



Appeal Decision

Site Visit made on 27 July 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2021

Appeal Ref: APP/W3520/W/21/3267230

Land rear of the Norton Salvation Army Hall, Woolpit Road, Norton IP31 3LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 T Sprigings against the decision of Mid Suffolk District Council.
 - The application Ref DC/20/04158, dated 23 September 2020, was refused by notice dated 19 November 2020.
 - The application sought planning permission for Erection of 5 No detached dwellings without complying with a condition attached to planning permission Ref DC/17/03668, dated 2 March 2018.
 - The condition in dispute is No 4 which states that: *Any dwelling/s or part thereof within 20 metres of the northern and eastern boundary shall be of a single storey design only with living accommodation on the one ground floor only.*
 - The reasons given for the condition are: *In order to secure a design in scale with development surrounding the site so as to protect the visual amenities and character of the area and to safeguard local distinctiveness and neighbour amenity.*
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Decision

1. The appeal is dismissed.

Background and Procedural Issues

2. The appeal is against the refusal of an application made under Section 73 of the Town and Country Planning Act 1990 (the Act) to carry out development without complying with a condition attached to a grant of planning permission.
3. Section 73 of the Act makes provision to apply for planning permission to carry out development without complying with a condition to which an earlier planning permission was granted. The practical effect of which is that, if the application is permitted, a new planning permission is created that is subject to different conditions. The original planning permission would remain unaffected, with the applicant having choice over which permission to implement.
4. The application subject of this appeal sought to carry out the development, without complying with Condition 4 imposed on outline planning permission (Reference DC/17/03668), relates to the matter of some of the dwellings being single storey. Moreover, the aim of the variation of that condition being that the dwellings could be no more than one-and-a-half storeys, but with windows positioned away from neighbouring boundaries or obscure glazed in the case of bathrooms/shower rooms, depending of course on the intended design. Such a

design would then have to be submitted as a reserved matter to the original outline.

5. The planning permission in question was granted on 2 March 2018 and Conditions 1 and 2 required certain reserved matters to be submitted for approval within set time scales, and also set time limits for the commencement of the development. In effect, Condition 4 ensured that any scheme for reserved matters would be designed in accordance with its restriction. From the evidence before me, a reserved matters application (Reference DC/21/01170) was submitted and subsequently approved on 23 April 2021. This shows single storey dwellings in the areas referred to by Condition 4.
6. Given that Condition 1 of the outline requiring the submission of reserved matters time expired on 2 March 2021, that part of the condition can no longer be complied with, removed, or varied. Therefore, an alternative design in conjunction with the disputed condition could not now take place and allowing the appeal would not enable a revised design, under reserved matters, to be approved. The correct vehicle to resolve this situation would be through the submission of a fresh planning application, with an amended design, to the Council in the first instance.
7. I wrote to the main parties requesting their views on this position, but did not receive any responses. Consequently, having regard to the facts of the case, my findings on the procedural matters above are determinative and, therefore, it is not necessary for me to consider the merits of any other issues raised in this case, as they would not alter my overall decision.

Conclusion

8. For the reasons given above, I conclude that the appeal should not succeed.

Paul Thompson

INSPECTOR