



Appeal Decision

Site Visit made on 18 December 2020

by A M Nilsson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/E2001/W/20/3259022

Sands Lane Nurseries, Sands Lane, Holme Upon Spalding Moor YO43 4EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Northvale Homes & East Coast Electric Generating Co Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 18/04164/REM, dated 17 December 2018, sought approval of details pursuant to condition No 1 of a planning permission Ref DC/14/03761/OUT/WESTWW, granted on 11 August 2016.
 - The application was refused by notice dated 20 March 2020.
 - The development proposed is the erection of 39 dwellings.
 - The details for which approval is sought are appearance, landscaping, layout and scale.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout and scale details submitted in pursuance of condition No 1 attached to planning permission Ref DC/14/03761/OUT/WESTWW granted on 11 August 2016, subject to the conditions contained in the schedule at the end of this decision.

Preliminary Matter

2. The Council have commented that they will not be contesting the appeal. They have nevertheless submitted a statement which details the background and deliberations with the appellant which led to the refusal of the application.

Main Issue

3. The main issue is the necessity of affordable housing and open space (and the commuted sums in lieu of on-site provision) with regard to the details for which approval is sought.

Background

4. Outline planning permission was granted on 11 August 2016 for the erection of 39 dwellings at the appeal site. This was subject to a number of conditions. Condition 1 requires the approval of the details of the layout, scale, appearance and landscaping of the development (the reserved matters). Also relevant to the appeal are conditions 4 and 5 which require a scheme for the provision of affordable housing and the provision of open space (including arrangements for its future maintenance).

Reasons

5. The appeal site is the former Sands Lane Nurseries. It is located on the western side of Sands Lane where it sits opposite existing residential properties. The Council comment that the site forms part of a wider site that is allocated for housing development.
6. The planning merits of the submitted details are not in dispute between the parties. From the evidence before me, I have no reason to form a different view.
7. The power to grant outline planning permission is contained in s92 of the 1990 Act and Article 5 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). These allow the Local Planning Authority to grant permission subject to a condition specifying reserved matters for the authority's subsequent approval. The outline permission is the planning permission.
8. As planning permission has already been granted the decision maker may only consider the acceptability of the reserved matters which are before them. There is no scope to reconsider matters which were dealt with (or should have been dealt with) at the outline stage. As a result, an application for the approval of reserved matters is, by definition, an application for the approval of details pursuant to the permission.
9. The reserved matters relevant to the main issue are those of layout and landscaping. These are defined in article 2 of the DMPO as: 'Layout' – the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development; and 'Landscaping' – the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features.
10. Taking the above definitions into account and the fact that there are conditions on the outline planning permission pertaining to the provision of affordable housing and the provision of open space (including arrangements for its future maintenance) I do not consider that the consideration of these matters at the reserved matters stage is appropriate. These issues do not constitute aspects of the development that could not have been reasonably foreseen at the outline stage.
11. Although I do not know the circumstances behind the affordable housing and open space planning conditions on the outline permission, they are not in dispute between the parties nor are their merits before me. The conditions remain in place and require being satisfied prior to the commencement of development. The outcome of the appeal does not alter the status of these conditions. Although I consider that the requirement to enter into a S106 agreement to secure affordable housing and open space provision at the reserved matters stage is not appropriate, to my mind, requiring the entering into an agreement at this stage would, in any event, duplicate control unnecessarily.

12. I therefore conclude that the Council should not have withheld approval of the reserved matters due to necessity of affordable housing and open space provision, as such issues should, and indeed were, considered at the outline stage. As a result, the reserved matters are not contrary to Policies H2 and C3 of the East Riding Local Plan (2016) which require, amongst other things, that affordable housing will be required as part of housing developments and that development that increases demand for open space will be required to address this demand.

Other Matters

13. I note a number of objections that were received to the application. Objections relating to the impact of the development on highway safety are not pertinent to the main issue and there is no substantive evidence before me that would lead me to conclude that there would be unacceptable levels of harm. The traffic generation and highway matters outside the site are matters for the outline planning permission and its conditions, not the reserved matters which are before me.
14. On the matter of the impact on living conditions, this also is not pertinent to the main issue and there is nothing before me to suggest that unacceptable harm would be caused to the living conditions of occupants of surrounding residential properties as a result of the development.
15. In terms of the scale of the development, third party comment is made that only bungalows should be allowed. Whilst I observed that this part of Sands Lane itself is made up of bungalows, there are two storey properties in the wider area and I do not consider that there would be harm to the character and appearance of the area due to the scale of the proposed development.
16. There is also no evidence before me that the development would cause harm to landscape or ecological interests. Reference is also made to access and ownership of Green Lane. This would be a private matter between the affected parties and is not a reason to withhold approval of the reserved matters.

Conditions

17. I have imposed a condition requiring that the development is carried out in accordance with the approved plans, this is in the interest of certainty. In the interests of the character and appearance of the area, I have imposed conditions requiring the submission of details of materials, the implementation of landscaping and the submission of a landscape management plan.
18. I have considered the conditions referred to in the consultation responses. These relate to such matters that are outside the scope of the reserved matters and are, for the most part, covered in the conditions of the outline planning permission.

Conclusion

19. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1563 – 120 Rev H Site Plan and Boundary Details
 - 1563 – 121 Rev A Site Section
 - 1563 – 122 Rev B House Type Details – AA/AB/BB
 - 1563 – 123 Rev B House Type Details – BA(1)B/C/D
 - 1563 – 124 Rev B House Type Details – E/F/G
 - 1563 – 125 Rev B House Type Details – H/J/K
 - 1563 – 126 Rev C House Type Details – LL/Garage Types
 - 1563 – 127 Rev A House Type – Handed Details – H/J/K
 - 2990/1 Rev E Detailed Landscape Proposals
- 2) Notwithstanding any details shown on the submitted plans and forms, no development shall take place above damp proof course until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) All soft landscaping comprised in the approved plan (Drawing Number 2990/1 Rev E) shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.
- 4) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of part of the development. The landscape management plan shall be carried out as approved.

-----End of Conditions Schedule-----