The Planning Inspectorate

Appeal Decision

Site visit made on 17 September 2019

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Appeal Ref: APP/L2440/W/19/3226284
69 Launde Road, Oadby LE2 4HH

- The appeal is made under section 78 of the Town Country Planning Act 1990 against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Town and Country Planning Act 1990 and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988.
- The appeal is made by Mr Trivedi against Oadby & Wigston Borough Council.
- The application Ref 18/00560/FUL is dated 7 February 2018.
- The development proposed is single storey front extension, two storey side extension, alteration to existing single storey flat roof and replacement of detached outbuilding.
- The information alleged by the Council to be necessary is a new set of appropriately scaled plans including a north point rather than submitting previously approved plans that were marked as such and not to scale.

Decision

1. The appeal is dismissed.

Main Issue(s)

2. Whether the planning application as originally submitted is valid and if so whether the proposed development would be acceptable.

Reasons

Whether the planning application as submitted is valid

3. Section 62(3) of the 1990 Act provides that a local planning authority may require that an application for planning permission must include (a) such particulars as they think necessary, and (b) such evidence in support of anything in or relating to the application as they think necessary. Section 62(4A) provides that the section 62(3) requirements should be reasonable and relate only to matters that are likely to be material considerations.

4. For the purposes of the 1990 Act and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO), specific requirements must be set out in a published list. However, in this case the Council does not have an adopted Local List for Validating Planning Applications, and instead relies on the general provisions of the DMPO for the purposes of validating applications.

5. Part 3 article 7 of the DMPO sets out the general requirements a planning application must meet in order to be considered valid. Article 7 paragraph (2) states that any plans or drawings submitted as part of a planning application must be drawn to an identified scale and show the direction of North.

6. Before validating the application, the Council requested additional plans in order for the application to be validated. Specifically, it considered that additional information was required in relation to the submitted plans not being to scale; not including a north point; and the fact that the plans were marked 'Approved' as they comprised those already approved under a previous application ref 18/00471/FUL. The plans submitted were as follows:
   - Proposed ground floor plans – to scale 1:100 but marked 'approved' and not including a north point.
   - Originally proposed store elevations – to scale 1:100 but marked 'approved'.
   - Proposed elevations – to scale 1:100 but marked 'approved'.
   - Proposed first floor plans – to scale 1:100 but marked 'approved' and not including a north point.
   - Existing ground floor plans – to scale 1:100 but marked 'approved' and not including a north point.
   - Existing first floor plans – to scale 1:100 but marked 'approved' and not including a north point.
   - Revised proposed store elevations – not marked 'approved' and to a scale nominally 1:100 but including centimetres as well as metres.
   - A site location plan to scale 1:1250 and including a north point.

7. The appellant disputed the need for the additional information and followed the process set out for dealing with such disputes in DMPO article 12. The outcome is that the application is classified as a non-validated application, by virtue of DMPO article 34(5). As such the time periods for decision set out in DMPO article 34 apply, which in turn enables an appeal to be made under section 78(2) of the 1990 Act where the Council has not given notice of their decision on the application.

8. However, the structure of the legislation is that it is a dispute about the need for the required information that provides the right to appeal. Hence the appeal determination must first resolve that dispute before going on to consider whether a grant of planning permission is justified. Section 62(4A) of the 1990 Act specifies that it must be reasonable to think that the matters on which additional information was required will be a material consideration in the determination of the application, having regard to the nature and scale of the proposed development. A material consideration is a matter that should be taken into account in deciding a planning application or on an appeal against a planning decision, and the law requires that all material considerations must be considered.

9. I must first consider, therefore, having regard to the particular proposal, whether it is reasonable to consider that the matters about which the additional information is required are likely to be material considerations. Only if I conclude that it was not reasonable, and that the application should have been validated, would it be appropriate to consider whether planning permission should be granted.

10. To be valid, an application must include all of the required elements, which are set by the relevant statute (here, the DMPO). The appellant's reason for not providing the information requested by the Council was that the submitted plans were to scale, included a north point and had already been previously approved without any validation concerns being raised.

11. The submitted plans do not include a north point apart from the site location plan which I consider to be sufficient in this regard. They are also all to an appropriate scale apart from the revised proposed store elevations where the scale is only just legible with the differing measurements of centimetres and metres. I do however, consider that this would make it difficult to take accurate measurements and determine the dimensions of the proposal. Further, I consider that the presence of the submitted plans for a proposed development that are marked 'approved' would lead to confusion for anyone who subsequently viewed them and undermine the authority of any decision reached.

12. Consequently, I consider that the above inaccuracies in the submitted plans mean that it would be impossible to determine the dimensions of the proposed development which would be essential to making a decision. I therefore conclude that it is sensible to think that the information required by the Council with particular regard to the scale of the proposal and the deletion of the 'approved' markings relates to matters that would reasonably be regarded as material considerations in the determination of the application, having regard to the scale and nature of the proposed development. The Council was therefore justified in requiring this information before validating the application.

Conclusion

13. I must consider the appeal afresh, however my conclusion above means that I can only dismiss the appeal, on the basis that there are material considerations, matters of importance in the planning balance, about which I do not have sufficient information to enable me to properly assess the impact of the proposal. This appeal is therefore dismissed.

C Coyne

INSPECTOR