



Appeal Decision

Site visit made on 7 June 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/Z4718/W/18/3217917

Land off Butt Lane, Hepworth, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Acumen against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/61/94120/W, dated 29 November 2017, sought approval of details pursuant to condition No 1 of a planning permission Ref 2015/60/92993/W, granted on 9 September 2016.
 - The application was refused by notice dated 24 September 2018.
 - The development proposed, and the subject of the outline planning permission, is the erection of residential development, particularised by the reserved matters application to mean the erection of 4 dwellings, and further particularised during the course of the reserved matters application to mean the erection of 2 dwellings.
 - The details for which approval is sought are the reserved matters of the access, appearance, layout, scale and landscaping of the site.
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Decision

1. The appeal is allowed, and the reserved matters are approved, namely the access, appearance, layout, scale and landscaping details submitted in pursuance of condition 1 to planning permission Ref 2015/60/92993/W dated 9 September 2016, subject to the conditions listed in the Schedule at the end of this decision.

Application for costs

2. An application for costs was made by Acumen against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The scope of the outline planning permission for the 'erection of residential development' is rather broad, and the reserved matters application as submitted was to erect 4 dwellings on the site. During the course of the application this proposal was reduced to 2 dwellings, and it is the details of these 2 dwellings that form the subject of the Council's decision notice now under appeal. A large number of documents and plans were submitted with the appeal, some of which have been superseded as a result of the amendments made during the course of the application. As a result, the main parties have agreed a more limited list of plans for my consideration.

4. The reserved matters application was the subject of a site and press notice in December 2017, at which point the application was to erect 4 dwellings. Whilst there is evidence of some reconsultation during the course of the application having taken place as the result of amendments, this may not have extended to further publicity having been given (although the Council's committee report suggests that this did take place). There were no public representations made in support of the proposal. Neighbours and interested parties have been notified of the appeal. Given the reduction in the scale of the proposal since the original publicity exercise, and the opportunity for public participation in the appeal proceedings, I am satisfied that the appeal, consisting of the proposal to erect 2 dwellings on the site, may be considered without prejudicing the interests of third parties.

Main Issue

5. Although the Council's decision notice does not expressly specify any objection to any one or more of the particular reserved matters, it identifies flooding risk to future occupiers of the development as a concern, with an asserted flood having occurred in 2002 over 'large parts of the application site including the position of the proposed dwellings'. The Council in its appeal statement identifies 'the layout and its impact on flood risk' as important considerations. The Council also confirms that in its view, subject to the use of appropriate planning conditions, the reserved matters of access, scale, appearance and landscaping are acceptable. From this I conclude that the main issue in the appeal concerns the layout of the proposed development, with particular regard to flooding risks to the proposed occupiers.
6. Several other concerns have been raised by interested parties including the appearance of the proposed dwellings, their effect on neighbouring living conditions by reason of privacy impacts, highway safety risks, the effect of the proposed development on nearby trees, and future flooding risks elsewhere.

Reasons

Layout and flooding risks to the proposed occupiers

7. The appeal site lies to the eastern edge of the small settlement of Hepworth, at the base of a steep hill and adjoining the Rakes Dike watercourse to the east. The site is presently open grass land, sloping eastwards toward the dike and its surrounding mature tree cover, with a public footpath beyond on the other side of the dike. To the west of the site are properties on Carr View Road, and the site is accessed from Butt Lane to the north.
8. Outline planning permission was granted in 2016 for the erection of residential development on the site. A number of planning conditions were imposed on that permission, including No 5 that precluded development in Flood Zone 3 and any changes to ground levels, as set out in section 8 of the approved Flood Risk Assessment, and required finished floor levels to be set 150mm above ground levels, flood resilience measures to be installed up to 600mm above ground levels and the provision of overland flow routes through the site.
9. The Council does not dispute that the proposed details of the development would comply with this condition. It is also common ground that the Environment Agency and the Lead Local Flood Authority have no objection to the proposal. The Environment Agency report that the development would be

located outside Flood Zone 3 and within Flood Zone 1. The Council in its case relies on photographs of a 2002 flooding event in the vicinity, and on information provided by existing and former ward councillors for the area.

10. The photographic evidence of the 2002 event shows that an area in Jackson Bridge, approximately 370m downstream of the appeal site, was subject to flooding notwithstanding that it lies within Flood Zone 1. Other photographs, appearing to be of more recent provenance, are not readily attributable to the appeal site, although some of them appear to show the Rakes Dike in spate and with areas of standing water on the appeal site. It is not apparent that this standing water is the result of fluvial flooding, or which Flood Zone it is in.
11. The information apparently given by the ward councillors is that in 2002 the footpath on the other side of the Rakes Dike was destroyed by a flood, that buildings on the appeal site were damaged or destroyed, and that animals on the appeal site had to be restrained on higher ground. It is further stated, although unsupported by any evidence from planning or building control records, that the houses to the west of the appeal site, on higher ground, were required to be constructed on raised levels, as a flood resilience measure, when built.
12. Although the Council's stated reason for refusing to approve the reserved matters refers to a history of flooding over the application site including the particular position of the proposed dwellings, the information submitted during the appeal is rather more vague. No evidence has been supplied as to the specific extent of the 2002 flooding event, and there is no express assertion, other than in the Council's reason for refusal, that the sloping site has flooded in the particular area where the dwellings are proposed to be sited.
13. The Environment Agency provides flood maps showing areas at risk of flooding, principally from rivers and the sea. These are not necessarily precise, being based, in many cases, on modelled assessments. I have not been provided with any Strategic Flood Risk Assessment by the Lead Local Flood Authority that might refine the Environment Agency's information. There is evidently considerable local concern that the Environment Agency's information is outdated. One of the neighbours making representations in the appeal has helpfully supplied drawings of the likely extent of flooding on the site if the river levels were to rise to the level of the public footpath, and if they were to rise to a level 0.5m above that. The latter drawing shows that such a flood would encroach on to 'Plot 1'. However there is no evidence, rather than assertion, before me of any unacceptable risk of such an event.
14. The principle of developing the appeal site for housing was established by the outline planning permission, at which stage the susceptibility of the site to flooding was considered and addressed. The information now supplied concerning the 2002 flood would reasonably have been available to the Council at the time of granting that outline planning permission. The current proposal meets the requirements of condition No 5 attached to the outline planning permission, and there is insufficient evidence to permit of a conclusion either that the proposed siting of the dwellings would be unacceptably exposed to the risk of flooding, or that any such risk would be avoided by a different layout.
15. Therefore on this issue I conclude that the development has been directed to an area at the lowest probability of flooding and the layout complies with the requirements of Policy PLP 27 of the Kirklees Local Plan adopted in February

2019 concerning development and flood risk, as well as with policies in Chapter 14 of the National Planning Policy Framework.

Other matters

Appearance

16. The proposed dwellings would be detached properties amply spaced from each other and the nearby dwellings on Carr View Road. Those dwellings on Carr View Road have the appearance of single-storey dwellings to their fronts, with 2 storeys to the rear as they overlook the appeal site. The appeal dwellings would be larger, but as the land levels fall away they would not appear out of context, with their ridge heights some 3m or more below those of the dwellings on Carr View Road. Construction materials would be in keeping with the local vernacular. Concern is expressed that the dwellings would appear unduly overbearing to users of the public footpath on the other side of the dike, as the patio areas would be raised to the ground floor levels, with the properties' eastern rear elevations on top of those giving a tall appearance overall. However, I consider the sloping land levels could accommodate these heights and the dwellings would not appear out of character in the vicinity. A condition would secure appropriate boundary treatments.

Living conditions

17. The site section drawing 2397-04E shows that the house on 'Plot 2' will face on to existing houses on Carr View Road. The land slopes significantly downwards from Carr View Road towards the application site, and the section drawing suggests that there will be a difference in levels of approximately 3 metres. Although details of the boundary treatments are scant, these can be secured by condition and there is adequate separation distance between the dwellings, both from each other and from existing houses, to avoid unacceptable impacts on the occupiers' living conditions by reason of overlooking or other privacy concerns.

Highway Safety

18. Proposed site plan 2397-03G shows 2.4m x 70m visibility splays in each direction at the site entrance, with a 2m footway on either side. The visibility for drivers exiting the site would not be unduly affected by the presence of the telegraph pole sited at the side of the road towards Jackson Bridge. Potential conflict with pylons and overhead power lines is a matter for other legislation, but there is no evidence to suggest that this could not be resolved.
19. Concern has also been expressed about the potential for overspill parking on Butt Lane. Although the proposed dwellings are large, I consider that the provision of double parking areas, garages, and a visitor parking area for the proposed dwellings would be adequate without undue risk to the safety of highway users on adjoining roads as a result of parking outside the site.

Effect on trees

20. A 'Woodland' Tree Preservation Order was made and confirmed in early 2018, and the application was amended in order to account for concerns about the possible effects on nearby trees. The plans show a limited amount of tree removal, and it appears that the plans reducing the number of dwellings on the site to 2 were submitted after the receipt of public responses. Two silver

birches and an ash are marked for removal, as detailed in the appellant's arboricultural report, as being in poor condition. The remaining trees would be adequately protected by compliance with the arboricultural method statement, secured by condition.

Other flooding risks

21. Condition No 6 of the outline planning permission restricts surface water discharge from the site to a maximum of 5 litres per second, and concern is expressed that the discharge opening to the dike has been sized so as to exceed this. Concern has also been raised about the potential for using a road drain overflow within the site. Rather than being a concern of the reserved matters submission, however, as the Council points out, the drainage from the site has to be secured through a separate application to obtain the planning authority's approval of the details required by condition No 6 of the outline permission. These matters are more appropriately considered at that juncture, and accordingly I do not impose a requirement to comply with the drainage plans that have been submitted, which would require revisions to reflect the number of houses now under consideration.
22. Objectors also raise the question of whether retaining walls or structures within the site would affect the holding capacity of the floodplain. Walls to the road and raised patio areas are shown on the plans, although the principal parties are agreed that no retaining structures would be erected within the garden areas of the proposed dwellings. No development would take place within Flood Zone 3, and the Council and the Environment Agency are content with the information submitted. Although it is asserted otherwise, I have insufficient evidence to conclude that the proposed development would unacceptably affect the holding capacity of the floodplain or increase flood risks elsewhere.

Conditions

23. The Council has suggested a number of planning conditions, although without detailed reasoning or extracts from the development plan in support of its limited reasons. A condition requiring compliance with the approved plans is required for certainty about what has been approved. This includes the Arboricultural Method Statement, which does not require a separate condition. Details of the proposed external surfaces should be subject to approval in advance of building above slab level, in order to ensure an acceptable finish to the development that is in keeping with the area. A scheme for the boundary treatment of the site is required because of the privacy and overlooking concerns of neighbours and the views from the public footpath, and because the landscaping details submitted as part of the reserved matters application are lacking in abundant detail. The approved access arrangements should be secured by requiring their provision, including the adjoining footway, at an appropriate stage of the development, and their future maintenance thereafter. Similarly, arrangements for the collection of wastes, and the provision and retention of appropriately surfaced parking areas, are related to the access arrangements hereby approved.
24. The Council also suggests that the overall method of construction of the development will need to be secured by the details of a construction management plan, to be submitted and approved before development commences. This however goes beyond the scope of the matters reserved for approval at this stage and I do not impose it.

25. The proposed requirement for bat and bird boxes for ecological reasons also appears to go beyond the scope of the reserved matters for which approval is sought, and I do not consider this condition to be necessary or reasonably related to the details before me. The details of any external lighting of the proposed dwellings, although proposed for ecological reasons, do however obviously relate to the appearance of the development, and I accept that such a condition is reasonably related to what is now proposed. No detailed evidence is before me as to the necessity of such a condition, but I accept that the wildlife corridor of the adjoining dike could be susceptible to adverse impacts from night-time lighting and so it is a reasonably necessary condition to impose.
26. Condition No 8 of the outline permission restricts the application of the Town and Country Planning (General Permitted Development) (England) Order ('GPDO') concerning the erection of walls or other means of enclosure within part of the site. This relates to the part of the site lying within Flood Zone 3 only. Whether or not the construction of retaining walls would already require permission (with or without the application of the GPDO), the Council seeks to prevent them without prior written consent, in furtherance of flood mitigation objectives. This matter refers to both the layout and the appearance of the proposed development, and I concur that such a restriction is necessary. I acknowledge that there are local concerns about flood risk, but moreover a number of representations have referred to the adverse visual impacts of any proposed retaining walls when viewed from the recreational footpath on the other side of the dike. Such a condition is therefore necessary for this reason.
27. As to the further prohibition on permitted development rights sought by the Council, however, I do not think that this is necessary. Classes A and E of Part 1 of the GPDO are already restricted by the outline permission, and so the Council's suggested condition is unnecessary in these respects. As to Classes B and D, there is no clear evidence before me as to the flooding risks that might materialise from any alterations to the roof of a property, and the proposed dwellings would be largely surrounded by areas of hardstanding, including in the areas in which any porches might reasonably be expected to be constructed. It is not explained how the exercise of these permitted development rights might reasonably be expected to obstruct flood mitigation measures.

Conclusion

28. For the reasons given above, and subject to the imposition of appropriate conditions, the Council's reason for refusing to approve the reserved matters is not substantiated. There is insufficient evidence that the proposed layout of the development would be unacceptable on flood risk grounds, especially given that the principle of the development has already been established with regard to such matters. The proposal complies with the development plan for the area and so the appeal is allowed and reserved matters approved in accordance with the Schedule of Conditions set out below.

Laura Renaudon

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and specifications:
 - Location Plan Ref 2397-LOC
 - Existing Site Plan Ref 2397-01
 - Existing Site Levels Ref 2397-02
 - Proposed Site Layout Ref 2397-03G
 - Proposed Site Sections Ref 2397-04E
 - Plot 1 House Type – Proposed Plans & Elevations Ref 2397-05
 - Plot 2 House Type – Proposed Plans & Elevations Ref 2397-06A
 - Flood Plan Ref 2397-09A
 - Arboricultural Report Ref 13978/AJB
 - Arboricultural Method Statement Ref 13978-A/AJB incorporating Appendix 5: Tree Protection Plan
- 2) Before any development above slab level takes place in the construction of the hereby approved dwellings, details of the materials to be used in the external surfaces of the dwellings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved materials.
- 3) Prior to the occupation of the hereby approved dwellings, a scheme detailing the boundary treatment of the all the site shall be submitted to and approved in writing by the Local Planning Authority. The dwellings hereby approved shall not be occupied until the works comprising the approved scheme have been completed, and it shall be retained thereafter.
- 4) Prior to the occupation of the hereby approved dwellings, the sightlines as set out on the hereby approved Dwg. No. 2397-03G shall be provided with no obstructions above 1 metre in height. The sightlines shall thereafter be retained.
- 5) The development shall not be brought into use until a scheme of design and construction details for the provision of a 2 metre wide footway across the frontage of the application site and as detailed on the hereby approved plan Dwg. No. 2397-03G has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before either of the dwellings are first occupied and retained thereafter.
- 6) The development shall not be brought into use until all areas indicated to be used for the parking of vehicles as set out on Dwg. No. 2397-03G have been marked out, and laid out with a hardened and drained surface in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or any successor guidance. These areas shall be so retained, free of obstructions and available for the use specified on the plan and retained thereafter.
- 7) Prior to the occupation of the hereby approved dwellings details of any external lighting to be installed on the dwellings shall be submitted to and approved in writing with the Local Planning Authority. No external lighting other than that approved shall be installed on the hereby approved dwellings.
- 8) No retaining walls other than those indicated on hereby approved site layout plan Dwg. No. 2397-03G and site sections plan Dwg. No. 2397-04E shall be erected in the site outlined in red on the hereby approved Location Plan,

Dwg. No. 2397-LOC without the prior written consent of the Local Planning Authority. For the avoidance of doubt there shall be no development in Flood Zone 3 as identified on Dwg. No. 2397-03G.

- 9) Before the hereby approved dwellings are first occupied, details of storage and access for collection of wastes from the premises shall be submitted to and approved in writing by the Local Planning Authority. The works comprising the approved details shall be provided before the dwellings are first occupied and shall be so retained thereafter free of obstructions and available for storage.