
Appeal Decision

Site visit made on 13 December 2016

by David Walker MA MRTPI

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

Decision date: 12th January 2017

Appeal Ref: APP/W1145/W/16/3155870

Land at Golf Links Road, Westward Ho!, Bideford, Devon EX39 1GW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Westward Living Ltd against the decision of Torridge District Council.
 - The application Ref 1/0648/2016/FUL, dated 30 June 2016, was refused by notice dated 1 August 2016.
 - The application sought planning permission for development described as 'Hotel – Restaurant – Ground Floor Commercial – Spa' without complying with a condition attached to planning permission Ref 1/0995/2014/OUTM, dated 25 November 2015.
 - The condition in dispute is No 4 which states that: 'Any development on this site shall be no higher than one metre above the northern elevation of the adjacent 'Latitude 51' development, this being the height of the northern boundary wall to the development immediately west of the proposed site'.
 - The reason given for the condition is: 'To ensure the proposal relates to the character and appearance of the area'.
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Decision

1. The appeal is allowed and planning permission is granted for development described as 'Hotel – Restaurant – Ground Floor Commercial – Spa' at Land at Golf Links Road, Westward Ho!, Bideford, Devon EX39 1GW in accordance with the application Ref 1/0648/2016/FUL dated 30 June 2016, without compliance with condition number 4 previously imposed on planning permission Ref 1/0995/2014/OUTM, dated 25 November 2015, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Westward Living Ltd against Torridge District Council. This application is the subject of a separate Decision.

Main Issue

3. The appeal relates to an application to remove condition No 4 which imposes a height restriction on the development, in relation to the height of the adjacent building 'Latitude 51'. The Council's reason for refusal refers to the condition being necessary in relation to character and appearance, and living conditions. However, in allowing the appeal for the original permission¹ and imposing the condition the Inspector only stated that it was required to ensure the proposal

¹ Appeal Ref: APP/W1145/W/15/3084356

relates to the character and appearance of the area. On this basis I consider the main issue to be whether condition No 4 is necessary and reasonable having regard to the effect of the height of the proposal on the character and appearance of the area.

Reasons

4. In granting the original permission, the appeal Inspector considered there was no reason why a four or five storey building could not relate to the character of the area. While I have no knowledge of the design information that was considered by the Inspector in granting that permission I have no reason to disagree with his assessment.
5. However, it was apparent at my site inspection that care would be required to ensure that the new building is designed to harmonise with the mixed scale of the existing buildings and spaces of the setting. From the appeal submissions of the Council and interested parties such a view is evidently strongly held within the community. Design considerations would logically extend to the height and scale of the proposal.
6. Since the original permission was granted new evidence² indicates that there may be difficulties in achieving a five storey building that accords with contemporary space and technical standards. The appellant indicates that an additional 1.4 m above the existing limits may be required and an illustrative design has been submitted with the appeal. Given the sensitivities of the appeal site a proper assessment of the merits of any particular scheme can only be made in the knowledge of fully detailed plans.
7. Nonetheless, it is conceivable that a satisfactory design might exceed marginally the height limitations imposed by condition No 4. Equally, a poor design could fall within the parameters established by the condition. The actual height of the building is less important than its perceived scale and massing, and impact on the locality. As the original permission is in outline with all detailed matters reserved for the Council's future consideration there remains scope for flexibility over the final design and siting of the development. I see no reason why a suitable design should be precluded.
8. While continued control over the height of the building remains necessary to ensure a satisfactory effect on the character and appearance of the area, I am satisfied this could be exercised in relation to any subsequent reserved matters submission. The opportunity to secure compliance with the design requirements of Policies DVT6, DVT7 and DVT11 of the Torridge District Local Plan, and the sustainability objectives at paragraph 7 of the National Planning Policy Framework, would not necessarily be compromised.
9. However, in the light of the technical difficulties explained I find that further flexibility may be required to achieve a suitable scheme and in these circumstances the limitations imposed by condition No 4 are unreasonable. As a result I conclude that the appeal should be allowed and condition No 4 should be deleted.
10. Turning to other matters. Interested parties have raised additional issues in relation to overshadowing and living conditions, and access and parking. In these matters I have no evidence of harm before me for them to weigh heavily

² Letter from PWH Surveyors Ltd, dated 21 June 2016

against the proposal. The effect of a detailed scheme on living conditions will be addressed at the reserved matters stage. Access is also a reserved matter and I note that in relation to the original permission that the Highway Authority raised no objection.

Conditions

11. The Planning Practice Guidance (the PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the conditions from the original planning permission. As I have no information before me about the status of the other conditions imposed on the original permission I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged that is a matter which can be addressed by the parties. The PPG also confirms that applications under section 73 should not seek to extend the life of a permission and I have amended condition No 2 accordingly to refer to the date of the original permission.

Conclusion

12. For the reasons given above I conclude that the appeal should be allowed.

David Walker

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of the original permission which, for the avoidance of doubt, is dated 25 November 2015.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) In accordance with details that shall previously have been submitted to and approved by the Local Planning Authority prior to the implementation of development works on site, provision shall be made within the site for the disposal of surface water such that none drains onto any County Highway.
- 5) The premises shall be used as a hotel and for no other purposes (including any purpose within Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), (or in any provision equivalent to that Class in any Statutory Instrument for revoking and re-enacting that Order).