

Appeal Decision

Site visit made on 14 March 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 30th March 2017

Appeal Ref: APP/Z2830/W/16/3162429

59 Brackley Road, Towcester, NN12 6DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant subject to conditions of consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr C Lewis against the failure of South Northamptonshire Council to give notice of its decision within the statutory period.
 - The application Ref PP-05366292(i), dated 18 August 2016, sought approval of details pursuant to the reserved matters (access, appearance, landscaping, layout and scale) of a planning permission Ref S/2013/0828/OUT granted on 19 August 2013.
 - The development proposed is three dwellings with access road (outline) at rear of 59 Brackley Road Towcester.
-

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Mr C Lewis against South Northamptonshire Council. An application for costs was also made by South Northamptonshire Council against Mr C Lewis. These applications are the subject of separate Decisions.

Preliminary Matters

3. The application concerns the approval of reserved matters following the outline approval of planning permission for 3 houses on the site. Approval for all matters of access, appearance, landscaping, layout and scale is sought.
 4. The Council considers that the information and plans submitted with the application do not meet the necessary statutory requirements. It issued a letter to the appellant dated 23 August 2016 which sets out three reasons why the application was not validated. The first two reasons relate to inaccuracies on the submitted plans. The notice refers to the study window on drawing number PL06 (Plots 1 and 3) measuring 1 metre on the elevation but 1.7 metres on the floorplan, and a glass structure shown on the side elevation of drawing number PL07 (Plot 2) that is not on the floorplan.
 5. The third reason relates to the timeliness of the reserved matters application. However I understand that the Council now accepts that the application was made within the 3 year deadline of the outline permission (albeit that it still considers the application to be invalid due to the inaccuracy of the plans).
-

6. The appeal is thus made against the Council's failure to give a decision within the appropriate period because of a dispute over the provision of information required to validate the application. The information in dispute is the accuracy of the plans. This background has led to my identification of the main issue:

Main Issue

7. The main issue in this case is whether the application contains adequate information to enable it to be validated and determined.

Reasons

8. Paragraph 016 of the Planning Practice Guidance (the Guidance) sets out what is required to make a valid application for planning permission. It includes a completed application form, compliance with national information requirements, the correct fee, and provision of local information requirements.
9. It has not been put to me that the Council has any local information requirements or has produced a local list. National information requirements are detailed in the Guidance which states that an application for planning permission must be accompanied by plans and drawings (paragraph 022). As a minimum applicants will need to submit a location plan that shows the application site in relation to the surrounding area. The Guidance also advises at paragraph 023 that additional plans and drawings will in most cases be necessary to describe the proposed development as required by the legislation.
10. Section 62(3) of the Town and Country Planning Act 1990 concerns the provision for the local authority to require that an application for planning permission must include (a) such particulars as they think necessary; (b) such evidence in support of anything in to relation to the application they think necessary. Section 62 (4A) of the Town and Country Planning Act 1990 (inserted by the Growth and Infrastructure Act) sets out limits to these powers. It advises that such requests must be reasonable having regard, in particular, to the nature and scale of the proposed development (a) and, may require particulars of, or evidence about, a matter only if it is reasonable to think that the matter will be a material consideration in the determination of the application (b).
11. In terms of reserved matters applications specifically, Article 6 of Part 3 of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015 (DMPO) advises that applications for approval of reserved matters; must give sufficient information to enable the authority to identify the outline planning permission in respect of which it is made (a); must include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with the matters reserved in the outline planning permission (b).
12. Article 12 of the DMPO sets out the procedure that can be followed to resolve validation disputes. Paragraph 49 of the Guidance describes the procedure whereby the applicant must first send the local planning authority a notice under Article 12 (Article 12 notice) which sets out the reasons why the applicant considers that the information requested by the local planning authority, in refusing to validate the planning application, does not meet the statutory tests.

13. That said, the need to provide plans is a national requirement, rather than a local one, and it seems to me that the right of appeal under Article 12 of the DMPO is intended to let applicants challenge local planning authorities on their local level requirements. As such a non-validation appeal relates to information required by the local authority which is included on its local list rather than information on the national list as is the case in this instance. Moreover, the appellant did not send a notice to the Council specifying which evidence he considered to be unnecessary, or request that the Council waive those particulars. Rather, on receiving the Council's letter with its reasons for non-validation, the appellant replied (email of 24 August 2016) to acknowledge errors on the submitted drawings which he accepted were easily corrected via amended drawings.
14. Thus, there appears to be no dispute between the parties regarding the provision of the corrected plans. Notwithstanding the issues concerning the timing of their submission which I will cover later, the appellant accepts the mistakes on the plans and provided revised drawings to address the errors identified by the Council. Accordingly, the appellant did not invoke the dispute resolution procedure and the Council did not issue a non-validation notice. It therefore follows that the right to make a non-validation appeal was not available in this case.
15. Nevertheless, I have considered whether the application contains sufficient information to allow me to make a decision on its planning merits and to determine the appeal against the Council's failure to determine the application within the appropriate time period.
16. In terms of the inaccuracies, the appellant confirms that on drawing number PL06 the study window would be 1 metre wide as shown on the elevational drawings (rather than the floorplan) which are correct in all other respects. In relation to drawing number PL07 the appellant advises that the small glazed conservatory was included on the right handed side elevation in error. It is not shown on the left handed side elevation, the rear elevation or the ground floor plan which are consistent with each other.
17. I have some sympathy with the appellant's view that in isolation the errors highlighted by the Council are relatively minor in nature. Nevertheless, they affect how two of the three proposed houses would look and I am mindful that appearance is a reserved matter for which approval is sought. Even though the discrepancies between the drawings are not great, they render the plans somewhat ambiguous and open to interpretation. Despite the appellant's view to the contrary, it is not obvious to me which drawings should be considered as paramount, and I am not convinced the designers' intentions are necessarily clear. I am also conscious of the cumulative effect of a number of small errors on the overall reliability of the plans.
18. Whilst not raised as an issue by the parties, I also note that the roof line of the front gable of the house shown on drawing number PL07 is shown to be higher on both side elevations than it is on the front elevation. It is not clear to me which roofline is correct. If the roofline is to be as indicated on the side elevations, the front table feature of house on Plot 2 would be much taller and the roof slope considerably steeper.

19. These discrepancies are more fundamental to the scheme's appearance than those already raised by the Council. They also add to cumulative effect of the already identified errors on the plans. Furthermore, they lead me to question whether there any other mistakes on the drawings that have not been brought to light.
20. I have seen nothing in relation to validation requirements that refers to the accuracy of the plans submitted to support an application or the scope for errors within them. However, in practical terms, I share the Council's view that due to their errors the submitted plans do not provide the information necessary to deal with the matters reserved in the outline planning permission, particularly in relation to appearance. As a result, the drawings are inadequate and fail to meet the requirements of Article 6 of the DMPO.
21. I appreciate that the appellant revised the plans to correct the errors identified by the Council (24 September 2016) and took reasonable steps to fulfil the information requirements. However, the date that the application would have become technically valid (as a result of the amended plans) came after the expiry of the outline consent (around 19 August 2016). As such, the Council argues that it was too late to validate the reserved matters application.
22. The appellant does not dispute the timing of these events, but advises that condition 1 of the outline permission states only that reserved matters shall be made to the local planning authority before the expiration of the three years from the date of the permission. He also refers to Article 11 of the GMPO which requires the Council to acknowledge an application in the first instance and regards the receipt of the application to be different from its registration or validation. Regardless of its validity, he therefore argues that the reserved matters application was made within the time limit (and so satisfies condition 1) such that the revised details to make the application valid could have been accepted by the Council.
23. On the other hand, the Council confirms that an application is only treated as received, or made, once it is a valid. Although the application was initially received in time, the corrected plans to enable it to be validated were not. In my view it would be reasonable to expect what is submitted (that is the information used to make the reserved matters application) should meet the requirements of Article 6 (and therefore be fit for purpose and adequate to allow the Council to consider the development proposed). That did not happen in this case.
24. In any event, notwithstanding this disagreement between the parties, although the matters raised by the Council have been corrected via the revised plans, I note that drawing number LP07 Rev A remains inaccurate in terms of the roof line of the front gable end. Whilst the appellant understands that the Council found the amended drawings acceptable, it seems to me that the amended plans still show anomalies that would have justified the Council continuing to resist the validation of the reserved matters application.
25. Bringing matters together, in my opinion the Council's request for accurate plans is reasonable having regard to the nature and scale of the development, and relates to a matter (appearance) that it is reasonable to think will be a material consideration in the determination of the application.

26. Although the Council failed to give notice of its decision on the application within the statutory period, it has indicated that it would have refused the application (had it been empowered to do so) and has provided a putative reason for refusal which concerns the design of the proposed houses. Even so, having regard to the evidence before me, I can only dismiss the appeal on the basis that there are material considerations which are matters of importance in the planning balance, about which I do not have the necessary information to enable me to properly assess the impact of the proposal.
27. I therefore conclude on this issue that the application does not contain adequate information to enable it to be validated and determined.

Conclusion

28. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR