



Appeal Decision

Site visit made on 23 June 2020

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/P2935/W/20/3250612

Bayview, Beachway, Blyth NE24 3PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Tracey Elliott against the decision of Northumberland County Council.
 - The application Ref 19/02402/FUL, dated 25 July 2019, was refused by notice dated 10 October 2019.
 - The development proposed is Erection of 1No. new dwelling and associated parking, bins, cycle store and erection of boundary fence (retrospective) at Bayview, Beachway, Blyth, Northumberland NE24 3PG.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An application for an award of costs has been made by the appellant and is considered under separate cover.

Main Issue

3. The main issue is whether the remedial works to the sea wall can take effect as a result of a separate planning application.

Reasons

4. There is considerable history surrounding the site as planning permission was originally granted for three separate plots on one piece of land¹ together with a Section 106 Agreement (S106) to secure remedial works to the existing sea wall that is adjacent to the site, and acts as a sea defence barrier to the land.
5. A further Deed of Variation was made to the S106 under a Section 73 application² to vary the original planning permission. The variation included a number of planning conditions with dates to undertake the works to the sea wall. It requires physical works to support the sea wall including gabion baskets and retaining wall as well as on-going maintenance.
6. The S106 was signed by the original owner of the land and the Council. It effectively runs with the land. Upon sale of the whole or part of the land the

¹ Application Reference 16/02735/FUL

² Application reference 17/04659/VARYCO

obligation will automatically be binding on successors in title of the original parties to it.

7. The parties who signed the S106 were in agreement that the remedial works to the sea wall were necessary in order to make the proposal acceptable in planning terms. This is not disputed by the appellant. There is no evidence before me to suggest that the remedial works or maintenance works are no longer necessary.
8. Since the time the S106 was executed, a further two independent applications were approved by the Council for retrospective permission for the two houses at Plots 1 and 2 (Sandhaven and Shoreside).³ The appeal before me relates to a separate retrospective application for the third dwelling on Plot 3 called Bayview, which is the closest of the three houses to the sea wall.
9. The parties do not agree that a new S106 is required as part of the application that this appeal relates, to secure the remedial works to the sea wall, as set out within the terms of the earlier S106.
10. The person who signed the S106 is responsible for the obligation at that time, and this is given over to any successors in title thereafter. However, as the Council has granted separate retrospective planning permissions for Plots 1 and 2 without any S106, should this independent permission be granted, there would be no legitimate method to secure the sea wall remedial works as per the terms set out in the S106 obligation. The earlier obligation and variation permission would be of no effect.
11. I can find no alternative method of securing the works without the need for a new Section 106 to be attached to any independent planning permission for Plot 3.
12. Despite the appellant explaining that the red line boundary associated with this appeal proposal does not include the land of the sea wall, a Section 106 can be applied to land away from a site. The S106 is the mechanism to secure the necessary works required.

Conclusion

13. Based on the evidence before me, the appeal is dismissed.

Alison Scott

INSPECTOR

³ Application references 17/03871/FUL and 17/03872/FUL