



Appeal Decision

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2020

Appeal Ref: APP/D2510/W/20/3256348

The Meadows, 9 Main Road, Toynton All Saints, Spilsby PE23 5AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Ray Thompson against the decision of East Lindsey District Council.
 - The application Ref S/185/00546/20, dated 19 March 2020, was approved on 26 June 2020 and planning permission was granted subject to conditions.
 - The development permitted is detailed particulars relating to the scale, appearance, landscaping and layout of 7 no. detached houses with associated garages and internal roadway (outline permission ref no. S/185/1454/16 for the erection of residential development (with means of access to be considered)), granted on appeal on 29 September 2017.
 - The conditions in dispute are Nos 2, 6 and 7 which state: (2) *"Within 7 days from the start of the development a Construction Management Plan and Method Statement shall be submitted to and approved in writing by the Local Planning Authority which shall indicate measures to mitigate against traffic generation and drainage of the site during the construction stage of the proposed development. The Construction Management Plan and Method Statement shall include; • phasing of the development to include access construction; • the parking of vehicles of site operatives and visitors; • space for the loading and unloading of plant and materials; • space for the storage of plant and materials used in constructing the development; • wheel washing facilities; • strategy stating how surface water run off on and from the development will be managed during construction and protection measures for any sustainable drainage features. This should include drawing(s) showing how the drainage systems (permanent or temporary) connect to an outfall (temporary or permanent) during construction. The Construction Management Plan and Method Statement shall be strictly adhered to throughout the construction period"*; (6) *"The 2 metre high acoustic fencing as shown to part of the southern boundary on approved plan no. SL-100 Revision C received on 05/06/2020 shall be erected prior to work commencing on the development and shall be thereafter retained and maintained"*, and (7) *"The construction work for the development hereby approved and the deliveries relating to that construction work must only be carried out between the hours of 07:00-18:00 Monday to Friday, 08:00-13:00 Saturday and must not be carried out at any time on Sundays, Bank or Public Holidays"*.
 - The reasons given for the conditions are: (2) *"To ensure that during the course of the development it is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of the site and to ensure that during the course of the development suitable traffic routes are agreed. This condition is imposed in accordance with SP16 and SP10 of the East Lindsey Local Plan"*; (6) *"In order to mitigate noise and disturbance from traffic movement to and from the site on the occupiers of Millfield Cottage, 11 Main Road directly to the south. This condition is imposed in accordance with SP10 of the East Lindsey Local Plan"*, and (7) *"In the interests of the amenity of local residents. This condition is imposed in accordance with paragraph 127 of the National Planning Policy Framework"*.
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Decision

1. The appeal is allowed and the planning permission Ref S/185/00546/20 for reserved matters consent relating to the scale, appearance, landscaping and layout of 7 no. detached houses with associated garages and internal roadway (outline permission ref no. S/185/1454/16 for the erection of residential development (with means of access to be considered)), granted on appeal on 29 September 2017 at The Meadows, 9 Main Road, Toynton All Saints, Spilsby, PE23 5AE, granted on 26 June 2020 by East Lindsey District Council, is varied by deleting condition Nos 2 and 7 and by deleting condition No 6 and replacing it with the following condition:

- (1) Within 2 months of the date of this decision, the 2 metre high acoustic fencing as shown to part of the southern boundary on approved plan No SL-100 Revision C received on 05/06/2020 shall be erected. The 2 metre high acoustic fencing shall thereafter be retained and maintained in accordance with approved details.

Application for costs

2. An application for costs was made by Mr Ray Thompson against East Lindsey District Council. This application is the subject of a separate Decision

Background and Main Issue

3. Outline planning permission was approved on appeal on 11 July 2017¹ for residential development on the appeal site. Only access details were considered at this stage. The appellant claims that the imposition of condition Nos 2, 6 and 7 of reserved matters consent S/185/00546/20 should not have been imposed as such conditions do not relate to the detailed matters which were the subject of the reserved matters consent application, i.e. appearance, landscaping, layout and scale. However, the Council claims that the aforementioned three conditions do relate to the detailed matters which were the subject of the reserved matters consent application. It states that the *'three conditions related to the overall construction and development of the site and do relate to those remaining four reserved matters'*.
4. In the context of the above, the main issue is whether condition Nos 2, 6 and 7 are necessary in so far that they relate to one or more of the four reserved matters which were the subject of reserved matters consent application S/185/00546/20 and whether such conditions meet all of the tests as laid out in paragraph 55 of the National Planning Policy Framework (the Framework).

Reasons

5. The National Planning Practice Guidance (PPG) states that *'the only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters. Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted'*.
6. Condition No 2 relates to the submission of a construction management plan and method statement to include measures to mitigate against traffic

¹ APP/D2510/W/17/3171706

generation and drainage of the site. This condition does not relate to the defined appearance, landscaping, layout or scale reserved matters. Indeed, clear definitions of what is meant by each of these reserved matters is provided in the PPG and in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order).

7. Even if one were to take the view that the part of condition No 2 that relates *'measures to mitigate against traffic generation'* fell within the access reserved matters definition, it would have been necessary to impose such a condition at outline planning permission stage.
8. Condition No 6 relates to the provision of a 2 metre high acoustic fence. The reason for the condition is to protect the occupiers of Millfield Cottage, 11 Main Road in respect of noise and disturbance from traffic movement to and from the site. I do acknowledge that in considering the principle of residential development on the site, the Inspector who considered the outline planning application did consider the inclusion of a length of acoustic fencing between the access and Millfield Cottage. However, I do not agree with the appellant that just because this matter was considered at outline stage it means that it could not be further considered, or indeed controlled by planning condition, at reserved matters consent stage.
9. In reaching the above view, I have taken into account the definition of the reserved matter 'landscaping' in the Order. This says the *'treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area and includes: (a) screening by fences, walls or other means'*. I find that condition No 6 has been imposed to protect the 'amenities' of the occupiers of the neighbouring property, i.e. *'the area'*. I therefore consider that the provision of such a fence directly relates to the landscaping reserved matter.
10. Given the close proximity of Millfield Cottage to the site, I find that it is both reasonable and necessary to protect the amenities (i.e. noise and disturbance) of the occupiers of the neighbouring property at an early stage. This would afford the occupiers of Millfield Cottage protection from noise and disturbance whilst main construction activities are being carried out as well as when the dwellings are occupied.
11. Notwithstanding the above, the appellant comments that written agreement was not sought from him, as per the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, for the imposition of what he considers is a pre-commencement condition as part of the determination of the reserved matters consent application. The main parties were asked to clarify this matter further as part of this appeal and there is no indication that written agreement was sought.
12. It is, however, open to interpretation as to whether condition No 6 is a pre-commencement type condition. The Council comment that condition No 6 *"requires that it should be constructed first and it was not intended therefore to be pre-commencement and permission was not sort from the appellant to include the condition. It is acknowledged by the Council, in hindsight, that the condition could have been better worded"*. Notwithstanding this uncertainty, I would point out that in respect of an appeal submitted against the imposition of conditions imposed on the grant of planning permission, I have the authority to

- reverse the original decision (i.e. to refuse planning permission), or to amend or delete existing conditions and/or to impose new ones.
13. The appellant has commented that they would agree to the imposition of a pre-commencement condition relating to the fence, if I were to find that this was necessary and appropriate at reserved matters consent stage. However, the evidence is such that development has commenced on the site. Consequently, it would not be possible to impose a pre-commencement type condition as that would not meet the tests in paragraph 55 of the Framework.
14. In order to ensure that the occupiers of Millfield Cottage are afforded protection from noise and disturbance at a very early stage, and indeed prior to all of the development being occupied and completed, the main parties were afforded the opportunity to comment on a condition which required the acoustic fence to be erected within a period of time from the date of this decision and thereafter retained. I consider that such an alternatively worded condition would meet all of the tests as outlined in paragraph 55 of the Framework. I have considered the comments made by the main parties and consider that a two month period would be a reasonable timescale. Notwithstanding comments made by the appellant, I am satisfied that this would reasonably allow the acoustic fence to be procured, delivered and erected.
15. Given the above, and whilst existing condition No 6 is in substance still necessary, I shall nevertheless delete it and then impose a new condition which requires the acoustic fence to be erected within two months of the date of this decision. I would point out that the imposition of such a condition would not be more onerous than condition No 6 which is imposed on the existing reserved matters consent. Indeed, such a condition requires the acoustic fence to be provided at an earlier stage.
16. Condition No 7 relates to construction working hours. I agree with the appellant that this is a matter which does not directly relate to any of the reserved matters. Consequently, this is a matter which could only have been imposed when the outline planning permission was granted; i.e. part and parcel of the consideration of the principle of residential development on the site. I find that the condition has not been reasonably imposed and therefore it fails to meet all of the tests as outlined in paragraph 55 of the Framework.

Conclusion

17. For the reasons outlined above, I conclude that condition No 6 should be deleted and then a new condition imposed requiring the acoustic fence to be erected within two months of the date of this decision and thereafter retained and maintained. However, condition Nos 2 and 7 were not reasonably imposed and should therefore be deleted. Therefore, the appeal should be allowed.

D Hartley

INSPECTOR