
Appeal Decision

Site visit made on 6 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 15 February 2017

Appeal Ref: APP/B3030/W/16/3164269

**Former Lynwood House, Fiskerton Road, Rolleston, Newark,
Nottinghamshire NG23 5SH**

- 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 Mr M Sanders & Mr I Whitehead against the decision of Newark & Sherwood District Council.
 - The application Ref 16/00202/OUT, dated 10 February 2016, was approved on 16 June 2016 and planning permission was granted subject to conditions.
 - The development permitted is an outline application for residential development of up to two new dwellings.
 - The condition in dispute is No 014 which states that:
'The building(s) shall be no more than 8.75 metres high when measured from ground floor level to the ridge and no more than 5.55 metres high when measured from the ground level to the eaves. The host residential building [sic] shall have a footprint no greater than 60 square metres'.
 - The reason given for the condition is:
'In the interest of securing good design'.
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Decision

1. The appeal is allowed and the planning permission Ref 16/00202/OUT for an outline application for residential development of up to two new dwellings at Former Lynwood House, Fiskerton Road, Rolleston, Newark, Nottinghamshire NG23 5SH granted on 16 June 2016 by Newark & Sherwood District Council, is varied, by deleting condition No 014.

Background and Main Issue

2. Planning permission for the outline application for residential development of up to 2 new dwellings, with approval for access only and all other matters reserved, was granted by the Council subject to the disputed condition 014. The application form specifies that layout was also a matter for which approval was initially sought. However, the evidence before me indicates that the appellant confirmed prior to the decision being issued that layout was to be treated as a reserved matter.
 3. The reserved matters of layout, appearance, landscaping and scale are identified under condition 02 and the approved plans with respect to the site location and access only are set out separately in condition 03 of the planning permission. Consequently, the layout, elevations and floor plans before me relating to designs for a pair of 2 bed semi-detached dwellings or a single 4 bed detached dwelling are for illustrative purposes only and I have determined the appeal on that basis.
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4. The reason for the disputed condition indicates that a restriction on the height and footprint of the dwellings is necessary to secure good design. The appellant has contended that the disputed condition is overly restrictive.
5. Having regard to the above, the main issue is whether the disputed condition is reasonable and necessary in the interests of the character and appearance of the site and the surrounding area or the living conditions of occupiers of neighbouring properties.

Reasons

6. Section 70(1)(a) of the Town and Country Planning Act 1990 enables the local planning authority in granting planning permission to impose '*such conditions as they think fit*'. However, this power must be interpreted in light of material factors such as the National Planning Policy Framework (the Framework), National Planning Practice Guidance (PPG) on the use of conditions, and relevant case law.
7. Paragraph 206 of the Framework states that '*planning conditions should only be imposed where they are: necessary; relevant to planning and; to the development permitted; enforceable; precise and; reasonable in all other respects*'. The PPG provides a table with key considerations relating to the 6 tests listed above¹. The PPG², amongst other things, also states that '*it is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls*'.
8. Although not specifically referred to within the reason for the disputed condition, Policies SP3, CP3, CP9 and CP13 of the Newark and Sherwood Core Strategy (CS), adopted March 2011, and Policy DM5 of the Newark & Sherwood Local Development Framework Allocations & Development Management Development Plan Document (AM&DM), adopted July 2013, relate to matters of design, including character and appearance and the living conditions of occupiers of neighbouring properties.
9. The appeal site is located within the village of Rolleston and was formerly occupied by a dwelling known as Lynwood House which has now been demolished. The site was originally included as part of the site for a replacement dwelling, which is now built and under separate ownership, but is now a separate vacant parcel of land enclosed by fencing along all of its boundaries, including its frontage onto Fiskerton Road. The dwellings for which outline planning permission has been granted by the Council would be accessed from Fiskerton Road via an existing access towards the junction with Station Road.
10. The disputed condition imposes a restriction upon the height and footprint of any dwellings within the site for which outline planning permission has been granted by the Council. The height and footprint of development is relevant to the design requirements of Policies SP3, CP3, CP9 and CP13 of the CS and Policy DM5 of the AM&DM. Nevertheless, in the particular circumstances of the outline planning permission before me, the height and footprint of dwellings relates specifically to the reserved matters of layout, appearance and scale which are listed separately under condition 02 as requiring submission of details to and approved in writing by the local planning authority.

¹ Use of Planning Conditions, Paragraph: 004 Reference ID: 21a-004-20140306 Revision date: 06 03 2014

² Use of Planning Conditions, Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014

11. Rolleston is an attractive village with a number of historic properties. However, the site is not designated as a heritage asset and is not within a Conservation Area. In the immediate surroundings of the site, there is a mix of buildings including the considerable height and footprint of a neighbouring dwelling known as Church Farm Cottage and the varied height, scale and form of other modern houses nearby. Consequently, subject to details of layout, appearance and scale to be provided as part of reserved matters, a proposal which exceeds the restrictions in the disputed condition may, nevertheless, be capable of achieving a design which reflects the varied scale, pattern and form of existing development in the surrounding context.
12. Having regard to the above, the disputed condition relating to the height and footprint of dwellings is not necessary in the interest of the character and appearance of the site and the surrounding area. The disputed condition is not needed to make the development acceptable in planning terms where such considerations fall within the scope of reserved matters. The height and footprint of any dwelling would be capable of being suitably assessed by the local planning authority at reserved matters stage via the alternative requirements of condition 02 if the disputed condition were to be deleted.
13. Based on the evidence before me, including the illustrative plans, together with observations during my site visit, development of the site consisting of up to 2 new dwellings could provide adequate separation to surrounding properties, including the neighbouring Church Farm House, to preserve the living conditions of occupiers in terms of adequate outlook, light and privacy. Such matters are also capable of being appropriately dealt with as part the reserved matters relating to layout, scale, appearance and landscaping. Consequently, the restrictions in the disputed condition are neither reasonable nor necessary to preserve the living conditions of occupiers of neighbouring properties.
14. In reaching the above findings, I have taken account of the Council's evidence which indicates that the intention of the disputed condition is to ensure that any resultant dwellings would be similar to the height and footprint of the original Lynwood House, with account for the finished floor levels required separately by condition 011. In this regard, it has also been brought to my attention that there was a previous appeal relating to the site. The Council have indicated that a previous Inspector offered no concerns with respect to a similar scale of dwelling to the restrictions in the disputed condition despite dismissing the appeal relating to housing need, which is no longer a matter of dispute. However, the full details of the appeal decision are not before me and in any case, it related to a different scheme and development plan context. This appeal must be considered on its own merits and, therefore, a restriction upon the height and footprint of dwellings to that which was considered by a previous Inspector is neither reasonable nor justified relative to the effect of the proposal before me.
15. Having regard to all of the above, I conclude that the disputed condition is not reasonable or necessary in the interests of the character and appearance of the site and the surrounding area, or the living conditions of occupiers of neighbouring properties, taking account of the Framework and the advice set out in the PPG relating to the appropriate use of planning conditions. In the absence of the disputed condition, the development would not conflict with Policies SP3, CP3, CP9 and CP13 of the CS or Policy DM5 of the AM&DM, which

are consistent with the objectives of the Framework with respect to matters of design.

16. I have considered the other conditions attached to the planning permission but there is no evidence before me that leads me to conclude that it is necessary to vary any of those. My decision alters the existing planning permission that has been granted and should be read in conjunction with it.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed and that the planning permission should be varied by deleting condition No 014 as set out in the formal decision.

Gareth Wildgoose

INSPECTOR