
Appeal Decisions

Site visit made on 25 January 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 February 2021

Appeal A

Appeal Ref: APP/G2713/W/20/3261207

Three Tuns Garage, Brentwood House, Sandhutton YO7 4RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Craig Smith (Moorside Developments Ltd) against the decision of Hambleton District Council.
 - The application Ref 20/01618/MRC, dated 23 July 2020, was refused by notice dated 21 September 2020.
 - The application sought planning permission for outline application for 5 dwellings and associated infrastructure all matters except access are reserved without complying with a condition attached to planning permission Ref 17/01247/OUT, dated 18 October 2017.
 - The condition in dispute is No. 8 which states that:
No part of the development shall be brought into use until the existing access on to the A167 has been permanently closed off and the highway restored. These works shall be in accordance with details which have been approved in writing by the Local Planning Authority. No new access shall be created without the written approval of the Local Planning Authority.
 - The reason given for the condition is:
In accordance with Policy [sic] and in the interests of highway safety.
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Appeal B

Appeal Ref: APP/G2713/W/20/3261208

Three Tuns Garage Vehicle Repair and Workshop, Brentwood House, Sandhutton YO7 4RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Craig Smith (Moorside Developments) against the decision of Hambleton District Council.
- The application Ref 20/01617/MRC, dated 23 July 2020, was refused by notice dated 21 September 2020.
- The application sought permission for approval of reserved matters (considering appearance, landscaping, layout and scale) following outline approval 17/01247/OUT for the construction of 5no dwellings and associated infrastructure (amended site plan and dwelling details submitted) without complying with a condition attached to planning permission Ref 19/00925/REM, dated 11 October 2019.
- The condition in dispute is No.3 which states that:
The permission hereby granted shall not be undertaken other than in complete accordance with the drawing(s) and/or details received by Hambleton District Council on 31 July 2019 unless otherwise agreed in writing by the Local Planning Authority.

- The reason given for the condition is:
In order that the development is undertaken in a form that is appropriate to the character and appearance of its surroundings and in accordance with the Development Plan Policy(ies).
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for 5 dwellings and associated infrastructure all matters except access are reserved at Three Tuns Garage Vehicle Repair and Workshop, Brentwood House, Sandhutton YO7 4RW in accordance with the application Ref 20/01618/MRC made on the 23 July 2020 without complying with condition No. 8 set out in planning permission Ref 17/01247/OUT granted on 18 October 2017 by the Hambleton District Council, but otherwise subject to the conditions set out in the attached Schedule of Conditions.

Appeal B

2. The appeal is allowed and planning permission is granted for approval of reserved matters (considering appearance, landscaping, layout and scale) following outline approval 17/01247/OUT for the construction of 5no dwellings and associated infrastructure (amended site plan and dwelling details submitted) at Three Tuns Garage Vehicle Repair and Workshop, Brentwood House, Sandhutton YO7 4RW in accordance with the application Ref 20/01617/MRC made on the 23 July 2020 without complying with condition No. 3 set out in planning permission Ref 19/00925/REM granted on 11 October 2019 by the Hambleton District Council, but otherwise subject to the conditions set out in the attached Schedule of Conditions.

Application for costs

3. Applications for costs were made by Mr Craig Smith (Moorside Developments) against Hambleton District Council. Although made separately in relation to both Appeal A and Appeal B, the grounds of the costs applications are identical and will be the subject of a single separate Decision.

Procedural Matters

4. The development address given differs between application form and decision notice (and subsequent appeal documentation), and between each appeal. In the interests of consistency, I have adopted the development addresses as they appear on the original decision notices from which these appeals derive, and not as set out on the initial application forms.

Background and Main Issue

5. Outline planning permission was granted by the Council in October 2017 for the construction of five dwellings and associated infrastructure. All matters other than access were reserved for future consideration. Subsequently, an application for approval of reserved matters was approved in October 2019. Unless otherwise specified, any reference hereafter to condition No. 8 refers to outline planning permission Ref No: 17/01247/OUT and reference to condition No. 3 refers to reserved matters approval Ref No: 19/00925/REM.
6. Condition 8 sought to ensure that the access into the former vehicle repair workshop's forecourt from the A167 was closed off prior to any of the dwellings

being occupied in the interests of highway safety. Condition 3 requires that the development be carried out in accordance with the approved plans for the scheme. With regard to the site layout, the approved plan showed a new single point of access from the A167 into the residential development, from which vehicular access to all five dwellings would be achieved. The previous use's forecourt access point would be block off with a newly planted hedge which would extend around plot 5's northern and western perimeter, punctuated by a path to provide pedestrian access to the front door, and access to the integral garage would be taken from the rear (east).

7. The appellant now seeks via Appeal A to remove condition 8 and its requirement to close off the previous access into the site and to vary condition 3 to amend the approved plans to show revised access and boundary planting arrangements for plot 5, and the reorientation of plot 5's attached garage to allow access from the west. Given the previous use of the site, the Local Highways Authority¹ raised no objection to either of the proposals on highway safety grounds and neither application was refused in terms of impact upon highway safety.
8. Thus, having regard to the above, the main issue in respect of both appeal A² and appeal B³ is the effect of the removal of condition 8 and the variation of condition 3 upon the character and appearance of the development and upon the surrounding area.

Reasons

9. The Sandhutton Parks Garden development, for which construction works are currently on-going, will upon completion be a small residential cul-de-sac development of five dwellings. The site is located at the edge of the village on the A167. Beyond it, to the south, lie open fields which are predominantly set behind generous roadside grass verges and hedgerows.
10. Although at the edge of the village, the site adjoins existing residential properties to the north, and lies opposite residential properties on the western side of the A167. These nearby properties display a mix of boundary treatments; those to north such as Brentwood House have substantial brick boundary walls whilst those opposite are marked by hedging. Driveway entrances punctuate both walls and hedgerows of surrounding properties.
11. The proposals set out by Appeal A and Appeal B would result in an arrangement little different to the prevailing pattern and character on approach to Sandhutton from the south. They would collectively result in a wider opening in the proposed hedgerow planting than would have been the case with the previously approved scheme. This would not, however, fatally undermine the prevailing character or appearance of the surrounding area or, crucially, diminish the character or appearance of the host property. An extensive length of hedgerow planting around the majority of the site's northern and western perimeter would remain and, in longer views into and out of the village, would blend with and form a visual continuation of, the existing splayed field hedge to the south of the site.

¹ North Yorkshire County Council

² The removal of condition No. 8 of planning permission Ref No 17/01247/OUT

³ The variation of condition No. 3 of planning permission Ref No 19/00925/REM

12. I accept that, when viewed from closer quarters, the wider site entrance would be clearly visible. However, as this would not have joined up with the splayed hedge to the south in any event, I do not find the gap created by the access to be harmful to the wider character or appearance of the site or the approach to Sandhutton.
13. I have carefully considered the Parish Council's concerns regarding the effect of the proposals on how the overall development is perceived and how the dwelling at plot 5 is seen within it. Despite the additional entrance, I do not agree that it would appear any less a part of the overall development than it would with the previously approved site layout and access points. Nor am I persuaded that the additional entrance point from the A167 to serve plot 5 would be incongruous or otherwise harmful to character and appearance given the nature and layout of nearby residential plots and the manner of their accesses. Nor would the reorientation of the garage door fenestration from east to west facing elevations cause harm to the character or appearance of the plot 5 dwelling.
14. The proposal to remove condition 8 and vary condition 3 would not compromise the development's ability to deliver high quality design that would avoid causing harm to the character and appearance of the surrounding area. As such, there would be no conflict with Core Strategy policies CP16 or CP17, or with Development Policies DP32 or DP33.
15. I am advised that the Council submitted its emerging Local Plan (eLP) in March 2020 and I am aware from other appeals I am dealing with within the district that it remains at an early stage of the local plan process. The refusal reasons for the applications that led to these appeals did not refer to any eLP policies, nor have I been referred to any during the appeal. The Council state that the eLP is no more than a material consideration to which limited weight can be afforded, with which I do not disagree and have determined the appeal accordingly.

Conditions

16. Planning Practice Guidance (the Guidance) makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission unless they have already been discharged. I have not been advised of the status of the conditions attached to the original permissions in respect of either Appeal A or Appeal B but note that the Council have provided a list of suggested conditions in relation to both appeals, clearly updated to reflect the current status of the construction works and where details have been previously agreed and approved. The appellant has had the opportunity to respond to these conditions at the Final Comments stage but has not done so. I have therefore considered the conditions in this vein and also in light of paragraph 55 of the Framework.

Appeal A

17. Conditions 2, 4, 5, 9 and 10 refer to compliance with details and specifications previously agreed to by, and with, the Council and to which the appellant has not objected or challenged the content. However, conditions 6, 7 and 8 relate to ground contamination matters and do not specifically refer to having previously been agreed between the main parties. Nor is it clear whether, to what extent or in what manner the ground contamination condition from the

outline permission has been addressed. In light of this, and the Guidance, I have re-attached the original condition. In the event that this has in fact been discharged, then that is a matter which can be addressed by the parties.

Appeal B

18. As development has commenced it is not appropriate for me to impose the time limit condition originally imposed on the approval of reserved matters. Although the original condition 3 did not specifically refer to the approved plans by title or drawing number, I have revised the wording of the plans condition to reflect the changes proposed by the revised site layout and access arrangements and the garage door details in the interests of certainty, clarity and precision.
19. Condition 2 sets out continued compliance with details already agreed between the appellant and the Council, whilst conditions 3, 4 and 6 replicate conditions 4, 5 and 7 of the original reserved matters approval. Finally, condition 5 reflects the changes to the access arrangements and the approved plans and refers specifically to the revised site layout plan in respect of accesses.

Conclusion

20. For the reasons set out, and having considered all other matters raised, I conclude that Appeal A should be allowed and condition 8 deleted and Appeal B also be allowed and condition 3 varied.

Graeme Robbie

INSPECTOR

Appeal A – Schedule of Conditions

1. The number of dwellings shall not exceed 5.
2. The site levels noted in the cover letter dated 16 October 2019 to prevent surface water from non-highway areas discharging on to the existing or proposed highway approved by the Local Planning Authority on the 4.3.2020 shall be implemented in accordance with the approved details.
3. The access(es) to the site are required to be set out and constructed in accordance with the published Specification of the Highway Authority and details that have been approved in writing by the Local Planning Authority. All works shall accord with the approved details unless otherwise agreed in writing by the Local Planning Authority.
4. The precautions noted in the cover letter dated 16 October 2019 to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site approved by the Local Planning Authority on 4.3.2020 shall be kept available, in full working order and used until the completion of the development.
5. The on-site parking and materials storage areas indicated on the site plan approved by the Local Planning Authority on 4.3.2020 shall be kept available for their intended use at all times whilst construction works are in operation.
6. Within 1 month of the date of this decision a Phase 2 assessment of the risks posed by contamination, the developer is required to commission a detailed assessment of the development site and materials scheduled for re-use in garden and communal areas. This should be submitted in writing to the local planning authority for approval. This assessment should ensure that the risks from land contamination to the future users of the land and neighbouring land are identified and an appropriate remediation strategy developed, together with those to controlled waters, property and ecological systems, and to ensure that the development once complete does not present any unacceptable risks to residents, neighbours and other offsite receptors. The assessment should be carried out in line with the Environment Agency's Land contamination risk management (LCRM) procedures for contaminated land.
7. If contamination is identified, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared and is subject to approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
8. Prior to first occupation, the approved remediation scheme must be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

9. The development shall be carried out in accordance with the foul sewage and surface water disposal facilities noted in the cover letter dated 16 October 2019 approved by the Local Planning Authority on 4.3.2020.
10. The development shall not be brought in to use until a footway has been formed across the site frontage parallel with the A167 from the vehicular access point to connect to the footway to the north in accordance with the approved site layout approved by the Local Planning Authority on 4.3.2020.

Appeal B – Schedule of Conditions

1. The permission hereby granted shall not be undertaken other than in complete accordance with the drawings and details received by Hambleton District Council on 27 July 2020 project number S027/16: the Plot 5 drawing 19C and 20C and project number S027-16 drawings 7H received 27 July 2020, and plot 1 drawing 2B, plot 2 drawing 10A, plot 3 drawing 4D and plot 4 drawing 5D received 31 July 2019.
2. The external envelope of the buildings shall comprise the following materials: Flemish Antique and Autumn Red with Sandtoft TLE, double pantile in terracotta red and dark grey slate approved by the Local Planning Authority on the 4.3.2020.
3. All doors and windows on elevations of the building(s) adjacent to the existing and or proposed highway shall be constructed and installed such that they do not open over the public highway for a height of 2.4 metres from the level of the adjacent highway. Above 2.4 metres no part of an open door or window shall come within 0.5 metres of the carriageway. Future replacement doors and windows shall also comply with this requirement.
4. Any projection overhanging the footway shall be securely fixed and no part shall be less than 2.4 metres above the footway level and no closer than 0.5 metres from the edge of the carriageway.
5. No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas indicated S027/16 7H are available for use unless otherwise approved writing by the Local Planning Authority. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
6. No building works including excavation, demolition works and delivery of construction materials shall be carried except between 0730 hours and 1800 hours Monday to Friday, 0800 hours to 1300 hours Saturday and there shall be no such work on Sunday or on any public holidays, unless by prior written consent of the Local Planning Authority

****end of Schedule****