

Appeal Decision

Site visit made on 20 June 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 13 July 2017

Appeal Ref: APP/Y2810/W/17/3171987

Land adjacent to 23 Sywell Road, Overstone, Northamptonshire NN6 0AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 John Harmon against Daventry District Council.
 - The application Ref DA/2016/1169 is dated 13 December 2016.
 - The application sought outline planning permission for two dwellings and garaging without complying with a condition attached to planning permission Ref DA/2013/0344, dated 2 July 2013.
 - The condition in dispute is No. 8 which states that: *"The development shall be carried out strictly in accordance with location plan; PT.257807.1 registered valid 15 May 2013"*.
 - The reason given for the condition is: *"To ensure that development is in accordance with the submitted drawings and to enable the Local Planning Authority to consider the impact of any changes to the approved plans"*.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by John Harmon against Daventry District Council. This application is the subject of a separate Decision.

Background and Main Issues

3. Outline planning permission Ref DA/2013/0344, for the erection of two dwellings on the appeal site, was granted on 2 July 2013. Condition 2 of the permission requires that approval of the reserved matters shall be obtained from the local planning authority in writing before development is commenced. The condition identifies the reserved matters as comprising details of scale, appearance and landscaping. Condition 8 ties the outline planning permission to the approved location plan PT.257807.1 which showed details of the layout of the development and the means of access to the two dwellings. Layout was, accordingly, not a reserved matter. Approval was subsequently granted for all of the reserved matters under planning approval Ref DA/2016/0148, granted by the Council on 1 July 2016.
 4. Condition 1 of the outline permission requires that development be commenced before the expiration of 3 years from the date of the permission or 2 years
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from the approval of the last reserved matters. As the latter period extends to 30 June 2018 the outline permission remains extant.

5. The application which is the subject of the appeal sought a variation to condition No. 8, the effect of which would be to enable the location plan approved as part of the outline permission to be replaced by a new plan showing a revised layout for the two dwellings and the vehicular access to these. The Council appears to have no substantive objection to the proposed revisions to the layout. However, it contends that the application could not be determined because a grant of permission would have the effect of extending the time limits imposed on the original outline planning permission and that this would be contrary to the provisions under Section 73 of the Town and Country Planning Act 1990 (1990 Act).
6. Accordingly, the key issue is whether the removal of condition No. 6 and its replacement with a new condition as sought by the appellant would be in accordance with the powers granted under Section 73.

Reasons

7. Section 92(2) of the 1990 Act requires that, when outline planning permission is granted, it shall be subject to conditions to the effect that:
 - (a) in the case of any reserved matter, application for approval must be made no later than the expiration of three years beginning with the date of the grant of outline planning permission; and
 - (b) that the development to which the permission relates must be begun no later than -
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.¹
8. Condition No. 2 of outline planning permission Ref DA/2013/0344 does not follow the requirement, as set out in Section 92(2)(a), that applications for the approval of the reserved matters must be made within 3 years of the date of the outline permission. Instead, it specifies that approval of the reserved matters shall be obtained '*before development commences*'. However, that apparent omission is of no practical consequence since Section 92(3) of the 1990 Act states that, if outline permission is granted without the conditions required under subsection (2), it shall be deemed to have been granted subject to those conditions. Accordingly, the last date by which an application for approval of any reserved matters under outline permission Ref DA/2013/0344 could have been made was 1 July 2016.
9. The appellant states that what is sought is a 'variation' to condition No. 8. However, the effect of the approval of an application under Section 73 is that a new permission is granted for the development. That new permission then stands alongside rather than replaces the original planning permission.
10. Section 73 provides the opportunity for an applicant to secure a new permission for a development either without a specific condition that was attached to the original permission or with a revised condition in its place.

¹ Sub paragraph (b)(i), which set out the alternative requirement that development should commence within 3 years of the date on which outline planning permission was granted, was deleted by an amendment made under section 51 of the Planning and Compulsory Purchase Act 2004.

There are limitations on what the powers can be used for. In particular, Section 73(5) stipulates that planning permission must not be granted under this section if it would have the effect of extending the time limit within which:

- (a) a development must be started; or
- (b) an application for approval of reserved matters must be made.

11. Also of relevance is Section 93(4)(b) which states that any application for the approval of reserved matters which is made after the date by which the conditions require it to be made shall be treated as not having been made in accordance with the terms of the planning permission.
12. Having regard to these provisions it would be open to me to allow the appeal and to grant a new outline permission for the two dwellings. However, because of the limitations imposed by Section 73(5), a condition would have to be attached to that permission requiring that application for approval of the reserved matters (relating to scale, appearance and landscaping) shall be made before the expiration of 3 years from the date of the original outline planning permission; i.e. before 1 July 2016. As that date has already passed there would be no possibility of securing approval of the reserved matters and the new outline permission would be incapable of implementation.
13. The appellant's stated intention, in the event that the appeal is allowed, is to submit an application under Section 73 in respect of reserved matters approval Ref DA/2016/01480. The purpose of such an application would be to amend the plans condition attached to that permission such that the details of scale, appearance and landscaping would fit with the revised layout for which approval is sought in the current appeal. However, whilst it provides for the possible removal or substitution of planning conditions, Section 73 does not enable any change to be made to the status of a planning permission.
14. It would be possible for the Council to grant a new reserved matters permission as a result of a Section 73 application. That new reserved matters approval would, however, form part of outline permission Ref DA/2016/01480 rather than of any new outline permission that I would be able to grant by allowing the appeal. Such an application would be a matter for the Council in the first instance. However, its ability to approve any revised reserved matters details would be constrained by reason that those details would need to be consistent with the site layout approved under the outline permission to which the reserved matters relate; that approved layout would remain that shown on Location Plan PT.257807.1. For these reasons I consider that the appellant's proposed strategy has no realistic prospects of achieving its intended outcome and does not provide any justification for my allowing the appeal.

Other Matters

15. An objector to the application states that the reserved matters approval, issued by the Council in July 2016, is invalid because the time limit for making an application for reserved matters under outline permission Ref DA/2013/0344 had passed when that application was made. That reserved matters approval is not before me and, as it appears not to have been the subject of any legal challenge or judgment, remains extant.

Conclusions

16. I conclude that the only planning permission that could be granted if I were to allow the appeal would be one that would not be capable of implementation. Such a permission would be a nullity and should not, therefore, be granted.
17. Accordingly, I conclude that the appeal should fail.

Paul Singleton

INSPECTOR