



## Appeal Decision

Site visit made on 10 January 2019

by **D Guiver LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 1 March 2019

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**Appeal Ref: APP/F4410/W/18/3213666**

**Land off Marshland Road/Bloomhill Court, Moorends, Doncaster DN8 4PF**

- 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 D Noble Limited against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 15/00878/FULM, dated 13 April 2015, was refused by notice dated 4 July 2018.
  - The development proposed is construction of 23 no. 2, 3 and 4-bed dwellings and associated car parking.
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### Decision

1. The appeal is allowed and planning permission is granted for construction of 23 no. 2, 3 and 4-bed dwellings and associated car parking at Land off Marshland Road/Bloomhill Court, Moorends, Doncaster DN8 4PF in accordance with the terms of the application, Ref 15/00878/FULM, dated 13 April 2015, subject to the conditions in the attached Schedule.

### Application for costs

2. An application for costs was made by D Noble Limited against Doncaster Metropolitan Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. Since the date of the Council's decision, the National Planning Policy Framework (the Framework) has been published and has effect. The parties have had the opportunity to make representations on the effect of the Framework on the application and I have taken all comments into consideration in this decision.
4. The Council has identified contributions normally required for the provision of affordable housing, public open space and school places. Such provision would normally be secured by a planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990. I deal with this matter below.

### Main Issues

5. The main issues are the effect of the proposed development on:
  - a) highway safety; and

- b) the living conditions of the occupiers of neighbouring dwellings.

### **Reasons**

6. The appeal site comprises an area of open land surrounded by buildings on Marshland Road, Bloomhill Court and Darlington Grove. The area is largely residential in character with a small shop located close to the north-eastern corner of the site. The proposal is for the erection of 23 dwellings, with associated garages and car parking. Three properties would front and take vehicular access from Marshland Road, while the remainder would be accessed off Bloomhill Court, mainly from a new estate road.

#### *Highway Safety*

7. Bloomhill Court is a small estate of 100 or so houses arranged into a number of smaller culs de sac and a longer main estate road running through the centre. The estate is within a 20mph speed zone. The culs de sac vary in size but typically have housing on both sides of the road. However, the street leading to the Bloomhill Court entrance to the site has dwellings only on one side of the road, save for a few near the entrance to the road. The culs de sac are characteristically short but some have a slight bend in the road or are 'T' shaped. It is unlikely that any traffic would be able to travel at excessive speeds in any of the culs de sac due to their respective lengths and designs.
8. The 20 or so dwellings that in the scheme would require access through Bloomhill Court would inevitably increase the number of traffic movements on the road. However, given the bends in the road and the overall 20mph speed restriction, I consider that increased vehicle and pedestrian traffic would not lead to any unacceptable risk to highway safety from collisions. I note that the Council's Highway Development Control Officer did not raise any object to the scheme.
9. Therefore, the proposal accords with Policies CS1 and CS14 of the Doncaster Council Core Strategy 2012 (the Core Strategy) which seek to ensure that developments secure the safety of the highway.

#### *Living Conditions of Occupiers of Neighbouring Dwellings*

10. The Council describes the character of the road off which the main access would be taken as a quiet cul de sac but does not appear to provide any compelling evidence to substantiate the description. However, it is reasonable to assume that traffic noise would be limited by the low speeds attainable and that the relatively small number of properties in the area would result in limited domestic noise.
11. The Council states that, by their very nature, the additional vehicular and pedestrian trips could harm the amenity of existing residents but does not state exactly how that harm would occur or that any harm would be unacceptable. The proposed development would inevitably add to the traffic volume in the cul de sac, but this would be similarly slow moving. The additional noise of engines starting and doors closing, and other domestic disturbance, would probably be restricted to the houses in the proposed development and in any event the likely journey numbers would remain small. It is therefore unlikely that the proposal would result in any significant or unacceptable disturbance to existing residential occupiers.

12. The Council also refers to interested parties' objections that there is a problem with vehicles queuing to leave Bloomhill Court at the junction with Marshland Road and states that the scheme would exacerbate the problem. However, there is no clear evidence of a specific problem and the additional dwellings proposed would not necessarily result in an unacceptable increase in vehicle journeys at peak times.
13. Moreover, any increase in traffic volumes should be measured against the 100 or so dwellings in Bloomhill Court as a whole. Presumably the road between Bloomhill Court and Marshland Road is adequate for anticipated traffic from the whole estate and the small probable overall rise would be unlikely to result in any unacceptable impact on the junction. As above, I note that the Council's Highway Development Control Officer did not raise any objection to the scheme.
14. Therefore, the proposal accords with Policies CS1 and CS14 of the Core Strategy which seek to ensure that developments protect local amenity.

#### *Planning Obligation*

15. Planning obligations should only be sought where they meet the tests in paragraph 56 of the Framework. The Council's Education Team has identified the potential requirement for three additional secondary school places likely to arise from the scheme. Policy CS12 of the Core Strategy provides that developments of 15 or more houses should secure the provision of affordable housing, either on site or through payment of a commuted sum. Policy CS17 seeks to ensure that schemes contribute to sport and recreation by providing appropriate on-site open space or a commuted sum towards equivalent off-site provision. The Council has calculated commuted sums of £54,891 to fund educational places and £21,750 to fund off-site open space.
16. There is no planning obligation before me to secure affordable housing or any commuted sum for education and open space provision. However, viability appraisals for the proposed development concluded that an open-market scheme with an affordable housing provision would not be viable. An additional appraisal of the scheme based on a 100% affordable housing scheme that also required commuted sums for education and open space provision would also not be viable. It is common ground that the viability appraisals are an accurate reflection of current market conditions and consequently no planning obligation should be sought.

#### **Other Matters**

17. There is a dispute between the parties over whether an assessment was agreed of the likely number of additional trips the development would generate. It does not appear to be in dispute that the scheme is below threshold at which any assessment of traffic movements would be required. However, even if the highest projected traffic estimate of traffic movements in the evidence before me is correct it would not alter my conclusion on the main issues. It is therefore unnecessary for me to reach a conclusion on this area dispute between the parties.
18. Interested parties have objected to the proposal for a number of reasons including: flooding; overshadowing, overlooking and loss of privacy; impact on

- wildlife; loss of vehicle turning space; loss of greenfield; anti-social behaviour; and underground electrical cables.
19. The appeal site is in Flood Zone 3 but it is common ground between the parties that both the sequential test and the exception test are met. The appellant has provided a Flood Risk Assessment (FRA) which identifies appropriate mitigation measures, and this has been accepted by the Environment Agency. The proposed mitigation measures and drainage systems should not have a detrimental impact on the occupiers of neighbouring dwellings.
  20. The application plans show dormer bungalows on two plots which have been included to address potential areas of overshadowing and overlooking of properties on Marshland Road. Other buildings would be constructed at oblique angles to neighbouring properties to reduce any risk of overlooking to an acceptable level. The separation distances of the majority of the proposed houses would exceed 20 metres and would meet the Council's recommended ten metres of separation between buildings and rear garden boundaries.
  21. There is no evidence before me of any high value habitats on the appeal site and while there might be some impact on local wildlife from the loss of vegetation, this could be mitigated with nesting boxes and bat boxes or bricks. I note that the Council's Ecologist agrees, and that Natural England does not object to the proposal.
  22. The existing part of the cul de sac road described as a vehicle turning point forms part of the carriageway and appears to be adopted highway. The use of this part of the road for turning would not be precluded by the proposed development in the same way that any similar turning could be used. While the site is greenfield, it is also allocated for housing within the local development plan so development is anticipated and acceptable in principle. Alternative sites were investigated and discounted when considering the sequential test for the FRA.
  23. There is no evidence before me to demonstrate that future occupiers of the site would be any more likely than the general population to cause or commits acts of anti-social behaviour and I therefore attach very little weight to this argument. The question of electrical cables beneath the surface of the appeal site is a matter that any developer would have to address with the relevant statutory undertaker and is a private law matter, not a planning matter.

### **Conditions**

24. The conditions set out in the accompanying Schedule are based on those suggested by the Council. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance. In the interests of proper planning I have imposed the standard condition in respect of time limits. For certainty I have imposed a condition requiring compliance with the relevant application plans.
25. To reduce the risk from flooding I have imposed conditions requiring compliance with the mitigation measures identified in the FRA and for an approved Flood Evacuation Plan. To ensure that the site is adequately drained I have also imposed a condition requiring the approval and implementation of foul and surface water drainage systems.

26. In the interests of highway safety I have imposed a condition requiring the access road to be completed before first occupation. To ensure that the amenity of neighbouring occupiers is not unnecessarily disrupted I have imposed a condition requiring the submission and approval of a construction method statement.
27. To protect the character and appearance of the area I have imposed conditions requiring approval of external facing materials and approval of a landscaping plan. To protect the ecology of the area I have imposed a condition requiring the installation of nesting and roosting sites for birds and bats. To ensure that the site is free of any contamination I have imposed conditions requiring an assessment and mitigation measures and the testing of materials brought onto the site.
28. To protect the living conditions of neighbouring occupiers with particular regard to privacy and to ensure that potential alterations to dwellings do not have a detrimental impact on flood risks, I have removed permitted development rights for the installation of additional windows and other alterations.

**Conclusion**

29. For the reasons given and taking account of all other material considerations, I conclude that the appeal should succeed.

*D Guiver*

INSPECTOR

## Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3996-00 Rev B; 3996-01 Rev N; 3996-03 Rev B; 3996-05 Rev B; 3996-06 Rev C; 3996-07 Rev B; 3996-09 Rev A; 3996-10 Rev C; 3996-12 Rev B; 3996-13 Rev E; 3996-14 Rev C; 3996-15 Rev E; 3996-16 Rev D; 3996-17 Rev B; 3996-18 Rev A.
- 3) The development hereby permitted shall be carried out in accordance with the mitigation measures identified in the Flood Risk Assessment compiled by AAH Planning Consultants (Ref AAH/0805/14FRA) dated February 2015 (amended March 2018). The mitigation measures shall be fully implemented prior to first occupation of any dwelling unless otherwise agreed in writing by the local planning authority.
- 4) Before first occupation of any part of the development hereby permitted, a Flood Evacuation Plan shall be submitted to and approved in writing by the local planning authority. The Flood Evacuation Plan shall include the following details:
  - i) flood warning procedures;
  - ii) safe points of extraction and evacuation;
  - iii) the areas of responsibility for those participating in the Plan;
  - iv) implementation procedures;
  - v) communication strategies for occupiers; and
  - vi) details of a scheme to update the Plan.The Flood Evacuation Plan shall thereafter be maintained and adhered to.
- 5) Development shall not commence until a scheme for foul and surface water drainage shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme before any part of the development is first occupied.
- 6) The building shall not be occupied until a means of access for vehicles, pedestrians and cyclists shall have been constructed in accordance with the approved plans. The access shall be retained thereafter.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) delivery, demolition and construction working hours;
  - ix) details of any external security lighting installation; and

x) the routing of contractors vehicles.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) No development shall take place until details of the materials to be used in the construction of the external surfaces shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) Before any part of the development is first occupied details of soft landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) a statement setting out the design objectives and how these will be delivered;
  - ii) a schedule of the species and nursery stock specification in accordance with British Standard 3936: 1992 Nursery Stock Part One and planting distances of trees and shrubs;
  - iii) details of planting and staking/guying;
  - iv) boundary treatments;
  - v) an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details and in accordance with the agreed implementation programme, and the local planning authority shall be notified within seven working days of practical completion. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 10) Before any part of the development is first occupied, five bird-nesting boxes and three bat boxes or bat bricks shall be provided on the site in accordance with a scheme submitted to and approved in writing by the local planning authority.
- 11) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.

- 12) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 14) Any soil or soil forming materials brought onto site for use in garden areas, soft landscaping, filling and level-raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to the local planning authority and be approved in writing prior to any soil or soil forming materials being brought onto site. The approved contamination testing shall then be carried out and verification evidence submitted to and approved in writing by the local planning authority prior to any soil or soil forming materials being brought onto site.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, addition or extension shall be made other than those expressly authorised by this permission.

**END OF SCHEDULE**