
Appeal Decision

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2020

Appeal Ref: APP/F2605/W/20/3245672

The Old Waggon and Horses, Chapel Street, Shipdham IP25 7LB

- 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 N Paske (Bowbridge Homes (Shipdham) Limited) against the decision of Breckland District Council.
 - The application Ref 3PL/2019/1308/VAR, dated 15 October 2019, was refused by notice dated 17th December 2019.
 - The application sought planning permission for demolition of old Public House, central garage and retail units. Erection of convenience store, retail units and flats without complying with a condition attached to planning permission Ref 3PL/2016/0655/F, dated 31st March 2017.
 - The condition in dispute is No 2 which states that: The development must be carried out in strict accordance with the application form, and approved documents and drawings as set out in the table at the end of this notice.
 - The reason given for the condition is: To ensure the satisfactory development of the site.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr N Paske (Bowbridge Homes (Shipdham) Limited against Breckland District Council. That application is the subject of a separate Decision.

Preliminary matters

3. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available supplemented by additional evidence from the Council, appellant and the Parish Council. Those three parties have agreed to the appeal proceeding on this basis.
4. Whilst both the main parties to this appeal are content that the proposal would fall within the remit of an application for a minor material amendment, allowed for under the provisions of Section 73 of the Town and Country Planning Act 1990, neither party referred to any case law in their original submissions that might support their position. In light of the specific concerns raised by the Parish Council regarding the ambit of the application, I provided the

opportunity for all parties to comment on the application of relevant case law¹. I have taken the responses into account in reaching my decision.

Background

5. The Planning Practice Guidance (PPG) states that where changes to a permission are fundamental or substantial, a new planning application under section 70 of the Act should be made. However, where less than substantial changes are proposed, it advises that section 73 can be used to seek a minor material amendment, if there is a relevant condition listing the originally approved plans that can be varied². There is no statutory definition of a 'minor material amendment', but the PPG advises that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from that which has been approved³.
6. Furthermore, the caselaw confirms that an application such as that the subject of this appeal, made under Section 73 of the Town and Country Planning Act 1990, cannot be used to pursue a fundamental variation to the effect of the permission overall.
7. In March 2017, planning permission was granted for what was described on the decision notice as "Demolition of old Public House, central garage and retail units. Erection of a convenience store, retail units and flats" at the appeal site⁴. The planning permission was subject to a number of conditions, one of which required the development to be carried out in accordance with the approved plans listed on the decision notice (Condition No 2). The approved plans show six dwellinghouses, two flats, a convenience store, three retail units and a garage/workshop.
8. The appellant submitted a Section 73 application to amend the approved plans and thereby vary condition No 2. The revised scheme is for seven dwellinghouses, a convenience store and three retail units. The application was refused and is the subject of this appeal.
9. I recognise that the development now proposed would still fall within the description of development on the original planning permission. Furthermore, there is no condition on the original planning permission requiring the provision of the garage/workshop element of the proposal or specifying the number of retail or residential units or the type of residential units. However, on the original planning permission, there is conflict between the written description of development and the details show on the approved plans, in as much as the description contains no reference to the proposed garage/ workshop. The description also refers only to flats, whereas the approved plans show a mix of dwellinghouses and flats. That said, in my view, the description of development needs to be read in conjunction with the approved plans.
10. I recognise that the scale of the retail units and the convenience store building proposed in the appeal scheme is similar to that in the original planning permission. However, the two flats are omitted from the revised scheme and instead seven dwellinghouses are proposed, resulting in a very different scale

¹ In particular *Vue Entertainment Limited v City of York Council* [2017] EWHC 588 (Admin) (referred to as the case law).

² Paragraph: 001 Reference ID: 17a-001-20140306

³ Paragraph: 017 Reference ID: 17a-017-20140306

⁴ 3PL/2016/0655/F (the original planning permission)

and design of development. Furthermore, the garage/workshop building has been omitted bringing to bear different policy considerations. When considered in the round, my view therefore, is that there has been a material change in the nature of the development in terms of the amount of, and use, of the buildings now proposed when compared to the originally approved scheme.

11. In addition, the layout of the development has been substantially altered, as well as accommodating the relocation of the proposed access in a westerly direction along Chapel Street. Moreover, the amount of car parking spaces has been reduced by seven spaces.
12. Individually, the differences in the scale and nature between the two schemes which I have identified may not seem significant. However, together, in my view, they amount to a substantial change to the scale and nature of the development which results in a fundamentally different scheme from that originally permitted. Therefore, with reference to the PPG and the case law, I consider that in this instance, section 73 of the Act cannot be used to consider the amendments sought. I have given consideration to the fact that interested parties were consulted on the proposal and recognise that the planning application was advertised in an appropriate manner, allowing for those with an interest the opportunity to comment on the amended scheme. However, I have found that the nature of the development proposed is such that it cannot be considered under the provisions of Section 73, as applied for. Rather, an application for full planning permission under section 70 of the Act would need to be made in order to progress the development proposed, which would need to be considered by the local planning authority in the first instance.
13. In any event, the description of development in the original planning permission refers to the erection of flats, whereas the scheme before me now includes only dwellinghouses. Therefore, even if I were to have dealt with the proposal under S73 of the Act, and concluded that the proposal was acceptable on its planning merits⁵, the appeal would still have failed as it is not within my power to alter the description of development contained on the original planning permission.
14. My finding on this issue is determinative and, therefore, it is not necessary for me to consider the merits of any other issues raised in this case.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

⁵ This is not to be taken as being representative of any conclusion on the planning merits of the case