The Planning Inspectorate

Appeal Decision

Site visit made on 4 September 2020

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 7th December 2020.

Appeal Ref: APP/D1265/W/20/3254197
Land West of Cattistock Road, Maiden Newton DT2 0AG

- 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 consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr Raymond McIntyre (Devon & Dorset Properties Ltd) against Dorset Council.
- The application Ref WD/D/19/002836, dated 5 November 2019, sought approval of details pursuant to condition Nos 2 and 6 of planning permission Ref WD/D/16/001598 granted on 16 June 2017.
- The development proposed is residential development for up to 9 dwellings, together with access, associated infrastructure and public open space (amended).
- The details for which approval is sought are: details of the layout, scale and appearance of the buildings, together with details of the access, geometric highway layout, turning and parking areas.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Raymond McIntyre (Devon & Dorset Properties Ltd) against Dorset Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Condition 2 of the outline permission states that layout, scale, appearance and landscaping were reserved for future consideration. This appeal seeks approval of layout, scale and appearance for only part of the site for which outline permission was granted. The appellant has confirmed that the reserved matters for the remainder of the site and landscaping for the appeal site would be dealt with in separate applications.

4. Although the appellant suggests that access was also reserved, it does not form part of the reserved matters listed in the outline permission, and the Local Planning Authority (LPA) has confirmed that means of access to the site were approved at outline stage. Furthermore, a Proposed Access plan is one of the approved plans listed in condition 1. Condition 6 of the outline permission required details of the access, geometric highway layout, turning and parking areas to be submitted and agreed by the LPA, including details of materials and drainage for those areas. Therefore, while the means of access to the site has

already been approved, the details of the internal road layout have not. The appellant is seeking approval of these details as part of this appeal and I have considered the appeal on this basis.

5. Amended plans have been submitted with the appeal. Drawings 5138.01Q, 5138.05F and 5138.06D were not before the LPA at the time it made its decision. Drawings 5138.02H and 5138.03F had been submitted to the LPA but were not accepted. The proposed amendments include various alterations to levels and landscaping, however as landscaping is a reserved matter these do not relate to the matters before me in this appeal. Changes are also proposed to the footway and path around the proposed turning head and the replacement of attached lean-to car ports for plots 1 and 5 with detached garages. These changes are minor and are not significantly different to the plans before the LPA. Therefore, there would be no prejudice to any party by my accepting these plans.

Main Issues

6. The main issues are whether the proposal is consistent with, and authorised by, the terms of the outline planning permission; and if so, the effect of the proposed development on the character and appearance of the area, the significance of heritage assets and the living conditions of 1 Manor Farm Close in respect of outlook and privacy.

Reasons

7. Section 92 of the Town and Country Planning Act 1990 (as amended) and Article 5 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) allow an LPA to grant permission subject to a condition specifying reserved matters for the authority's subsequent approval.

8. Planning permission is granted for a development at outline stage. An application for the approval of reserved matters is, by definition, an application for the approval of details pursuant to the permission. In this case, condition 1 of the outline permission requires that the development shall be carried out in accordance with three approved plans: location plan, Parameters Plan and Proposed Access plan. Condition 5 limits the number of dwellings to 9, and requires them to be contained within a grey shaded area on the Parameters Plan.

9. The Parameters Plan sets out a number of parameters, including the access into the site; areas for development and public open space; the location of a shared surface courtyard, including an offshoot that seems to me to indicate a turning head; a pedestrian access to the public open space to the west; locations where frontages should be to the street and where they should be onto green space; and trees and hedgerows to be retained.

10. While the appellant suggests that the Parameters Plan is only diagrammatic, it includes a scale bar and there is nothing on it to say that it is indicative or illustrative. This is in contrast to the Illustrative Masterplan also submitted at outline stage, which is not one of the listed approved plans, and is clearly labelled as being illustrative and not to scale. Therefore, in the absence of anything telling me otherwise, and given the specific and definite wording of

condition 1, I conclude that the Parameters Plan is something that must be complied with as part of the outline permission.

11. The appellant indicates that the LPA's highway engineers found the layout of the internal access road unacceptable at outline stage and that the LPA's report for that application referred to the need for an adoptable turning head. I do not have those documents before me however, and there is no compelling evidence before me that any highway objection related to the internal arrangement shown on the Parameters Plan. Had there been such an objection, I would have expected it to be carried through and reflected in the conditions on the outline permission. However, this is not the case, as the outline permission requires compliance with the Parameters Plan as an approved plan.

12. The proposed dwellings would be contained within the grey shaded area shown on the Parameters Plan for development. However, the proposed site layout shows the proposed turning head and pedestrian access in a different location to that shown on the Parameters Plan. Although the pedestrian access is between the first and second terrace of houses, it is nevertheless further north in the site than on the Plan.

13. The appellant explains that this reflects the position of a high voltage underground electricity cable which crosses the site and the requirement for a turning head to adoptable standards, which were not taken into account at outline stage. While there is clearly a good reason for the change in the location of these features, and the highway authority has raised no objection to the site layout now proposed, nevertheless it does not accord with the Parameters Plan. Being 'broadly in accordance' with that Plan would not comply with the specific and definite wording of condition 1.

14. Condition 6 requires further details of the access and geometric highway layout but there is nothing in the wording of that condition to show that it supersedes the requirement to comply with the Parameters Plan, or offers any flexibility to deviate from that Plan. For instance, it does not say that it seeks details 'notwithstanding' those shown on the approved plans. As such, it does not allow for the deviation from the Parameters Plan now proposed.

15. The Parameters Plan also shows a section of the site where properties are to have a frontage onto green space, which equates to proposed plots 4, 5 and 6. As proposed, each of these plots would have their front doors and principal elevations facing the internal road, not the green space to the west. While they would have doors and windows facing the green space, they would be some distance from it, with what the appellant describes as private gardens inbetween. Plots 5 and 6 would have paths from their rear doors to a shared path connecting to the green space, but Plot 4 would not. Occupiers of that plot would have to access the green space either via the shared pedestrian access or via a path on the far side of its parking space and garage.

16. Furthermore, although Plots 5 and 6 would have a porch over their west-facing door, giving it the appearance of an entrance, Plot 4 would not. All three plots would also have bi-fold doors on the rear elevations, which are not commonly seen on frontages. Consequently, due to their design and layout, I disagree with the appellant's suggestion that these dwellings would appear 'double fronted'. Their frontages would be to the internal road, and they would not have a frontage onto the green space as required by the Parameters Plan.

17. I am mindful that the Illustrative Masterplan showed a similar garden arrangement, however the appearance of the dwellings is also critical to whether they can be considered to have a frontage to the green space, and this was not under consideration at outline stage. In any event, the Illustrative Masterplan is not an approved plan and there is no substantive evidence before me that the LPA considered that the garden arrangement it showed complied with the Parameters Plan.

18. The Parameters Plan shows an area of trees and hedgerow along the boundary of the site with Cattistock Road to be retained, but this vegetation is not shown in the rear gardens of Plots 8 and 9 on the latest version of the proposed site layout. However, no built development is proposed in that part of the site, and I note that previous versions of the site layout did include it. As landscaping is a reserved matter, I cannot be certain that the intention is to remove this vegetation, and as such this apparent discrepancy could be resolved through a subsequent application.

19. Nevertheless, in the other respects set out above, the proposed site layout would not accord with the Parameters Plan, and therefore would not comply with condition 1 of the outline permission. The proposal is therefore not consistent with, or authorised by, the terms of the outline planning permission.

20. It would not be appropriate for me to consider the appeal as a full application as it has not been advertised as such, and therefore interested parties who may have wished to comment on the proposal as a whole, would not have had an opportunity to do so. Consequently, there would be a risk that interested parties would be prejudiced were I to consider the appeal otherwise than as a reserved matters submission in relation to the outline permission.

21. Given my findings above, I must dismiss the appeal. It has not therefore been necessary for me to consider the planning merits of the proposal, or the matters raised by the LPA and interested parties.

22. I appreciate the appellant's circumstances given the need to accommodate the high voltage cable and adoptable turning head within the scheme. However, it is open to the appellant to have an alternative layout considered through a fresh application for planning permission.

Conclusion

23. For the reasons given above, the appeal is dismissed.

L McKay

INSPECTOR