



Appeal Decision

Site visit made on 22 November 2022

by **E Dade BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/K1935/W/22/3298826

Land between Watercress Close, Coopers Close and Walnut Tree Close, Stevenage SG2 9TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr C Serban of SER Homes Ltd against the decision of Stevenage Borough Council.
 - The application Ref 21/00057/FP, dated 30 January 2021, was refused by notice dated 20 December 2021.
 - The development proposed is the erection of two four-bedroom dwelling houses.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two four-bedroom dwelling houses at land between Watercress Close, Coopers Close and Walnut Tree Close, Stevenage SG2 9TN in accordance with the terms of the application, Ref 21/00057/FP, dated 30 January 2021, subject to the conditions contained within the attached Schedule.

Preliminary Matters

2. For clarity regarding the site's location, I have used the site address stated on the Council's Decision Notice which includes the three streets which abut the site.

Main Issue

3. The main issue in this appeal is the effects of the proposal on the provision of open space.

Reasons

4. The appeal site is an undeveloped area of gently sloping, mown grassland situated within a modern housing estate. The site's boundary is planted with a mix of shrubs and occasional small trees and is enclosed by fences at the boundaries of adjacent gardens. The site is surrounded by dwellings and adjoins Walnut Tree Close, a winding estate road, and connects to turning heads at Watercress Close and Coopers Close.
5. During my site visit I found each of the site's access points closed off by tall hoardings and as such the site is inaccessible from the public highway. Details of the site's planning history indicates the site was subject to a previous appeal decision which confirmed that the enclosure of the land through the erection of hoardings at the site's accesses does not constitute a breach of planning

control and is permitted development¹. The previous appeal decision suggests the site has been inaccessible to the public for more than two years.

6. It is my understanding that, prior to its enclosure, the site was maintained by the Council and formed a well-used open space for various forms of recreation and provided access through the housing estate. It is evident that following the erection of the hoardings, the site no longer functions as a public open space.
7. The site is in private ownership and whilst privately owned land can serve as public open space, in this case there is no apparent mechanism to compel the landowner to return the site to its former use. In the event that the appeal were dismissed, the evidence before me does not suggest that the site has a realistic prospect of being brought back into use as a public open space. Consequently, I consider that the proposal would not compromise the access to and use of the land as a public open space, since public access to the site has already ceased.
8. Policy NH6 of the Stevenage Borough Local Plan 2019 (SBLP) indicates that the loss of open space through granting of planning permission for development will be justified where certain criteria are met. Since the appeal site is inaccessible to the public and it no longer functions as an open space, the proposal would accord with the requirements of SBLP policy NH6 which permits the development of open space in such circumstances.
9. The Planning Officer's Report considers a range of planning issues and has concluded that the proposal would provide satisfactory living conditions and would not prejudice the environment or infrastructure. The appeal site is a small, vacant site located within Stevenage's urban area. Consequently, I consider that the site would satisfy the requirements of SBLP Policy HO5 which supports windfall development of housing on unallocated urban sites.
10. The Council has raised concerns that the appeal proposal would set an undesirable precedent for the loss of open spaces through development. The local area appears green in character with amenity land and open spaces a common feature within the street scene. Whilst such spaces could attract development proposals in the future, I do not consider that my decision would create a precedent since I have reached my decision based on the specific merits of the case and found that it accords with the Development Plan.

Other Matters

11. Numerous written comments and objections were submitted by local people in response to the proposal. I have a great deal of sympathy with those residents lamenting the loss of the recreational function of the site prior to its enclosure. However, as discussed above, I have based my decision on the evidence available to me including my observations of the site's present condition.
12. Concerns were raised that the proposal appears to conflict with requirements of the original planning permission for the development of the housing estate in the late 1980s. I have determined the appeal in accordance with the present Development Plan as required by planning law².

¹ Appeal reference: APP/K1935/C/20/3251206

² S38(6) of Planning and Compulsory Purchase Act 2004 and s70(2) of Town and Country Planning Act 1990.

13. Some respondents identified the former value of the site in providing connections to surrounding streets. The proposed development would include an area of open space which would reinstate pedestrian access between Walnut Tree Close and Coopers Close. I therefore consider this improvement to accessibility to be a public benefit of the scheme.
14. A number of respondents raised concerns regarding the effects of the proposal on wildlife and habitats. I have been provided with a completed s106 agreement which includes a planning obligation securing a financial contribution to mitigate the effects of the proposal and deliver a net gain in biodiversity through off-site biodiversity enhancements within the borough as per the requirements of the Council's Biodiversity Supplementary Planning Guidance (2021). I am satisfied that the planning obligation meets the tests set out in para. 57 of the National Planning Policy Framework as the obligation is necessary to make the development acceptable in planning terms and is directly related and fairly and reasonably related in scale and kind to the development. Since the planning obligation would ensure the proposal delivers a net gain in biodiversity, I consider this a benefit of the scheme.
15. Issues relating to the design of the scheme and its effects on living conditions and local infrastructure have been brought to my attention. These issues are largely identified and considered within the Council's delegated report, and it is noted that the Council did not consider these were reasons to refuse the application. I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters. To ensure the development is acceptable in planning terms, I have attached planning conditions to this decision, as discussed in the following section.

Conditions

16. The Council has provided a list of conditions which I have considered carefully against the Framework's tests. I have attached a condition specifying the approved plans in the interests of providing certainty. Conditions regarding external materials, landscaping and boundary treatment are necessary in the interests of maintaining the area's character and appearance.
17. Conditions specifying the periods when vegetation may be removed and requiring the provision of features for wildlife to be integrated into the new development are necessary to conserve and enhance biodiversity.
18. I have included a condition to secure the provision of the proposed open space and ensure it remains accessible for the lifetime of the development. To safeguard the living conditions of the occupiers of neighbouring properties, I have included conditions requiring the written approval of a Construction Management Plan and specified the hours when construction shall take place. I have included a condition requiring the provision of adequate water infrastructure provision on site for the local fire service to discharge its statutory firefighting duties.
19. To ensure the development is adaptable to climate change through provision of energy and water efficiency measures, I have attached a condition requiring details of such measures be submitted to the Council.

20. In the interests of highway safety, I have included conditions to secure suitable vehicular access, to limit external lighting without the Council's approval, and to provide adequate parking provision.

21. At the time of this decision, building regulations require the provision of electric vehicle charging points. I have therefore not included the Council's suggested condition relating to this matter as it is no longer necessary.

Conclusion

22. For the reasons given above, the development accords with the development plan taken as a whole and therefore I conclude that the appeal should succeed.

E Dade

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1802-P-01-0000-ZXX; 1802-P-01-0003-ZXX-06; 1802-P-01-0100-Z00-04; 1802-P-01-0101-Z00-04; 1802-P-01-0102-Z00-04; 1802-P-01-0103-Z00-04; 1802-P-01-0110-Z00-04; 1802-P-01-0111-Z00-05; 1802-P-01-0112-Z00-04; 1802-P-01-0113-Z00-05; 1802-P-01-0120-Z00-04; 1802-P-01-0121-Z00-04; 1802-P-01-0002-ZXX-07; 1802-P-01-0001-ZXX-08; AVAL/91326/VS/001-C.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on the approved plans.
- 4) Prior to first occupation of the development, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) Prior to first occupation of the development, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which 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.
- 7) No removal of trees, scrub or hedges, shall be carried out on site between the 1st March and 31st August inclusive in any year, unless searched beforehand by a suitably qualified ornithologist.
- 8) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of –
 - a) Map showing the location of construction traffic routes to and from the site, details of their signing, monitoring and enforcement measures;
 - b) Access arrangements to the site;
 - c) Traffic management requirements;
 - d) Site set up and general arrangements for storing plant, materials, machinery and equipment, temporary offices and other facilities as applicable;
 - e) Details of provisions for temporary car parking, loading/unloading and vehicle turning areas;
 - f) Details of any hoarding;
 - g) Control of dust and dirt on the public highway;

- h) Siting and details of wheel washing facilities;
- i) Cleaning of site entrances, site tracks and the adjacent public highway;
- j) Timing of construction activities (including delivery times and removal of waste);
- k) The estimated number and type of vehicles per day/week;
- l) Details of any vehicle holding area;
- m) Details of the vehicle call up procedure;
- n) Access and protection arrangements around the site for pedestrians, cyclists and other customers;
- o) Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
- p) Details of consultation and complaint management with neighbours;
- q) A Site Waste Management Plan (SWMP) including mechanisms to deal with environmental impacts such as air quality and dust control measures, noise and vibration restriction measures, light and odour and predicted and latterly actual waste arisings and how this is to be managed and where it is sent to;
- r) Details of any proposed piling operations, including justification for the proposed piling strategy, a vibration impact assessment and proposed control and mitigation measures.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 9) No development above ground level shall take place until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the scheme has been implemented in accordance with the approved details.
- 10) Notwithstanding the details shown in this application the treatment of all boundaries including details of any walls, fences, gates or other means of enclosure, to include suitable access for hedgehogs, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved boundary treatments shall be completed before the dwellings are occupied.
- 11) Prior to first occupation of the development, details of the model and location of 2 integrated bat boxes and 2 integrated swift boxes shall be supplied to and approved in writing by the Local Planning Authority and shall be fully installed and retained thereafter.
- 12) No development above ground level shall take place until a detailed scheme of the open space provision, management and maintenance of, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the location, dimensions/size and layout of the open space (be reference to a plan), its regular maintenance of and how the space will be managed to ensure its continued availability to the public. The open space shall thereafter be provided and maintained in full accordance with the approved details.

- 13) The area of open space as identified on the approved block plan and in accordance with condition 12 shall be used only for the provision of publicly available open space and for no other means, at any time.
- 14) No development above ground level shall take place until details of measures to address adaptation to climate change have been submitted to and approved in writing by the Local Planning Authority. These measures shall then be implemented and permanently maintained in accordance with the approved details.
- 15) No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted light contours, have first been submitted to, and approved in writing the Local Planning Authority prior to first occupation of the development. Any external lighting shall accord with the details so approved.
- 16) Demolition or construction works shall take place only between the hours of 0730 and 1800 on Mondays to Fridays and between the hours of 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 17) Prior to first occupation of the development, the vehicular access shall be completed and thereafter retained as shown on drawing number 1802-P-01-0000-ZXX in accordance with details/specification to be submitted to and approved in writing by the Local Planning Authority. Prior to use appropriate arrangements shall be made for surface water to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway. The discharge of this condition requires a Section 278 (highway works agreement) to be entered in to.
- 18) Prior to first occupation of the development, the proposed parking arrangements, in the form of driveways and garages shall be provided and made available for use in accordance with the approved block plan and shall thereafter be used for no other purpose than the parking of vehicles in perpetuity.