



Appeal Decisions

Site visit made on 25 January 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal A

Appeal Ref: APP/G2713/W/20/3261769

**Ingleby Arncliffe Church of England VC Primary School, High Street,
Ingleby Arncliffe DL6 3NA**

- 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 planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Quartermaine (York Diocesan Board of Education) against Hambleton District Council.
 - The application Ref 20/00665/MRC is dated 31 March 2020.
 - The application sought planning permission for outline application (some matters reserved) for the demolition of existing school and construction of four dwellings and access as amended by email received by Hambleton District Council on the 26 November 2019 without complying with a condition attached to planning permission Ref 19/01448/OUT, dated 13 January 2020.
 - The condition in dispute is No. 14 which states that:
The access road set out on drawing HN/19/002/003 received on 03 July 2019, shall be completed to the North West boundary of the site, prior to the occupation of the fourth dwelling.
 - The reason given for the condition is:
In order that a satisfactory access is completed through the site.
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Appeal B

Appeal Ref: APP/G2713/W/20/3261770

**Ingleby Arncliffe Church of England VC Primary School, High Street,
Ingleby Arncliffe DL6 3NA**

- 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 planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr S Quartermaine (York Diocesan Board of Education) against Hambleton District Council.
- The application Ref 20/00664/MRC is dated 31 March 2020.
- The application sought planning permission for outline application (some matters reserved) for the demolition of existing school and construction of four dwellings and access as amended by email received by Hambleton District Council on the 26 November 2019 without complying with a condition attached to planning permission Ref 19/01448/OUT, dated 13 January 2020.
- The condition in dispute is No. 11 which states that:
The size of each dwelling in the reserved matters submission shall reflect the mix and size requirements as expressed in Development Policy DP13 of the Hambleton Local Development Framework.

- The reason given for the condition is:
To ensure that the scope of the decision reflects the proposal made and that the development meets local needs in terms of the size and type of dwellings in accordance with Hambleton Local Development Framework Policy DP13 and the Size, Type and Tenure SPD.
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Decisions

1. **Appeal A** and **Appeal B** are allowed and outline planning permission is granted for outline application (some matters reserved) for the demolition of existing school and construction of four dwellings and access as amended by email received by Hambleton District Council on the 26 November 2019 at Ingleby Arncliffe Church of England VC Primary School, High Street, Ingleby Arncliffe DL6 3NA in accordance with the applications Ref 20/00665/MRC (Appeal A) and 20/00664/MRC (Appeal B) made on the 30 March 2020 without complying with conditions Nos. 14 (Appeal A) and 11 (Appeal B) set out in planning permission Ref 19/01448/OUT granted on 13 January 2020 by the Hambleton District Council, but otherwise subject to the conditions set out in the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by York Diocese Board of Education against Hambleton District Council in respect of Appeal B. This application is the subject of a separate Decision.

Background and Main Issues

3. The Council granted outline planning permission¹ with some matters reserved for the construction of four dwellings and associated works in January 2020. Access was considered at the outline stage, with appearance, landscaping, layout and scale the reserved matters to be considered at a future point.
4. The outline permission was subject to a number of conditions, of which two, conditions 14 and 11, are the subject of these appeals. Appeal A relates to condition 14 of the outline approval. This condition seeks to ensure that the access road shown on Drwg No: HN/19/002/003² is completed to the north west boundary of the site prior to the occupation of the fourth dwelling. Appeal B relates to condition 11 of the outline approval. This condition seeks to ensure that each dwelling in the reserved matters submission shall reflect the mix and size requirements expressed in policy DP13 of the Hambleton Local Development Framework 'Development Policies Development Plan Document (DPD).
5. References herein to Appeal A or Appeal B are therefore made in those terms, although I am mindful that the Council's Statements of Case associate the wrong condition and application to the appeal reference numbers. I have however taken the appellant's appeal forms as being definitive in this matter and it is clear upon reading the submissions in each instance which material matters relate to each appeal. I have determined the appeal accordingly.
6. Although I have considered the matters relating to each disputed condition separately in relation to Appeal A and Appeal B my decision is set out as a

¹ LPA Ref No: 19/01448/OUT

² Stated as being received by the LPA on 3 July 2019

single decision addressing both matters in the interests of clarity. I am satisfied that in so doing neither party will be disadvantaged.

7. Having regard to the above, in relation to Appeal A the main issue is whether the disputed condition is necessary, reasonable and precise, having regard to matters of access and those other matters reserved for future consideration. In relation to Appeal B, the main issue is whether the disputed condition is necessary and reasonable, having regard to housing mix.

Reasons

8. The National Planning Policy Framework (the Framework)³ is clear that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. These are known as the '6 tests' of planning conditions.

Appeal A

9. It is agreed by the two main parties that the only detailed matter for consideration at outline stage was that of access. That means that the other detailed matters, those of appearance, landscaping, layout and scale, were reserved for future consideration.
10. 'Access' in relation to reserved matters is defined⁴ as 'accessibility to and within the site for vehicles, cycles and pedestrians in terms of the position and treatment of access and circulation routes and how these fit into the surrounding access network'. Submitted with the outline planning application, a 'proposed site layout'⁵ showed access into the site from the existing layby at the appeal site (school) entrance. An access road through the site towards land to the rear and the siting of four detached dwellings is also shown on that plan, along with indicated possible future links to land to the east and west of the site.
11. As access was a matter for consideration at the outline stage, in principle a condition or conditions relating to access or highway safety matters would not be unreasonable or unnecessary. However, the Council have not cited any highway safety justification for the imposition of the disputed condition, instead stating that it is necessary to ensure a satisfactory access through the site to avoid the creation of a 'ransom strip' at the edge of the existing site.
12. Although only illustrative, the proposed site layout does not suggest there to be any imperative reason why it is necessary for the access to be completed up to the north west site boundary prior to occupation of the fourth dwelling however. The indicative layout demonstrates how four dwellings could be laid out, including an indication of where vehicular and pedestrian access to each of them could be secured. However, the layout is indicative and therefore subject to final resolution at the reserved matters stage. In this respect, the disputed condition unreasonably seeks to fetter the reserved matters; those being matters relating to layout more appropriately considered at the reserved matters stage.

³ Framework paragraph 55

⁴ Town and Country Planning (Development Management Procedure) (England) Order 2015: Pt 1, paragraph 2(1)

⁵ Drwg No: HN/19/002/003

13. There are no objections on highways grounds to the alignment or width of the access beyond the entrance into the site. Whilst perhaps desirable in light of a longer term desire to develop the site to the rear, there is insufficient evidence before me to persuade me that a safe and satisfactory access through the site could not be achieved or secured when considered the layout reserved matter, or that this condition is indeed either necessary for, or relevant to, the development permitted.
14. The disputed condition is therefore neither necessary, reasonable nor relevant to the development and for these reasons, the disputed condition would fail to satisfy the tests of conditions set out in the Framework and Planning Practice Guidance.

Appeal B

15. Although the layout, appearance, landscaping and scale are all reserved for future consideration, the illustrative proposed site layout plan shows how four detached dwellings could be accommodated within reasonably modestly sized plots. In granting planning permission for a development specifically described as providing four dwellings on a site of this size, the Council clearly considered the site to be suitable and capable of accommodating the quantum of development proposed.
16. It is not uncommon for outline planning permissions to be subject to restrictions imposed by way of condition. Thus, restrictions on dwelling numbers (if not already specified) or the heights of dwellings can pass the tests for conditions set out in the Framework, and indeed the outline approval deals with such matters in both its description and at condition 12. In dealing with such matters in this way certainty is provided.
17. In this instance however, I am not persuaded that the disputed condition provides precision or that it is reasonable or necessary. The Council's case does not set out what the established housing need is for the locality, nor is anything more than very vague reference made to the SPD, and no explicit reference to its requirements in this regard. Other than stating that the provisions of DPD policy DP13 and the SPD are of relevance, which they would be in any event given the scope and range of the reserved matters, the condition serves little purpose in terms of setting out expectations of policy to the appellant.
18. The wording and requirements of the condition are vague and imprecise and the expectations upon the appellant are not clearly set out. The Council have not set out any justification within their appeal submission of the type, nature or size of house that it is that they seek through the imposition of this condition and the failure to determine the application within the prescribed period adds to this lack of precision by the absence of further justification for the grounds for this approach. Nor am I persuaded that the absence of this condition would prejudice the ability of the Council to ensure that the proposed dwellings would be of an appropriate size or type. Thus, the necessity of the condition has not been adequately demonstrated and lacks precision, thereby failing to satisfy the tests of conditions described in the Framework and Planning Practice Guidance.

Conditions

19. Each appeal relates to conditions imposed upon outline planning permission reference 19/01448/OUT. I have no evidence before me that an application for approval of the reserved matters has been submitted or that any of the information required by other conditions has been submitted. I have therefore considered the entirety of the conditions imposed upon the outline permission in the current instance.
20. As I have concluded that both Appeal A and Appeal B should succeed, and they both relate to the same original outline planning permission, my decision and associated conditions are expressed in terms of a single decision. I have revised the wording of condition 1 so as to ensure that the effect of allowing these appeals is not to extend the time period in which the development must be started or an application for approval of reserved matters be made. I have therefore adopted the date given by the original outline planning permission was granted in this respect.
21. I have no evidence before me which would lead me to reach a different conclusion in respect of the other conditions which were not subject to dispute between the parties and so I have adopted those without amendment, other than slight renumbering brought about by my decision in respect of the disputed conditions.

Conclusion

22. For the reasons set out, and having considered all other matters raised, I conclude that Appeal A and Appeal B should be allowed.

Graeme Robbie

INSPECTOR

Schedule of Conditions – Appeals A and B

- 1) Application for the approval of all of the reserved matters shall be made to the Local Planning Authority not later than a period of three years from 13 January 2020 and all of the development hereby approved shall be begun before the expiry of whichever is the later of the following:
 - i) Three years from the date of 13 January 2020; and
 - ii) The expiration of two years from the final approval of the reserved matters or in the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) No development shall commence until details of all the reserved matters have been submitted to and approved by the Local Planning Authority:
 - (a) the siting, design and external appearance of each building, including a schedule of external materials to be used;
 - (b) the landscaping of the site;
 - (c) the layout of the proposed building(s) and space(s) including parking and any external storage areas; and
 - (d) the scale of buildings overall.
- 3) Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:
 - (i) The details of the following off site required highway improvement works, works listed below have been submitted to and approved in writing by the Local Planning Authority.
 - a. The removal of the existing signs and lines associated with the school site within Ingleby Arncliffe.
 - (ii) A programme for the completion of the proposed works has been submitted to and approved in writing by the Local Planning Authority.
- 4) The development hereby approved shall not be commenced until details of the foul sewage and surface water disposal facilities have been submitted and approved in writing by the Local Planning Authority. The development shall not be undertaken other than in accordance with the approved details and shall thereafter be retained in accordance with those details.
- 5) Prior to development commencing detailed cross sections shall be submitted to and approved in writing by the Local Planning Authority, showing the existing ground levels in relation to the proposed ground and finished floor levels for the development. The levels shall relate to a fixed Ordnance Datum. The development shall be constructed in accordance with the approved details and thereafter be retained in the approved form.
- 6) Unless otherwise approved in writing by the Local Planning Authority there shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority under condition number 3:

- a. The removal of the existing signs and lines associated with the school site within Ingleby Arncliffe.
- 7) Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted until full details of the following have been submitted to and approved in writing by the Local Planning Authority:
 - a. vehicular accesses;
 - b. vehicular parking; and
 - c. vehicular turning arrangements.
- 8) No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas approved under condition number 7: are available for use unless otherwise approved in 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.
- 9) There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the Local Planning Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site and be kept available and in full working order and used until such time as the Local Planning Authority agrees in writing to their withdrawal.
- 10) Unless approved otherwise in writing by the Local Planning Authority there shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:
 - a. on-site parking capable of accommodating all staff and sub-contractor's vehicles clear of the public highway;
 - b. on-site materials storage area capable of accommodating all materials required for the operation of the site; and
 - c. The approved areas shall be kept available for their intended use at all times that construction works are in operation.
- 11) The detailed plans required by condition 2 shall indicate no more than four dwellings.
- 12) Prior to the commencement of work on site a scheme for the protection of retained trees shall be submitted in writing to and approved by the Local Planning Authority. The approved measures shall be installed on site, prior to the commencement of all other site works and be retained throughout the course of the development of the site.

****end of schedule****