



Appeal Decision

Site visit made on 25 April 2017

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 04.07.2017

Appeal Ref: APP/N2739/W/17/3168058

Quarry Drop, Westfield Lane, South Milford LS25 5AP

- 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 Mr Ian Lindsay against the decision of Selby District Council.
 - The application Ref 2016/1190/FUL, dated 2/10/2016, was refused by notice dated 2/12/2016.
 - The application sought planning permission for part retrospective application for the erection of a detached three storey dwelling and the erection of temporary building for residential use during the construction period without complying with a condition attached to planning permission Ref 2016/0850/FUL, dated 15/09/2016.
 - The condition in dispute is No 9 which states that: "No construction works shall take place on site outside the hours of 8am-6pm Monday to Friday, 9am to 1pm Saturday, or at all on Sundays and Bank Holidays".
 - The reason given for the condition is: "In interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan".
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Decision

1. The appeal is dismissed.

Background and main issue

2. Planning permission has been granted for a three storey dwelling and temporary building for residential use during the construction period in 2016. Condition 9 restricted the times and days when construction works could take place on the site. The appellant sought to have condition 9 removed but this application was refused permission and is now the subject of this appeal.
3. There is a history of previous permissions on the site and Council investigations into various alleged works on the site; nevertheless, these separate matters do not affect the planning considerations on this appeal. The Planning Committee report in relation to Ref 2016/0850/FUL dated 7/09/2016 had not initially included a condition on restricting construction hours but this was added as an additional condition along with another specifying the period within which the dwelling should be completed. These minutes of the Planning Committee deliberations are included in submissions. The appellant challenges the delegated authority to impose these conditions, but this matter is not within my remit of a Section 78 appeal.

4. The main issue to consider is the effect of removing the condition restricting the hours and days that construction works can take place would have on the living conditions of nearby residents in relation to noise and disturbance.

Reasons

5. The appeal site comprises a former quarry predominantly surrounded by residential properties. The quarry wall lies adjacent to Westfield Lane where there is a considerable drop in level to the ground of the site. The access and driveway comprises an engineered concrete ramp onto Westfield Lane adjacent to No. 24. The ramp has been substantially completed although the access point is currently closed by protective fencing. Foundation trenches were being dug during my visit and the temporary accommodation was in place.
6. Planning Practice Guidance (PPG) and the National Planning Policy Framework (the Framework) refer to the 'six tests' applicable to imposing planning conditions that they should only be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. The preceding Circular 11/95 The Use of Conditions in Planning Permissions was cancelled but Appendix A of the Circular on model conditions remains in force.
7. A condition may be considered necessary if the effect of not having it in place or removing it would lead to significant harm. Necessity of the condition depends on whether it serves a useful purpose having regard to the development plan. The Council refers to Policy ENV1 of the Selby District Local Plan which seeks to ensure good amenity for residential occupiers, this is consistent with the Framework and PPG in relation to noise and disturbance and the imposition of planning conditions on planning permissions.
8. Whilst the appellant disagrees with the veracity and motives of letters of objection to the application for removal of the condition the Council has produced evidence cataloguing alleged breaches of the working hours which has led to complaint. Furthermore, the Council's Environment Health Officer objects to the removal of the condition on noise and disturbance grounds. In the light of the available evidence the condition is needed, and is relevant to planning and is relevant to the development permitted in relation to the site context, evidence of complaint about working hours and there is a clear planning purpose to protect amenity in relation to local planning policy.
9. Without a restriction on working hours there is in this case evidence of harm to residential amenity of nearby residents, and an unfettered condition on working hours would as a result erode the enjoyment of occupants of neighbouring properties. Although the level of noise may not amount to a statutory nuisance the imposition of conditions relevant to planning can be imposed where they seek to protect residential amenity in relation to general disturbance. While concerns about noise may not itself constitute a noise nuisance and is regulated by other legislation that does not mean that planning conditions should not be imposed to protect residential amenity which has broader planning considerations.
10. The condition in my view is enforceable because it is possible to detect a contravention and to remedy any such breach by not working outside the specified hours. The hours of working are also within the overall control of the appellant to oversee the programme of work in terms of project management.

I note that the appellant works during the week in order to finance the build. I also note the legitimate concerns about the amount of limited personal time he is able to dedicate to the project as a means of reducing the build costs.

11. In this case Condition 10 requires the development to be completed by September 2019. The appellant contends he will now have to put the work out to tender in order to meet this deadline. Further, the management model for delivering the project will now change from a hands-on self-build to a professional managed project. The appellant contends that he will be put to unreasonable expense as a consequence of the working hours restrictions. Condition 10 is not before me but concerns about the deliverability of the build principally stems from this limitation. Condition 9 is reasonable in all other respects to restrict working hours of the build in the interests of residential amenity.
12. In terms of precision the condition is sufficiently precise so as to have sensible meaning when read as a whole and is not uncertain. The Council has since clarified which works amount to construction and which amount to repair and maintenance. Construction should be given its normal meaning and would not normally involve work which amounts to domestic repairs incidental to the property. I do not regard the Council's interpretation as unreasonable and the appellant has this information to ascertain whether it falls within or outside condition 9.
13. I therefore conclude that removing the condition restricting the hours and days that construction works can take place would harm the living conditions of nearby residents in relation to noise and disturbance, in conflict with Policy ENV1 of the Selby District Local Plan.
14. Having regard to all other matters raised I conclude that the appeal should not succeed.

Iwan Lloyd

INSPECTOR