
Appeal Decision

Site visit made on 28 December 2016

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 16 January 2017

Appeal Ref: APP/N4720/W/16/3160674

2 Low Grange View, Belle Isle, Leeds LS10 3DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Dr B Prasad against the decision of Leeds City Council.
 - The application Ref 15/06085/FU, dated 17 November 2015, was approved on 11 August 2016 and planning permission was granted subject to conditions.
 - The development permitted is erection of 10 flats in 3 blocks.
 - The condition in dispute is No 1 which states that: *'The development hereby permitted shall be begun before the expiration of one year from the date of this permission'*.
 - The reason given for the condition is: *'Imposed pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004'*.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether or not it is necessary and reasonable in all respects to require development to be commenced within a period of one year from the date of the permission.

Reasons

3. Paragraph 206 of the National Planning Policy Framework (the Framework) states that *'Planning conditions should only be imposed where they are: necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.'* Paragraph 027 of the Planning Practice Guidance (PPG) states that *"the LPA may wish to consider whether a variation in the time period could assist in the delivery of the development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts."*
 4. The site is within an area characterised by two storey residential development, located at a road intersection and occupied by a detached red brick dwelling which sits centrally within an amenity space on the site. The parties agree that the site is in a state of dereliction. Fencing has been erected and the site appears untidy and overgrown. Situated on broadly sloping hill side and close to a large area of open space I observed that the site and building are prominent in a number of local views and significantly detract from the character and appearance of the locality.
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5. The Council reports a long planning history on the site, that enforcement proceedings commenced in 2013 due to an untidy land complaint (LPA reference 13/00049/UL3), and that prior approval was granted for the demolition of the existing building following a demolition notice served under a programme instigated by the Council to tidy derelict sites. Although a number of applications were refused, some consents were granted and there has been a prolonged period of non-commencement of development on the site.
6. I attach significant weight to the detrimental impact upon the character and appearance of the site and the locality that non-implementation of consents has had. I conclude that it is necessary to require development to be commenced within a period of one year from the date of the permission.
7. The appellant accepts that the period for commencement can be varied from three years to one, but that it is not reasonable in this case where it is necessary to allow sufficient time to resolve all outstanding issues that might arise from seeking to discharge the other conditions which he considers to be onerous, in particular the requirements of Conditions 5, 12, 13, 14, 15 and 16.
8. Condition 12 is related to contamination and requires notification of any contamination found during development works and operations. Condition 13 relates to new soil and requires a methodology for testing imported soils to be submitted and approved and samples to be taken and the findings submitted. This is a common type of condition for residential development of previously developed land. Both conditions are necessary to protect future occupiers of the site. They are precise, and enforceable. Neither Condition 12 nor 13 require discharge prior to commencement of development and therefore do not impact upon the ability to comply with Condition 1.
9. Condition 5 requires the submission of a statement of construction practice and management. It is a reasonable and necessary requirement to prevent adverse impacts upon the occupants of nearby properties. Condition 14 requires a scheme for site investigations to be agreed and undertaken and the report of the findings submitted to the Council for approval. It is a necessary and reasonable requirement for redevelopment of previously developed land to protect the living conditions of users of the site from possible contamination. Conditions 15 and 16 relate to drainage matters and are reasonable and necessary to manage surface water and flood risk.
10. Conditions 5, 14, 15 and 16 are all precise and enforceable. They are all pre-commencement conditions and some may require site investigations. Whilst they could require a substantial amount of work to be undertaken, including detailed specifications and calculations, the requirements are not unusual and there are consultants or other competent persons experienced in undertaking the required work. Nor is there evidence to explain outstanding issues related to these conditions. I am not persuaded that there is evidence to say that the required work would be onerous, or require such time so as to make it likely or probable that development could not be commenced by 16 August 2017.
11. Conditions 3, 6 and 7 also require matters to be approved before the commencement of development. Condition 3 relates to the submission of materials, Condition 6 relates to details of hard and soft landscaping and Condition 7 relates to details for cycle and motorcycle storage. The application plans provide a basis upon which the information for discharging these conditions could be based, and the Council advise that the details for

Conditions 3 and 7 could be incorporated onto the approved plans. I find nothing to say that compliance with the requirements of these conditions would result in an onerous amount of work or require such time so as to make it likely or probable that development could not be commenced by 16 August 2017.

12. There is nothing to say what unresolved issues there might be and scant evidence to judge if the requirements of all of the conditions would result in a substantial or unreasonable overall workload. In any event some matters could be dealt with by more than one person/consultant.
13. Conditions 3, 5, 6, 7, 14, 15 and 16 require the Council to consider and approve submitted information, but this cannot be pre-judged. That the Council took 9 months to determine the application does not mean that they would not be able to undertake their discharge of condition responsibilities within a reasonable timescale, particularly given that they seek to see this site redeveloped expeditiously. Nor is there evidence to demonstrate how the length of time taken to determine an application should have a bearing upon the time allowed for commencement.
14. A Core Planning Principle at paragraph 17 of the National Planning Policy Framework (Framework) is to support the effective use of land by reusing land that has been previously developed. I find nothing to say that a shorter time for commencement of development is unsupportive of this aim or that the requirements of Condition 1 and the other conditions would thwart this aim.
15. I attach little weight to references to proposed draft revisions to the Framework as it is not adopted policy, and I find no evidence to say that the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004 were introduced to allow developers sufficient time to resolve outstanding conditions.

Conclusions

16. It is evident that there has been a prolonged period of non-commencement of development on this site. Having regard to advice at paragraph 027 of the PPG the detrimental impact of the vacant derelict site upon the character and appearance of the site and the locality.
17. There is an absence of evidence to explain how dealing with outstanding issues and the requirements of Conditions 2-16, individually and as a whole, would be so onerous or likely to take such time, or would otherwise make the requirement of Condition 1, that development be commenced by 16 August 2017, unrealistic or unreasonable.
18. I conclude that the requirement of Condition 1 is necessary and reasonable, precise, enforceable and reasonable in all other respects and meets the requirements of the tests at paragraph 206 of the Framework. Therefore, and having considered all other matters raised and mindful that at the time of my decision the period of time for compliance provided by Condition 1 will be less than 1 year, I nonetheless conclude the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR