

Pins Ref 3139494 3138623 3138625 3138971	Land adjoining 14 – 19 Upper Eddington, Hungerford	Carrying out of development by way of the erection of two dwellings on the land.	Ctte. Refusal	Appeals Allowed in part. 28.07.2016
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Appeal A - Appeal Allowed, Enforcement Notice Quashed and Planning Permission granted.

Appeal B - Appeal Dismissed.

Appeal C - Appeal Allowed in part and Dismissed in respect of Condition 15.

Appeal D - Appeal Allowed and Planning Permission granted subject to Conditions.

Procedural matters

The breach of planning control as alleged in the notice in Appeal A is the carrying out of development by way of building operations upon the land, resulting in the partial erection of two (2) new dwellings and garages. It does not allege that the breach of control concerns the breach of conditions. The appellants wish to argue under ground (a) in Appeal A either that planning permission should be retrospectively granted for the works that have taken place on site, or that the conditions in both the outline permission and the reserved matters consent should be retrospectively discharged. However, as there are three other appeals that relate to conditions, the Inspector dealt with them separately and considered the breach as operational development in Appeal A in accordance with the allegation.

The requirements of the notice in Appeal A state at (ii) 'Remove from the land all associated materials, debris *and arisings* from the demolition.' Reference to 'arisings' is unclear and Mr Butler for the Council was unable to explain the meaning behind its use. As no injustice would arise and with the agreement of the parties at the hearing, the Inspector corrected the notice by the replacement of step (ii) of the requirements with the words "(ii) Remove from the land all materials and debris arising from the demolition".

The Council states that it became a CIL charging authority on 1 April 2015 and if the appeal on ground (a) in Appeal A succeeds then the Council will refund monies already paid by the appellant under a s106 agreement but the development would become subject to CIL payments. The appellants point out that if the conditions were to be discharged then this would not trigger a CIL payment. However these are matters between the appellants and the Council.

Appeal D concerns a s73A application for the removal or variation of conditions following the grant of outline planning permission 12/01584/OUTD. The Council determined the application on the basis that it was an application for outline planning permission and refused it for the reason that "*the proposed dwellings as a result of their scale, massing and layout would result in an overbearing, dominant and harmful impact on the outlook of neighbouring properties to the detriment of their amenities. In particular the development*

would harm the amenities of the neighbouring properties to the south, Linden Lea and 3 Waram Close, and the neighbouring properties to the west, No's 5 and 6 Hamblin Meadow". In determining an appeal on a s73A application, the Inspector is required to look at the planning circumstances existing at the time of his decision and it is a conventional planning application in all respects other than the development has already commenced. He therefore dealt with Appeals A and D together.

At the hearing a Statement of Common Ground was submitted (Document 2).

An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The Appeal Site

The appeal site is situated to the rear of properties at 14 - 19 Upper Eddington and between Hamblin Meadow and Waram Close. There are two storey dwellings to the north and west of the site and bungalows to the south. The site is within the North Wessex Downs Area of Outstanding Natural Beauty (AONB).

Building works have commenced on the site and two detached dwellings and garages are at an advanced stage of construction. The dwellings are up to about 7.5m and 8m high above ground level and the garages are about 5m. The dwellings have been roofed but windows and doors have not been installed. Gabion walls and some fences have been erected around part of the site.

Mr Cunnane on behalf of the residents claimed that the developer had taken 5m of land belonging to 15 - 19 Upper Eddington. However, the Council is satisfied that the red line planning application site is correct in terms of the notices otherwise it would not have validated an application. Any boundary dispute between the appellant and others is a private matter.

Residents also allege that the siting of the dwelling on Plot 2 (on the east part of the site) does not accord with the approved layout of the reserved matters (Document 4) as it has been built 1.4m closer to the boundary than shown on the approved plan which indicates the dwelling to be 2 metres from the boundary to 14 - 19 Upper Eddington. A boundary fence has been constructed as shown on Document 7 which dog legs into Plot 2 close to the rear of the side (north) elevation. This was erected in September/October 2013 according to Mr Holmes, the previous owner of the site. However, despite the position of the fence, the siting of the dwelling relative to the dwellings at 14 - 19 Upper Eddington has not changed. .

The residents further allege that part of the grass bank at the site access has been cut back on land not under the appellant's control and this has necessitated the repositioning of some steps up the bank giving access to the rear gardens of 14 - 19 Upper Eddington. Again, this is a private matter.

At the site inspection, the Inspector had the opportunity of viewing the development from the gardens of 6 Hamblin Meadow; Linden Lea, 1, and 3 Waram Close; and from the rear gardens of 14 - 19 Upper Eddington. He was also requested to view the site from Upper Eddington about 200 metres away to consider the impact of the development on the AONB.

Relevant Planning History

The SoCG sets out the full planning history of the site. The site has benefitted from residential permission for a number of years but it is the outline planning permission 12/01584/OUTD dated 30 August 2012 for two detached houses with garages that is most relevant to this appeal. The outline permission is subject to 21 conditions. Reserved matters 14/00753/RES were approved on 16 July 2014, subject to seven conditions.

Three applications were subsequently refused and are subject to the current appeals for the matters which are described in the banner heading to these decisions.

In May 2015 a complaint was received from a neighbour that the development approved under the outline permission had commenced prior to the discharge of conditions including levels and land contamination issues. As a consequence of the appellant continuing with the development despite warnings from the Council, Stop and Enforcement notices were served. The enforcement notice is the subject of one of the current appeals.

Application 15/03024/OUTD is a s73A application to vary condition 21 of the outline planning permission 12/01584/OUTD regarding contamination. Mr Butler for the Council acknowledged that his authority had misguidedly approved the application in May 2016 as an outline permission and that conditions should have been attached. He pointed out that the provisions of s92(2) relating to the time limitation of an outline permission would still apply but in any event he considers the permission to be null and void as the appellant cannot implement the permission due to the existing dwellings. Notwithstanding this the Council is considering revoking the permission. However, the wording or legitimacy of that decision is not a matter for these appeals although the technical information submitted in support of that application (Document 9), is relevant

Appeals A and D

The appeal on ground (a), the deemed application, and the s73A appeal

Main issues

From his inspection of the site and its surroundings, and from the representations made at the hearing and in writing, the Inspector considered that the main issues in these appeals are the effect of the development on the living conditions of the occupants of nearby dwellings, in particular the occupants of 5, 6 and 7 Hamblin Meadows, Linden Lea, 1 Waram Close, Whitestacks, and 14 - 19 Upper Eddington; and, the effect of the development on the character and appearance of the area.

Reasons

In the SoCG the Council agrees that all the information relating to conditions submitted with Appeal D is acceptable other than Condition 15 of the outline planning permission 12/01584 regarding levels, due to the impact of the development on the amenity of neighbouring occupiers.

The two dwellings and garages have been built generally in accordance with the siting and layout approved as reserved matters with some minor amendments detailed on amended plans. However, in the view of local residents, the development is not in accordance with the requirements of certain conditions on the outline approval, in particular conditions 4 (highways), 10 (materials) and 15 (levels). The residents consider that the height of the dwellings could have been up to one metre lower had the Council been able to consider the details required to be submitted and approved under Condition 15.

Although only partially constructed the dwellings are at an advanced stage where the impact on living conditions of the occupants of nearby properties can be assessed.

Condition 4 relates to details of the surfacing arrangements for the vehicular access to the highway being submitted to and approved in writing by the local planning authority. Mr Cunnane's objection is that the access has not been created as shown in the outline permission and that it takes land from Mr Holmes. The Inspector referred to this above and regarded this to be a private matter. Furthermore, as the appellant points out the access has not yet been completed.

Condition 5 relates to the submission and approval of materials. The residents consider that the use of a dark red brick and the scale of the dwellings make them appear obtrusive and out of character with the surrounding dwellings which are a combination of lighter coloured brick and render. The Council considers that the materials are on balance acceptable as they represent one of the textural hues of traditional development in Berkshire. The Inspector noted that 14 - 19 Upper Eddington is predominantly built of red and blue bricks, with some render, and that red brick is evident in other buildings in Hungerford. He considered the brick type to be acceptable in that it complements the appearance of other buildings in the wider area and causes no harm to the character or appearance of the AONB.

Condition 15 requires that no development shall take place until details of the finished floor levels of all buildings in relation to existing and proposed ground levels have been submitted to and approved in writing by the local planning authority. It was imposed to ensure a satisfactory relationship between the proposed building and the adjacent land. The Inspector considered the appellants arguments concerning plans submitted that have a bearing on this condition in his comments on Appeal C.

Mr Butler for the Council explained that whilst the scheme as built was considered on balance to be acceptable by the case officer, his own interpretation of the Committee's concerns were in relation to the unacceptable impact on the living conditions of Linden Lea and 3 Waram Close, the two bungalows at a lower level than the appeal site. He considers that harm is caused through the scale and massing of the development and perceived (but not actual) overlooking would occur. There is no concern about overshadowing but there could be a degree of the loss of light.

A gabion wall of about 1.6m high with a 1.8m high timber fence above has been erected on the side boundary of 3 Waram Close with Plot 2 which in the opinion of the occupant creates a sense of enclosure and overbearing. The occupant also questions whether the gabion wall has been set back 0.5m from the boundary fence as shown on the drawings. Whilst the overall height of the gabions and fence is substantial, this is necessary due to the difference in levels between the appeal site and 3 Waram Close and Linden Lea and serves the purpose of protecting the privacy of the neighbours. The Inspector did not consider the height to be so excessive to create a level of harm to living conditions to justify refusal. Although the gabion wall looks relatively new with the steel cages and stones being visible, in time they should become better integrated with the gardens as plants become established. As the boundary treatment is to the north of Linden Lea and 3 Waram Close, little overshadowing is likely.

The rear elevation of Plot 1 has velux windows serving the first floor and this would avoid overlooking of Linden Lea which would have a similar boundary treatment with the development as 3 Waram Close.

The relative separation distances between the appeal dwellings and neighbouring houses are acceptable as they exceed the generally accepted separation standard of 21m between habitable room windows below which the potential for loss of privacy could be regarded as significant. He considered therefore that there is no significant harm to the living conditions of the occupants of those dwellings arising from privacy issues.

Although the view has changed from the rear of the dwellings at 14 - 19 Upper Eddington, this does not result in the new dwellings appearing overbearing or obtrusive, or leading to unacceptable levels of overlooking, due to the new dwellings being constructed at a lower ground level and the separation distances involved.

The two storey properties in Hamblin Meadow are at a lower level than the appeal site, particularly Nos. 5 and 6 at the head of the cul de sac. The side wall of Plot 1 faces onto the cul de sac and is a significant presence in the street scene albeit that the proposed boundary fencing and planting would help to mitigate this. A first floor window opening overlooks Nos. 6 and 7 but with obscure glazing, any potential for overlooking would be mitigated. The large window opening to the ground floor rear habitable room is at an oblique angle to the garden and the rear of No. 6 but the proposed fence on gabions would substantially reduce any prospect of overlooking of No. 6, the garden of which is currently overlooked to some extent by Nos. 4 and 5.

The garages are of a scale and are sited such that they would not create harm to living conditions.

The Inspector understood why local residents remain dissatisfied with the development as built, bearing in mind the early felling of trees on the site, the approach taken by the appellants in proceeding with the development without the necessary pre-commencement conditions being discharged, the disagreement over boundaries, and, being faced with a development that they consider has changed the character of the site and led to concerns over its appearance and impact. Nevertheless, although prior agreement of finished floor levels required under Condition 15 might have led to a lowering of the overall height above existing ground levels of possibly up to about one metre, the extent of this, if any, is unknown and it is likely that the impacts of the development would be only marginally different to that currently occurring.

Notwithstanding the above comments, his consideration relates to the impacts of the development as built. In concluding on the first issue, whilst there is some harm to living conditions, these relate to the extent that the development could be considered to be overbearing or obtrusive. In his view, this occurs primarily on the west side of Plot 1 adjacent to Hamblin Meadow but the harm occurring is not so significant to justify dismissing the appeal. Whilst there may be the possibility of perceived overlooking, this is different to actual overlooking and he attached less weight to this factor. The siting and scale of the dwellings and their position relative to neighbours does not lead to any significant loss of privacy, light or overbearing impact.

Turning to the second issue, Hungerford is washed over by the AONB and the appeal development forms an integral part of the overall built-up area. The Inspector concluded above that the scale and materials used do not have any significant harmful effect on the character and appearance of the area.

He was satisfied with all other aspects of the development as constructed and the manner in which the appellants propose to complete. The development can be controlled through the imposition of appropriate conditions to overcome any matters of concern.

Policy CS14 of the West Berkshire Core Strategy (2006-2026) seeks to achieve high quality and inclusive design. Saved Policy HSG1 of the West Berkshire Local Plan (1991-2006) controls the location of new housing development and sets out the criteria to which housing development should have regard. He was satisfied that the development generally accords with the requirements of these policies and does not conflict with the National Planning Policy Framework (the Framework) particularly paragraphs 56, 57 and 61 in respect of design and the Council's Supplementary Planning Document "Quality Design". Nor does it conflict with Core Strategy Policy ADPP5 and paragraph 115 of the Framework so far as they relate to development in AONBs.

For the reasons given above, the Inspector concluded that the Appeal A should succeed on ground (a) and planning permission will be granted subject to conditions as set out in Appendix B. The appeals on grounds (f) and (g) do not therefore need to be considered.

For the same reasons, he concluded that Appeal D should succeed and planning permission be granted subject to the conditions set out in Appendix B but without compliance with conditions numbers 4, 6, 7, 8, 10, 11, 13, 14, 15, 18, 20 previously imposed on planning permission 12/01584/OUTD.

Conditions

The appellant has suggested conditions which the Council has no fundamental objection to other than requesting a condition for a wholesale withdrawal of permitted development rights, other than for outbuildings. The Inspector could see no reason why such a condition is necessary. Condition 5 withdraws PD rights for window openings on certain elevations of both dwellings to protect living conditions. No over-riding case for an additional condition withdrawing further PD rights has been put forward by the Council or reasons why tolerances controlling PD rights would not satisfactorily protect the amenity of neighbours and the character and appearance of the area.

Conditions 1, 6 and 9 are necessary for the avoidance of doubt. Conditions 2, 3, 4 and 10 are necessary in the interests of road safety. Conditions 5, 7, 11, 12 and 15 are imposed to safeguard the living conditions of the occupiers of nearby dwellings. Condition 8 is imposed in the interest of visual amenity. Condition 13 is necessary to ensure that any risks from ground contamination are minimised and follows on from the Council's acceptance of the findings of the Phase 1 and 2 Environmental Investigation Report (reference 3761/15) prepared by Terramech Investigations Ltd and dated 18 March 2016. Condition 14 is imposed in the interest of biodiversity enhancement.

The outline permission includes a condition requiring the development to accord with the Code for Sustainable Homes level 3 but as this has now been superceded following changes in the government's approach to housing standards, such a condition is unnecessary.

Appeal B

Appeal B relates to the refusal of details required by Condition 3 of the reserved matters approval, 14/00753/REM.

Condition 3 states that "No development, site clearance and/or other preparatory works shall take place until an arboricultural method statement has been submitted and approved in writing by the local planning authority. The statement shall include details of the implementation, supervision and monitoring of all temporary tree protection and any special construction works within any defined tree protection area. Thereafter the development shall incorporate and be undertaken in accordance with the approved statement."

The reason for the condition is "To ensure that the protection of trees identified for retention at the site. This condition is imposed in accordance with the National Planning Policy Framework (March 2012), and Policy CS18 of the West Berkshire Core Strategy 2006-2026"

The Council states that at the time of the officer's site visit on 12 May 2015 development had commenced on the site and was well underway, including the removal of trees. The Council indicated that the condition could not be Appeal discharged and that a s73A application to vary conditions attached to the planning permission was required to regularise the unauthorised development, although the Council later advised that such an application could not be dealt with as there is no provision in the legislation to vary the conditions of a reserved matters approval.

Some clearance of the site including the removal of trees and hedging took place before the appellants acquired the site, which was also after the approval of reserved matters. The appellants state that the Council's case officer was aware that site clearance had taken place before their acquisition of the site. On 11 May 2015, the appellants commenced their own preliminary clearance which involved scraping the site, demolishing an old outbuilding and creating a means of access.

The appellants state that development had not commenced at the time of the submission of applications and that the site clearance works did not constitute the commencement of development. S56(2) sets out the relevant factors that establish whether works have begun. If, as the appellants state, only site scraping, demolition of an outbuilding and works to create the access were carried out, these could conceivably fall under the categories of 'material operation' set out in s56(4) although such works need to more than de minimis.

Had the development commenced then it is reasonable for the Council to consider whether the conditions go to the heart of the permission and whether work that had been relied upon to commence the permission been carried out in breach of one or more conditions. If work does not fall within one of the Whitley exceptions, then consideration is given to whether the permission has been lawfully commenced and thus implemented. The Council took the view that the development had commenced and therefore, because one or more conditions were conditions precedent that go to the heart of permission, the details relating to the conditions could not be approved.

The Inspector noted that Condition 18 of the outline permission also relates to tree protection and that the same Arboricultural Method Statement (AMS) had been considered by the tree officer in the Appeal C application and found to be acceptable.

The AMS had been carried out in February 2015 and other than a small insignificant cherry tree, there were no other trees on the site. The AMS recommended the root protection of two trees outside the site but close to the boundary. Tree stumps indicated that trees had been within the site and there was evidence of the cutting back of hedges. No evidence has been submitted to identify the type and size of these trees or to the contribution they may have made to the character and appearance of the area.

The purpose behind condition 3 was defeated by the felling of trees on the site. Whilst this may have not been the responsibility of the appellants it nevertheless resulted in an AMS being limited in what it could recommend, and nothing meaningful would now be achieved by discharging the condition. However the trees were not protected and no consent was required for their felling other than in meeting the requirement of Condition 3. Had the retention of the trees been fundamental, then the Inspector would have expected the Council to have imposed some additional protection either through a TPO or by identifying at the outline stage, which if any trees contributed to amenity to justify protection. For this reason, he considers that, although a breach of the condition has occurred, the condition did not go to the heart of the permission and was not a true condition precedent. However, as Condition 15 is a condition precedent, and work has commenced in breach of that permission, there is no permission against which to consider the details of Condition 3 of the reserved matters approval.

He dismissed the appeal.

Appeal C

In Appeal C the Council refused the submitted details on all the conditions for similar reasons for refusing Appeal B. In the SoCG the Council agrees that all the information relating to conditions submitted with Appeal D is acceptable other than Condition 15 relating to levels, although the Council does not express this view in respect of Appeal C.

The Inspector considered the residents' concerns in respect of Conditions 4, 5 and 6 in respect of Appeals A and D above

Regarding Condition 15 the appellants consider that that the purpose of the condition was, either, to ensure levels are not raised and not built higher; or, to ensure levels were agreed at existing site levels for the avoidance of doubt. Notwithstanding this, the Council's reason for the condition is quite clear. It is a true condition precedent as it seeks to control the relationship between the proposed building and the adjacent land by considering floor levels prior to development commencing. Once development has proceeded to the point of foundation and slab levels, it would be too late for the local planning authority to have any meaningful influence on the overall height of the dwellings.

The appellants consider that the development as built is in full accordance with the approved plans. They state that reserved matters approval Drawing No 0803/14/04 (Document 4) shows the site levels and these are the same as shown on the site survey and that Drawings Nos. 0803/14/01; 02; and 03 submitted as part of the application for reserved matters show a level line with no indication of any excavation. Additionally the case officer never indicated that there was an issue with the levels and the reserved matters approval implied that the levels had been agreed thereby indicating that Condition 15 had been met and that there has never been any suggestion that there would be any excavation of the site.

Drawing No 0803/14/16 (Document 5) shows site sections indicating the finished floor levels of the two dwellings and garages together with existing ground levels. This was submitted with the reserved matters application and Mr Butler for the Council assumed it was considered as part of the reserved matters process. However the Council draws attention to Condition 2 of the reserved matters decision which does not include Drawing No 0803/14/16 as one of the approved drawings. The decision notice is unambiguous. As no reference is made to Drawing No 0803/14/16, it would be inappropriate to make assumptions about what the decision notice might otherwise have referred to.

I therefore conclude on Appeal C that whilst the details connected with conditions Nos. 4, 6, 7, 8, 10, 11, 13, 14, 18 and 20 are acceptable, the requirements of Condition 15 have not been met. As this is a condition precedent and operations contravening the condition have taken place then these operations cannot be properly described as commencing the development comprising the permission and there is no permission against which to consider the details of Condition 3 of the reserved matters approval.

The Inspector dismissed the appeal

Formal decisions

Appeal A Ref: APP/W0340/C/15/3139494

The enforcement notice is corrected by the deletion of the words "Remove from the land all associated materials, debris and arisings from the demolition" and the substitution of the words "Remove from the land all materials and debris arising from the demolition" in paragraph 5(ii). Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the partial erection of two (2) new dwellings and garages on the land adjoining 14 - 19 Upper Eddington, Hungerford, Berkshire, subject to the conditions set out in the Conditions Schedule attached as Appendix 2 to these decisions.

Appeal B Ref: APP/W0340/W/15/3138623

The appeal is dismissed.

Appeal C Ref: APP/W0340/W/15/3138625

The appeal is dismissed.

Appeal D Ref: APP/W0340/W/15/3138971

The appeal is allowed and planning permission is granted for residential development for two (2) detached houses with garages at land adjoining 14 - 19 Upper Eddington, Hungerford, Berkshire in accordance with application Ref 15/01355/OUTD, dated 15 May 2015, without compliance with conditions numbers 4, 6, 7, 8, 10, 11, 13, 14, 15, 18, 20 previously imposed on planning permission 12/01584/OUTD dated 30 August 2012 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the new conditions set out in the Conditions Schedule attached as Appendix 2 to these decisions.

Costs Decision**The submissions by Waddington Forbes Homes Ltd**

The application was made in writing at the hearing. In summary the appellants' case is that they have been put to unnecessary and wasted expense in all four connected appeals. In respect of Appeals B and C, both applications to discharge conditions should have been promptly approved. The applications were validated in March 2015 but the site was not visited until 12 May and the refusals issued on 15 May without providing time for the appellants to respond. The development had not commenced at the time of the officer's visit and the applications could have been approved.

Appeal D arises in response to advice from the Council to submit applications under s73A to regularise the position with the conditions and commencement of development. In response to neighbour comments changes were proposed to landscaping and boundary treatment. Contrary to the officer's recommendation the application was refused on the basis of an inaccurate understanding of the development that had already been approved and the nature of the application to vary conditions.

Following this decision, the appellants met with officers to resolve the matter and began to prepare a new full planning application. Before this could be submitted the Enforcement and Stop Notices were served without it being expedient to do so. This prevented the appellants from making the buildings watertight.

The response by West Berkshire Council

The Council's response was also in writing at the hearing. It was not unreasonable for the Committee to overturn the officer recommendation as the development as built could not be varied effectively by the imposition of new conditions. The level of public concern and harm caused justified the tests of expediency given that the works were continuing. The Council was not legally able to approve the conditions discharge once development had commenced and had no discretion in the matter.

A material change in circumstances had occurred through the building out of the houses allowing a fresh assessment of the proposal. The decisions were necessary, proportionate and reasonable.

Reasons

Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Appeals B and C

In Appeals B and C, whilst the appellant may feel aggrieved that the Council refused the conditions applications so swiftly after the site inspection, had the development commenced then it is reasonable for the Council to consider whether the conditions go to the heart of the permission and whether work that had been relied upon to commence the permission been carried out in breach of one or more conditions. If work does not fall within one of the Whitley exceptions, then consideration is given to whether the permission has been lawfully commenced and thus implemented. It seems that the Council took the view that the development had commenced and therefore because one or more conditions were conditions precedent that go to the heart of permission, the details relating to the conditions could not be approved.

The appellants state that development had not commenced at the time of the submission of applications and that the site clearance works did not constitute the commencement of development. S56(2) sets out the relevant factors that establish whether works have begun. If, as the appellants state, only site scraping, demolition of an outbuilding and works to create the access were carried out, these could conceivably fall under the categories of 'material operation' set out in s56(4) although such works need to more than de minimis.

It is possible that works had not commenced in any meaningful sense at the time that the applications were being determined. Nevertheless the Council made a judgement on the facts before them at that time which they were entitled to do. The fact that the appellants subsequently sought to regularise the commencement of development suggests to me that there was an acceptance on their part that works had commenced.

It appeared that on the basis of the information before the Inspector that the time of the officer's site visit none of the work carried out on site would have prevented the consideration of the details relating to the conditions, including the conditions precedent, such that any necessary agreement by the Council to such details could not have been achieved. However, even if the Council had taken this approach, it does not follow that the details relating to all the conditions, including Condition 15 regarding finished floor levels, would have been approved. In the event the Council chose not to follow that approach as they considered that they had no power to determine the details of the conditions.

The Inspector considered therefore that the Council's approach in determining the applications in Appeals B and C has not necessarily led to any delay to the development.

Appeal D

In determining an appeal on a s73A application, the decision taker is required to look at the planning circumstances existing at the time of the decision and it is a conventional planning application in all respects other than the development has already commenced. It also requires consultation to be carried out and it appears from the officer's report on the application that some 10 objections were received and a petition of 28 signatories.

The Committee refused the application contrary to the officer's recommendation which it is perfectly entitled to do so long as they have sound planning grounds to do so. In this case the Committee was concerned about the impact of the development on the living conditions of neighbouring residents. The appellants assert that the decision was based on an inaccurate understanding of the development that had already been approved but whether or not this was the case is unclear.

The s73A application was made on 15 May 2015, presumably before any substantial building works commenced. In the Inspector's view, the Council should have had regard to the outline and reserved matters permission and approved the application subject to those conditions on the original permission still remaining relevant and subject to any new conditions that were reasonable and necessary. This could still have included a condition

regarding finished floor levels if there were sound planning reasons why the appellants' proposed levels were not acceptable. Any such permission may well still not have satisfied the developer and there could have been an appeal against an imposed condition.

Appeal A

It appears that the appellants were not prepared to suspend work on the site. Following a complaint by a local resident on 26 May 2015 the Council informed the appellants that the development was unauthorised. However work continued which necessitated the serving of the Enforcement and Stop Notices. In his view, the steps taken by the Council were necessary and proportionate as the development would otherwise have proceeded to completion without the Stop Notice. Had the appellants not proceeded in the manner they did, then the notices would not have been necessary and the appeal against the notice would not have been made.

Conclusions

It is evident that the appellants have been very frustrated by their efforts to have the relevant conditions of the permission discharged. The Council could have adopted a more constructive approach to dealing with the applications but the Inspector did not consider that this constitutes unreasonable behaviour.

There were genuinely made concerns expressed about the impact that the development would have on the living conditions of local residents to the point where the Committee chose not to accept their officer's recommendation. Whilst some may have wanted to stop development of the site completely, there is insufficient evidence to suggest that this was the intention of the Committee. At the end of the day, finished floor levels remained unresolved.

Although the Inspector had determined the s73(a) and the ground (a) appeals in favour of the appellants, this does not provide any retrospective justification for proceeding with an unauthorised development. The carrying out of works without full planning approval only brings the planning system into disrepute.

Paragraph 48 of the Guidance indicates that a local planning authority may be at a risk of an award of costs if better communication with the appellant would have enabled an appeal to be avoided. However, he was not convinced that this would have been the case with these appeals, nor was he convinced that the Council's actions have necessarily caused delays in the eventual approval of the development as appeals may well still have been made if the Council continued in its view in respect of ground levels.

The Inspector therefore found that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Guidance, has not been demonstrated and that an award of costs is not justified.

Decision

The application for an award of costs is refused for all four appeals.

DC