



Appeal Decision

Site visit made on 11 February 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th March 2020

Appeal Ref: APP/Y2620/W/19/3238670

Plots 2 and 3, Land off Cromer Road, Mundesley, NR11 8DB

- 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 Mr Ryan Bailey against North Norfolk District Council.
 - The application Ref: PF/19/0872 is dated 18 May 2019.
 - The application sought planning permission for the erection of four dwellings without complying with a condition attached to planning permission Ref: PF/19/0214 dated 15 May 2019.
 - The condition in dispute is No. 1, which states that: *This permission is granted in accordance with the plans and documents approved under PF/16/0872 and CDA/16/0872 as amended by the following:*
 - 1) Drawing Number 1808 BR02 Revision B, entitled Plans and Elevations Plot 1 As Proposed [submitted as amended layout for Plot 1], dated 04/2/19;
 - 2) Drawing Number 1808 BR03, entitled Plans and Elevations Plot 1 As Proposed [submitted as amended layout for Plot 1], dated 01.07.18;
 - 3) Drawing Number 1808 BR04 Revision B, entitled Plans and Elevations Plot 1 As Proposed [submitted as the Amended Elevation detail to Plot 1], dated 23/3/19, received on 1st April 2019 and date-stamped 3rd April 2019;
 - 4) Drawing Number 1808 BR01 Revision B, entitled Plans and Elevations as Proposed [submitted as Landscaping Scheme for all plots], dated 28/3/19, received on 1st April 2019 and date-stamped 3rd April 2019.
 - The reason given for the condition is: *For the avoidance of doubt and to ensure the satisfactory layout and appearance of the development in accordance with Policy EN 4 of the adopted North Norfolk Core Strategy.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of four dwellings at Land off Cromer Road, Mundesley, NR11 8DB in accordance with the terms of the application Ref: PF/19/0872 without compliance with condition number 1 previously imposed upon planning permission Ref: PF/19/0214 dated 11 February 2019, but subject to the conditions set out in the attached schedule.

Application for costs

2. Applications for costs have been made by both parties against each other. These applications are the subject of a separate Decision.

Procedural Matters

3. The site address from the original planning application form described the site as 'Plot 2 Land off Cromer Road,...'. The proposed alterations also include plot 3, therefore, I have referred to this in the site address in the banner heading.
4. The description of development used in the banner heading above is that from the planning application form. An amended description was agreed by the parties as *'variation of condition 1 (approved plans) of planning permission PF/19/0214 to allow for the construction of attached single garages to Plots 2 and 3 in place of a double garage serving both plots, amendments to the fenestrations of Plots 2 and 3, amended internal layouts to Plot 2 and the erection of 1.8m high close boarded fence to divide gardens of Plots 2 and 3'*. Whilst this describes the proposed amendments, it is not a description of the development and therefore I have used the description from the original planning permission and application form in the decision paragraph above.
5. Planning permission Ref: PF/16/0872 (dated 31 August 2016) was granted for the erection of four dwellings. The Council fully discharged condition 4 and part-discharged conditions 5 and 6 by a letter on 21 November 2018 pursuant to application Ref: CDA/16/0872 (Discharge of conditions 4, 5 and 6 of PF/16/0872). Permission was granted on 15 May 2019 (Ref: PF/19/0214) for a variation of condition 2 of Ref: PF/16/0872 to allow various alterations to the dwelling on plot 1 of the development. If this appeal were to be allowed there would be a third planning permission extant. I have dealt with the appeal on this basis.
6. The planning application was validated on 18 June 2019, and the Council confirm at this time, no works sought by the proposed variations had taken place. During the determination of the application when amended plans were submitted the Council noted some of the works subject of the application had commenced. A photograph dated 7 August 2019 shows this. The Council subsequently advised the appellant the application could not be progressed under s73 of the Town & Country Planning Act 1990. It advised the application must be withdrawn and a new application needed to be submitted under s73A, because permissions for works already commenced cannot be issued under s73. This is still the Council's position. The appellant disagrees and has not withdrawn the application, but the application was not determined by the Council.
7. The Council has advised whilst it has not undertaken a formal assessment of the changes, it does not have an objection to them. Therefore, there is no dispute of the planning merits of the development between the main parties. There appears no dispute that the previous permissions were lawfully commenced. At my site visit the dwelling on plot 1 had been substantially completed. The structure and brickwork of the plot 2 dwelling and garage had been constructed, but the windows and roofs were not completed. There appeared to have been no development on plot 3 as yet.
8. The Council has provided correspondence between the parties that lead up to the appeal being submitted. The appellant has set out the view in various emails that an application submitted under s73 could be granted under 73A, and cited s73 and s73A provisions. In later correspondence the Council appears to have altered its position slightly, in suggesting the application could

be 'switched' to an s73A if the appellant were to submit a new application form and a larger planning fee.

9. The Council's Locum Lawyer has made reference to the Encyclopaedia of Planning Law (2-3312), but this extract is not before me. In-turn the appellant refers to P73A.05, which the appellant believes sets out S73A applies only where the breach has occurred before the date of the application. Reference is made by both parties to the judgement of *Lawson Builders Ltd v SSCLG [2015] EWCA Civ 122*. I shall not repeat the exchange in any detail, and the Lawson judgement is a matter of public record.
10. In the Lawson judgement the Court confirmed there is a fluidity between sections 73 and 73A. In an appropriate case (depending upon the nature and stage of the development) a decision maker considering an application made under s73 to proceed with a development without complying with conditions attached to an existing permission, might grant under s73A, retrospective permission for development already carried out and in addition impose conditions under s70. In the Lawson case, the development had been carried out in accordance with the existing permission albeit in breach of a condition precedent. The court said it was implicit the Inspector had been using the power given by s73A to grant permission retrospectively, which caused no prejudice.
11. The evidence before me suggests the appeal development was lawfully commenced, and that this application had been submitted and validated before the development had commenced. The proposals do not fundamentally change the nature of the development. Accordingly, I have dealt with the appeal on this basis.

Background and Main Issues

12. The Council has advised whilst it has not undertaken a formal assessment of the changes, it does not have an objection to them. Therefore, there is no dispute of the planning merits of the development between the main parties. However, third parties have raised concerns in respect of compliance of the proposed development with Policy EN12 North Norfolk Local Development Framework Core Strategy (2008) (the NNCS) due to a perceived increase in the number of bedrooms in the dwellings. Accordingly, the main issue is: whether the proposed dwellings would be comparable in size to those which they are to replace.

Reasons

13. Third party representations suggest the revised development is increasing one of the plots from a 3 to 4-bedroom dwelling through creating a bedroom in the integral garage, and one further bedroom is being added to plot 3. Therefore, as such, the proposals do not comprise a minor material amendment and would be contrary to Policy EN12 of the NNCS. Policy EN12 requires, amongst other things, that the new dwellings are comparable in size to those which they are to replace.
14. Proposed plan/drawing BR01 Rev. D indicates that plot 2 is to be a 4-bedroom dwelling and plot 3 a 2-bedroom dwelling. The detailed plans for plot 2 show that it is to be a 3-bedroom dwelling, and this can be secured by a suitable planning condition. The Council has not raised an objection in this regard.

Based upon the information before me in plan/drawing ref. PL09 Rev. A, plot 3 was previously approved as a 2-bedroom dwelling, and therefore this is not proposed to change. Therefore, the development would be compliant with Policy EN12 of the NNCS and I find no conflict in this regard.

Other Matters

15. Third party representations object because new plans have already been through at least one stage of public consultation, and that one of the garages has been already part constructed. Whilst I note that the development has been the subject of a previous consultation by the Council and the development has already commenced, I have considered the development before me on its own merits and impacts.
16. The Council's press advertisement refers to the proposals affecting the character and appearance of the Mundesley Conservation Area (MCA). The Council's plan of the appeal site in relation to the MCA indicates it is outside but adjoins the MCA on the northern boundary of the appeal site, where it fronts the public highway. The proposals are located well within the appeal site, away from the front hedgerow on the boundary with the public highway. The nature, location and scale of the proposed amendments are such that there would be no harm to the setting of the MCA and the development would comply with Policy EN8 of the NNCS.

Conditions

17. I have considered the Council's suggested conditions and if appropriate amended the wording to more closely align with the Planning Practice Guidance. The appellant has not raised an objection to these conditions. The suggested conditions appear to align closely with the previous planning permissions for the development, which this permission would sit alongside. As the development has commenced, there is no need for a condition in this regard. A condition requiring compliance with the approved plans and relating the development back to the other planning permissions is necessary to provide certainty, compliance with the other planning permissions, and because some of the amendments remain to be carried out. Conditions removing permitted development rights and controlling external materials are necessary in the interests of the character and appearance of the area and the setting of the Mundesley Conservation Area.
18. Conditions numbered 5 and 6 below to secure the provision of a suitable specification of access, are necessary in the interests of highway safety. A condition to require the implementation of the approved parking arrangements is necessary to secure the availability of car parking within the development. Conditions 8, 9, 11 and 12 below to require the implementation of the approved landscaping scheme, the retention and maintenance and replacement of the planting, and the retention and maintenance of the existing hedgerow, are necessary in the interests of the character and appearance of the area. Condition 10 below is necessary to prevent light pollution and in the interests of highway safety.

Conclusions

19. For the reasons set out above the appeal should be allowed and planning permission is granted.

Dan Szymanski

INSPECTOR

Schedule of Conditions

- 1) This permission is granted in accordance with the plans and documents approved under PF/16/0872 and CDA/16/0872 as amended by PF/19/0214 and the following:
 - a) Drawing Number 1808 BR01 Revision D, entitled Plans and Elevations as Proposed [submitted as Landscaping Plan], dated 14/05/19;
 - b) Drawing Number 1808 BR07 Revision C, entitled Plans and Elevations Plot 2 As Proposed [submitted as elevations for Plot 2], dated 30/7/19, received on 31st July 2019;
 - c) Drawing Number 1808 BR05 Revision B [submitted as Ground Floor Plan for Plot 2], entitled Plans and Elevations Plot 2 As Proposed, dated 07/05/19;
 - d) Drawing Number 1808 BR06 Revision D, entitled Plans and Elevations Plot 2 As Proposed [submitted as Ground and First Floor Plan for Plot 2], dated 30/7/19, received on 31st July 2019;
 - e) Drawing Number 1808 BR10 Revision A, entitled Plans and Elevations Plot 3 As Proposed [submitted as elevations for Plot 3], dated 30/7/19, received on 31st July 2019;
 - f) Drawing Number 1808 BR08 Revision A, entitled Plans and Elevations Plot 3 As Proposed [submitted as Ground Floor Plan for Plot 3], dated 30/7/19, received on 31st July 2019;
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking, amending or re-enacting that Order with or without modification) no enlargement of or other alteration to the dwellings hereby permitted (including the insertion or any further window or rooflight) shall take place unless planning permission has been first granted by the Local Planning Authority.
- 3) The materials to be used in the construction of the external walls and roofs of the dwellings and associated garages shall be in full accordance with the details approved under application reference CDA/16/0872.
- 4) The details of the colour finish to all the external joinery on all dwellings and garages, including the timber cladding, window frames and doors shall be carried out in strict accordance with the details approved under application ref. no. CDA/16/0872.
- 5) Prior to the first occupation of the development hereby permitted, the vehicular access shall be laid out in the position shown on the approved plan in accordance with construction details and specifications which have first been submitted to, and approved in writing by, the Local Planning Authority. In addition, arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from, or onto, the highway carriageway.

- 6) Prior to the first occupation of the development hereby permitted, access visibility splays shall be provided in full accordance with the details indicated on the approved plan (59m x 2.4m x 59m). The splay shall thereafter be retained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.
- 7) Prior to the first occupation of the development hereby permitted, the proposed on-site car parking and manoeuvring areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan. They shall be retained thereafter available for that specific use.
- 8) Notwithstanding the provisions of condition 1 above, the development shall be undertaken in accordance with the hard and soft landscaping scheme set out in Drawing Number 1808 BR01 Revision B, entitled Plans and Elevations As Proposed [submitted as Landscaping Scheme for all plots], dated 28/3/19, received on 1st April 2019 and date stamped 3rd April 2019. The approved scheme shall be carried out not later than the next available planting season following the commencement of development.
- 9) The existing hedgerow to the frontage of the site with the Cromer Road shall be trimmed and retained at a minimum height of 3 metres above ground level.
- 10) Prior to the installation of any external lighting, details shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall thereafter be installed in accordance with the approved details.
- 11) No tree, shrub or hedgerow, which is indicated on the approved plan to be retained, shall be topped, lopped, uprooted, felled or in any other way destroyed, within ten years of the date of this permission.
- 12) Any new tree or shrub which within a period of ten years from the date of planting dies, is removed or become seriously damaged or diseased, shall be replaced during the next planting season with another of a similar size and species to that originally planted.

End of Schedule