planning Obligation

11. The approved development is for 100 percent affordable rented housing, which has been secured through a planning obligation. When the previous planning application was approved, in February 2015, the Council advised that there was

a significant need for new housing, including affordable housing, in Cheadle. The housing mix that the development would provide was considered to be a good mix for the area. In view of the benefit that would result from the provision of affordable housing on the site, the Council did not seek financial contributions towards education, public open space or town centre improvements. In reaching this conclusion, the Council sought an independent assessment of the applicant's Financial Viability report, which confirmed that the scheme could not accommodate any of the financial provisions that would normally be sought.

12. In considering the original application, the Council referred to Core Strategy[1] Policy SS5c, which specifies the need to expand the housing market and increase the range of available and affordable house types, and Policy H2, which requires a proportion of houses on sites such as the appeal site to be affordable.

13. Although there is a signed and executed planning obligation in place, I have some concerns about the document itself and whether the Council could rely upon it to secure the affordable housing. I am aware that this is in the process of being addressed by the parties through a deed of variation. Nonetheless, as it stands, and for the reasons given in the previous paragraphs, I am not satisfied that the planning obligation would secure the provision for affordable housing that the Council has justified with reference to Policies SS5c and H2 of the Core Strategy. Moreover, it is clear that the planning permission was predicated on the development being affordable rented housing and different planning considerations would apply if the occupancy could not be assured.

14. To conclude on this issue, I consider that the measures in the planning obligation are necessary, related directly to the development and fairly related in scale and kind. As such they accord with the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests of planning obligations set out in the National Planning Policy Framework (the Framework). A Section 106 planning obligation is necessary to secure the provision of affordable rented housing. No satisfactory obligation is in place and therefore the appeal must fail for this reason.

Highway Safety

15. The appeal site is located between properties that front Meadow Drive, The Avenue and Bank Street, and there is a primary school on the eastern boundary. The site is close to the town centre but the surrounding area is predominantly residential in character.

16. Although the Council accepts that Meadow Drive is technically capable of servicing the development, it maintains its objection to the proposal due to the likely increase in traffic, which would access the site via Meadow Drive and the connecting local roads.

17. The appellant's Transport Statement [2] includes an analysis of the likely traffic flows resulting from the development, using the industry standard TRICS[3] data. The traffic impact of the development is predicted to result in an additional 20

[1] Staffordshire Moorlands Local Development Framework: Core Strategy Development Plan Document, adopted 26 March 2014
[2] Ref 16-00470/TS/01 dated June 2016
[3] Trip Rate Information Computer System

two-way vehicular trips at morning peak time (0800-0900) and 14 two-way vehicular trips at evening peak time (1700-1800). Between 0700-2200 there are predicted to be 158 two-way trips. The Council has not challenged the data provided by the appellant and there is no evidence before me to demonstrate that the methodology applied is not robust or that the findings are unsound. I also note that the Highways Authority has not raised any objection to the proposal. Moreover, the Council has provided its own independent Highway Statement,[4] which accepts that the traffic generation from the new development would be limited. Therefore, on the basis of this evidence, the traffic flows resulting from the development are unlikely to be significant.

18. The appellant's Transport Statement concludes that the increase in vehicular movements on Meadow Drive as a consequence of the development would be negligible and would not impact on highway capacity and safety. The Council disagrees with this finding. There are a number of schools in the vicinity of the site and a significant number of pupils make their trip to school by foot or by parental vehicle. The Council's Highway Statement includes photographs that appear to show congestion and conflict between highway users at school drop-off times. It also describes causal factors in Road Traffic Clashes and states that many such factors were observed in and around the local highway infrastructure of the site during school arrival and dispersal times, despite the relatively low traffic speeds. It is reported by both parties that there are no accident records within the local residential roads.

19. I appreciate that the high concentration of schools in the area may lead to conflict between highway users at certain times of the day. Although the development would result in an increase in vehicles using the local road network, it has been shown that this increase is unlikely to be significant, even at peak times. Therefore, despite the existing local traffic conditions, the effect of the proposal on the local highway network would not be severe.

20. The Council favours the approved Bank Street junction as this would not place an additional burden on the residential estate roads to the south of Meadow Drive. Nevertheless, the Highways Authority states that the access from Meadow Drive would be the preferred option as it can comfortably accommodate the modest development of 42 dwellings. Moreover, it is stated that a separate access off Bank Street is unnecessary and undesirable.

21. Conversely, the Council's Highway Statement concludes that the approved junction could "operate safely in serving this small scale development" and "the limited traffic generation from the new development would not have a material impact on the operation of the A521 gyratory traffic flow". Whether or not safe and suitable access to the site could be achieved from Bank Street is not the issue before me. However, several local residents have expressed concern that Meadow Drive should not be used as through route. The Highways Authority has advised that it would not be possible to design the Bank Street access to prevent through access from Meadow Drive. In contrast, the proposed access from Meadow Drive would serve the development only and would not result in it becoming a through route.

22. A number of third parties, including a local haulage firm, have expressed concerns about construction traffic and the effect of this on highway safety. Should the development be approved, the routing and timing of construction

[4] Report No: P10-0053-NPC dated July 2016

traffic could be agreed and controlled through a planning condition. Also, conditions could be used to ensure any damage to Meadow Drive would be rectified, if such a condition was demonstrated to be necessary.

23. A third party has referred to a traffic study dated November 2015 by the highways department, which found that Cheadle is at maximum capacity regarding traffic. However, I have not been provided with this document and I am unable to establish whether or not it is relevant to the appeal. Similarly, references in the Core Strategy to traffic issues in and around Cheadle do not demonstrate that the highway network in the vicinity of the site cannot cope with the limited increase in traffic likely to be generated by the development.

24. I have considered the concerns of the Council and local residents carefully. However, the evidence before me shows that the development would be unlikely to generate significant levels of traffic. There are no technical reasons why the proposed alternative access would be unacceptable or that local roads could not accommodate the likely increase in traffic. Overall, it has not been demonstrated that safe and suitable to the site cannot be achieved via Meadow Drive. Moreover, the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Although there is some evidence of congestion and conflict between highway users at school drop-off time, it has not been demonstrated that the impacts of the development would be severe.

25. To conclude on this issue, I find that removing / varying the conditions would not have a material adverse effect on highway safety. The development would comply with Policy T1 of Core Strategy which, amongst other things, seeks to ensure that all new development is located where the local highway network can satisfactorily accommodate traffic generated by the development.

Other Matters

26. A small section of the northern part of the site is within the Cheadle Conservation Area, and there are a number of listed buildings in the vicinity. The Council states that the development would not adversely affect the character and appearance of the existing building or its setting. I agree with this assessment and conclude that the development would preserve the character and appearance of the Conservation Area, and the setting of the listed buildings.

Conclusion

27. Although I have found that removing / varying the conditions would not have an adverse effect on highway safety, there is no mechanism to ensure that the development would be for affordable rented housing. Consequently, for the reasons given above in relation to this matter, the appeal is dismissed.

Debbie Moore

Inspector