



Appeal Decisions

Site visit made on 15 October 2019

by Julia Gregory BSc(Hons) BTP MRTPI MCMi

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

Decision date: 28 November 2019

Appeal A: APP/B3030/W/19/3234470

Springfield Bungalow, Nottingham Road, Southwell NG25 0QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Springfield Eco Ltd against the decision of Newark & Sherwood District Council.
 - The application Ref 19/00779/FULM, dated 23 April 2019, was refused by notice dated 26 July 2019.
 - The application sought planning permission for residential development of 38 dwellings and conversion and extension of existing residential property to form 12 supported living units without complying with a condition attached to planning permission Ref 15/01295/FULM, dated 13 December 2017
 - The condition in dispute is No 11 which states that: *No part of the development hereby permitted shall be commenced until visibility splays of 2.4m x 43m (minimum) are provided at the junction with Halloughton Road.*
 - The reason given for the condition is: *In the interests of highway safety.*
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Appeal B: APP/B3030/W/19/3234471

Springfield Bungalow, Halloughton Road, Southwell NG25 0QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Springfield Eco Ltd against the decision of Newark & Sherwood District Council.
- The application Ref 19/00689/FUL, dated 7 April 2019, was refused by notice dated 26 July 2019.
- The application sought planning permission for alteration of existing vehicular access on Halloughton Road, installation of kerb radii and provision of visibility splay without complying with conditions attached to planning permission Ref 16/01369/FUL, dated 31 March 2017.
- The conditions in dispute are Nos 2, 3, 4 and 5 which state that: (2) *The development hereby permitted shall be carried out in accordance with the following approved plan:- 12/1889/750; (3) No development shall be commenced until details of drainage and surface water disposal have been submitted to and approved in writing by the local planning authority. The development shall be carried out thereafter in accordance with the approved details unless otherwise agreed in writing by the local planning authority; (4) No part of the development hereby permitted shall take place until details of the new access road have been submitted to and approved in writing by the Local Planning Authority including longitudinal and cross sectional gradients, street lighting, drainage and outfall proposals, construction specification, provision of utilities services, and any proposed structural works. The development shall be implemented in accordance with*

these details to the satisfaction of the Local Planning Authority; (5) No part of the development hereby permitted shall be brought into use until the visibility splays of 2.4m x 43m shown on drawing no. 12/1889/750 are provided. The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.25 metres in height unless otherwise agreed with the Highway Authority.

- The reasons given for the conditions are: (2) *So as to define this permission;* (3) *To ensure the provision of satisfactory means of foul sewage/surface water disposal;* (4) *To provide a suitable standard of access and to allow for future maintenance;* and (5) *For the avoidance of doubt.*
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for residential development of 38 dwellings and conversion and extension of existing residential property to form 12 supported living units at Springfield Bungalow, Nottingham Road, Southwell NG25 0QW in accordance with the application 19/00779/FULM, dated 23 April 2019, subject to the conditions in annexe A.

Appeal B

2. The appeal is allowed and planning permission is granted for alteration of existing vehicular access on Halloughton Road, installation of kerb radii and provision of visibility splay without complying with conditions attached to planning permission Ref 16/01369/FUL, dated 31 March 2017 at Springfield Bungalow, Halloughton Road, Southwell NG25 0QW in accordance with the application Ref 19/00689/FUL, dated 7 April 2019, subject to the conditions in annexe B.

Preliminary matters

3. In respect of both appeals, the applicant name given on the application form is the agents. It was confirmed as part of validating the appeal that the original applicant was altered to Springfield Eco Limited. This conforms with the applicant details on the decision notices. I have therefore used this name in the banner headings.
4. The appellant has submitted a deed of variation to a S106 agreement which accompanied 15/01295/FULM, dated 13 December 2017. The deed of variation dated 4 November 2019 deletes clause 14 of the original agreement and replaces it with new clauses 14.1 and 14.2. These clauses ensure that the original deed would continue to have effect in the event of new planning permissions being granted.
5. The application for appeal A states that it is to construct the new access wholly within highway land or that owned by the applicant to comply with revised drawing submitted HALL-BSP-ZZ-XX-DR-C-100-P6. Although not specified on the application form, this would result in non-compliance with condition 11. Although the application says that it is not retrospective, the development is under way. I have therefore considered the application as being under s73A of the Act. Although the access has been created, modifications to the footway are proposed as part of the application.
6. The description of development on appeal B application form is alteration of existing vehicular access on Halloughton Road, installation of new radii and

provision of visibility splay. The application relates to conditions 2,3,4, and 5. Works have been carried out but the appellant accepts that further modifications are necessary to the access which could be required by way of planning conditions. A revised plan 37049-BSP-ZZXX-DR-C-101 Rev P4 was submitted as part of the application which seeks to demonstrate that crossfall and gradient adjustments could be made within highway limits. I have taken this plan into account in my determination of the appeals.

7. Although application site addresses differ, they both relate to the same site which has access from Halloughton Road.
8. Both appeals relate to the adequacy of the design of the access. Although the dimensions of the visibility splays are shown on the plans as 2.3 x 43m to the east and 2.3m X 29m to the west, these distances are not shown on the application forms or within the description of development. They are shown as lines on submitted plans. The Highway Authority confirmed that 2.3m by 43m can be achieved in both directions, but the hedgerow needs to be maintained to ensure that growth on land in third party ownership does not impede these splays.
9. I have given consideration as to whether I should determine the proposal on the basis of the visibility shown on the plans or that which can be achieved. I have taken into account the representations made in response to this question from the Council and the appellant, who both consider that I should determine it on the basis of the visibility that can be achieved. I shall proceed on that basis.

Applications for costs

10. Applications for costs have been made by the appellant against the Council. These applications are the subject of a separate Decisions.

Main Issue

11. The main issue in both appeals is the effect of non-compliance with the conditions on highway safety.

Reasons

12. There has been a land ownership dispute at the frontage of the site with Halloughton Road in the vicinity of the access. This has meant that the minimum required by the conditions of 2.4m x 43m visibility splays are not available at the access on land that can be assured to be within highway land. According to the evidence the strip in dispute amounts to only some 20cm in depth, with 1.8m to the carriageway edge re-confirmed as highway.
13. A lesser standard of visibility of 2.3m by 43m can be achieved, so long as vegetation on adjoining land is kept cut back. That is within the legislative control of the highway authority if problems occur. This represents a reduction of the "x" distance of only 100mm.
14. Halloughton Road is lightly trafficked with according to the Highway Authority some 900 vehicles per day two-way traffic, even though it may be used as a rat-run. Even in peak hours there would only be a flow of some 110 vehicles. That would average about 1 vehicle every 33 seconds according to the Highway Authority. This would allow significant gaps in traffic to enable cars leaving the

side junction serving this relatively modest new development to access Halloughton Road. It has not been demonstrated that the traffic likely to be generated and using the access would be harmful to highway safety conditions. Furthermore, the nature of the road is of a relatively short lane with a pronounced right angled bend a short distance to the west within the town. These features do not promote high speeds within the maximum permitted 30mph limit.

15. Local highway standards relating to visibility splay specifications are guidance. The Nottinghamshire Design Guidance allows flexibility. Also, Manual for Streets identifies that an "x" distance as low as 2.0m set back can be used in some very lightly trafficked and slow speed situations. As a result the Highway Authority has, during the course of considering the applications determined that the conditions are not necessary in the form given. They have accepted that 2.3m by 43m in both directions can be achieved and that it may be greater than this but just not within highway land. Given that 2.3m by 43m can be achieved in both directions and that is a very marginal difference in visibility I consider this acceptable.
16. Furthermore, the Highway Authority has agreed the revised design of the footway, including its gradient and crossfall, the proximity of crossovers, the 5m access corner radii and kerbing and the varied width of the footway. These are all not so far from standard specifications as to be materially harmful to highway safety and accessibility for those with mobility impairments. Damage to kerbs by construction vehicles seem to be the result of lack of care by construction traffic which will cease on completion.
17. For these reasons, I conclude that the variations to the design of the access, including the modest reduction in visibility would not be harmful to highway safety. It would therefore comply with Newark and Sherwood Amended Core Strategy Spatial Policy 7 which requires that safe, convenient and attractive access should be provided for all.
18. It would also comply with Newark and Sherwood Local Development Framework Allocations and Development Management Development Plan Document Policy DM5 which requires safe and inclusive access to new development, and Southwell Neighbourhood Plan Policy TA3 which requires contributions from developers to mitigate the impact of negative impacts on the highway network.
19. As I have concluded that the conditions in their current form are not necessary to secure safe access, it follows that they would not comply with one of the six tests for planning conditions set out in the National Planning Policy Framework, and that subject to the imposition of replacement conditions to secure variations, that the appeals should be allowed.

Other matters

20. I acknowledge local concerns including about flooding and the buffer zone, but the focus of my attention is on the conditions relevant to this appeal, rather than the original grant of planning permission, the principle of which has been established. Surface water drainage on the footway would be controlled by Appeal A conditions 14 and 15 and Appeal B condition 3.

21. The involvement of the contracting arm of the Highway Authority in constructing the scheme, which is to be corrected, is noted. It is not for me to comment on the actions or any conflicts of interest of the Highway Authority. Those are matters of local accountability.

Conditions

22. As identified in the Council's committee reports, new planning permissions would be granted subject to varied conditions. The Council has suggested alterations to the conditions in dispute if I were minded to allow the appeals, which I am. These would secure revisions to the access and I consider that these are necessary in the interests of highway safety.
23. I have referred to the revised plan No 37049-BSP-ZZXX-DR-C-101 Rev P4 in appeal A conditions 11 and 23 and Appeal B conditions 1, 3, 4 and 5 as this is the most recent plan. I have used the distances of 2.3m by 43m in both directions in appeal A condition 11 and appeal B condition 4 as this can be achieved within the highway, in the interests of highway safety. I have made clear the visibility splays are revised in appeal A condition 11 and Appeal B condition 4 to ensure that the visibility splay is retained notwithstanding what is shown on the plan.
24. Although a request was made to specify that the Highway Authority use its powers under S154 of the Highways Act 1980 in the event of vegetation overgrowing the sight lines, the Highway Authority has this power and so the reference is unnecessary.
25. I have amended condition 23 and appeal B condition 5 to allow for a short period to apply for and obtain a temporary road closure as I understand that this could delay implementation of the alterations to the access.
26. I understand from correspondence that the alterations to the other conditions 2, 3, 4, 5, 12, 13, 14, 16, 18 and 20 of appeal A reflect the fact that these matters have been addressed, and they are agreed by the appellant. I have therefore changed the conditions subject to the appeal to reflect the variations sought. All of those conditions are justified for the reasons originally given.

Conclusions

27. For the reasons given above I conclude that the appeals should be allowed.

Julia Gregory

Inspector

Annex A

APP/P3030/W/19/3234470 - Conditions Schedule

1. The development hereby permitted shall not be carried out except in complete accordance with the following approved plans and documents unless otherwise agreed in writing by the local planning authority through the approval of a non material amendment to the permission.
 - Drawing No. 12/1889/LP Rev D Revised Site plan
 - Drawing No. 12/1889/101/Rev F - Revised site layout
 - Drawing No. 12/1889/102/Rev A - proposed roofscape
 - Drawing No. 12/1889/103/Rev A - proposed street elevation
 - Drawing No. 12/1889/120/Rev A - House type A
 - Drawing No. 12/1889/121/Rev A - House type B
2. The development hereby approved shall be carried out in accordance with the following external materials approved by the Local Planning Authority in correspondence dated 7 May 2019 under application ref. 19/00317/DISCON unless otherwise agreed in writing by the Local Planning Authority.
 - Bricks--Butterley Forterra Woodside Mixture
 - Roof - traditional single clay pantile
3. The development hereby approved shall be carried out in accordance with the ground and finished floor levels approved by the Local Planning Authority in correspondence dated 7 May 2019 under application ref. 19/00317/DISCON unless otherwise agreed in writing by the local planning authority.
4. The development hereby approved shall be carried out in complete accordance with the details of hard and soft landscaping approved by the Local Planning Authority in correspondence dated 7th May 2019 under application ref. 19/00317/DISCON unless otherwise agreed in writing by the local planning authority.
5. The development hereby approved shall be carried out in accordance with the Landscape Management Plan produced by Influence Environmental Ltd ref. INF N0559 R01-Rev A deposited on the 16th April 2019 and approved by the Local Planning Authority in correspondence dated 7th May 2019 under application ref. 19/00317/DISCON. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior consent in writing of the local planning authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority.
6. The approved soft landscaping shall be completed during the first planting season following the first occupation/use of the development, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the

next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1- Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984- Specifications for Forestry Trees ; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations. The approved hard landscaping scheme shall be completed prior to first occupation or use.

7. No part of the residential development hereby permitted shall be occupied until all associated drives and any parking or turning areas are surfaced in a hard bound material (not loose gravel) for a minimum of 2 metres behind the Highway boundary. The surfaced drives and any parking or turning areas shall then be maintained in such hard bound material for the life of the development.
8. Any garage doors shall be set back from the highway boundary a minimum distance of 5 metres for sliding or roller shutter doors, 5.5 metres for up and over doors or 6 metres for doors opening outwards.
9. The new shared private driveway serving Springfield Bungalow shall be laid out to a width of not less than 4.8 metres for at least 10 metres back from the nearside edge of carriageway and shall provide for vehicle parking and turning areas in accordance with the approved plan. The vehicle parking and turning areas shall not be used for any purpose other than the turning and parking of vehicles.
10. No part of the Supported Living Units hereby permitted shall be brought into use until the new dropped vehicular verge crossing serving Springfield Bungalow is available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority.
11. Notwithstanding the visibility splays shown on plan No HALL-BSP-ZZ-XX-DR-C-100 Rev P6 and plan No 37049-BSP-ZZXX-DR-C-101 Rev P4, prior to the first occupation of any part of the development hereby approved visibility splays of 2.3m x 43m shall be provided at the junction with Halloughton Road and shall be retained thereafter.
12. No residential unit or 'supported living unit' hereby permitted shall be occupied until its associated private access/driveway/parking area is constructed with provision to prevent the unregulated discharge of surface water from the access/driveway/parking area to the public highway in accordance with details first submitted to and approved in writing by the LPA. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.
13. The development hereby approved shall be implemented in complete accordance and to the satisfaction of the Local Planning Authority with the details of the drainage and outfall proposals for the new residential access road as indicated on drg.no. Drawing HALL-BSP-ZZXX- DR-C-240-P2 approved by the Local Planning Authority in correspondence dated 7th May 2019 under application ref. 19/00317/DISCON.

14. The development hereby approved shall be implemented in complete accordance and to the satisfaction of the Local Planning Authority with the following drainage plans for the disposal of surface water and foul sewerage drainage and precise drainage design approved by the Local Planning Authority in correspondence dated 7th May 2019 under application ref. 19/00456/DISCON, Drainage Strategy produced by bsp Consulting dated 01/12/19, Storm Sewer Design produced by bsp Consulting dated 04.03.19, Additional correspondence dated 03/04/19 from bsp Consulting, and Private Drainage Layout plan (bsp consulting) drg. ref. HALL-BSP-22-XX-DR-C-240 rev P2.
15. The drainage system on site shall be designed so that the positive discharge will be restricted to a maximum of 3.5 l/s in accordance with confirmation stated in correspondence deposited on the 8th March 2019 and connected to the public combined sewer in accordance with paragraph 3.9 of the Flood Risk Assessment Addendum produced by ACS and dated 28/10/15 revised 18/12/15. There should be no surcharge of the pipes on a 1 year storm. No surcharge in a 30 year site boundary in a 100 year +30 climate change storm.
16. The Written Scheme of Investigation produced by Locus Consulting Ltd dated 31/01/2019 and by the Local Planning Authority in correspondence dated 7th May 2019 shall be implemented in full accordance with the approved details under application ref. 19/00317/DISCON.
17. Removal of vegetation (including any trees to be removed following confirmation and approval of precise details through a reserved matters application) should not take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority prior to removal of any such vegetation and once approved all works shall be in accordance with these details.
18. The tree and hedgerow protection measures including timetable for these measures to be retained shall be implemented in full accordance with the Arboriculture Method Statement produced by Influence Environmental (ref. RSE_2057-01-V2) and Tree Protection Plan (Drg, ref. RSE_2057-7PP Revision-V2 approved by the Local Planning Authority in correspondence dated 7th May 2019 under application ref. 19/00317/DISCON.
19. Before development is commenced the Poplar Tree identified as being within G3 in Appendix 1 of the Tree Survey prepared by Chris Barker and dated 11th November 2015 shall be checked for the presence of roosting bats in accordance with the recommendations of the Ecological Appraisal and letter prepared by CBE Consulting dated 9th November 2012 and 5th January 2015.
20. The details of ecological enhancement and mitigation measures contained within the Habitat and Ecological Management Plan produced by Influence

Environmental Ltd ref. RSE_2057-02-V1 dated January 2019 and approved by the Local Planning Authority in correspondence dated 7th May 2019 shall be fully implemented in accordance with the approved details under application ref. 19/00317/DISCON.

21. Management of hedgerows should be undertaken in an ecologically sensitive manner. Only one third of (the total length of) hedgerows onsite should be cut each year, on a three year rotation. These should be cut in January/February, outside of the bird breeding season, and to allow wildlife to utilise the winter berry crop. Cutting hedgerows into an "A" shape will prolong the life of the hedgerow and create denser cover for wildlife.
22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (and any order revoking, re-enacting or modifying that Order), other than development expressly authorised by this permission, there shall be no development under Schedule 2, Part 1 of the Order in respect of:
- Class A: The enlargement, improvement or other alteration of a dwelling house, including extensions to the property and the insertion or replacement of doors and windows.
 - Class B: The enlargement of a dwellinghouse consisting of an addition or alteration to its roof,
 - Class C: Any other alteration to the roof of a dwellinghouse.
 - Class D: The erection or construction of a porch outside any external door of a dwellinghouse.
 - Class E: Development within the curtilage of a dwellinghouse; Or Schedule 2, Part 2:
 - Class A: The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
 - Class B: Means of access
 - Class C: The painting of the exterior of any building

Unless consent has firstly be granted in the form of a separate planning permission.

23. Within 14 days of the date of this decision an application shall be submitted for a road closure under S14 of the Road Traffic Regulation Act 1984 to enable works at the access. Within 4 weeks of the date a temporary highway closure order being granted, the existing footway gradient shall be reconfigured to provide a maximum gradient of 1 in 12 as shown on drawing 37049-BSP-ZZXX-DR-C-101 Rev P4. Any damage to the existing kerb edging, footway surface and tactile paving shall be re-instated to the original specification as shown on approved drawing HALL-BSP-ZZ-XX-DR-C-100 Rev 6.

Annexe B

APP/P3030/W/19/3234471- Conditions Schedule

1. The access hereby permitted shall be constructed in accordance with the following approved plan: -HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019 (Notwithstanding gradients) and 37049-BSP-ZZXX-DR-C-101 Rev P4.
2. The development shall be retained in accordance with details of drainage and surface water disposal shown on the plan approved by condition 1 of this permission ref: HALL-BSP-ZZ-XXDR-C-100 Rev P6 deposited 7th April 2019.
3. The development shall be retained in accordance with drainage and outfall proposals and construction specification as shown on the approved plan approved by condition 1 of this permission ref: HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019 (Notwithstanding gradients) and ref. 37049-BSP-ZZXX-DR-C-101 Rev P4..
4. Notwithstanding the visibility splays shown on plan No HALL-BSP-ZZ-XX-DR-C-100 Rev P6 and plan No 37049-BSP-ZZXX-DR-C-101 Rev P4 no part of the development hereby permitted shall be brought into use until visibility splays of 2.3m x 43m are provided. The visibility splays shall be retained. The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.25 metres in height unless otherwise agreed with the Highway Authority.
5. Within 14 days of the date of this decision an application shall be submitted for a road closure under S14 of the Road Traffic Regulation Act 1984 to enable works at the access. Within 4 weeks of the date of a temporary highway closure order being granted, the existing footway gradient shall be reconfigured to provide a maximum gradient of 1 in 12 as shown on drawing 37049-BSP-ZZXX-DR-C-101 Rev P4. Any damage to the existing kerb edging, footway surface and tactile paving shall be re-instated to the original specification as shown on approved drawing HALL-BSP-ZZ-XX-DR-C-100 Rev 6.