
Appeal Decision

Site visit made on 13 September 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2021

Appeal Ref: APP/C2708/W/20/3264796

Land at Ling Haw Hill/ Brow Top, Cononley Road, Glusburn, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr and Mrs B H Green against the decision of Craven District Council.
 - The application Ref 2019/21188/VAR, dated 21 November 2019, was approved on 11 June 2020 and planning permission was granted subject to conditions.
 - The development permitted is outline application with all matters reserved for the construction of twenty houses with the exception of access, layout and scale.
 - The conditions in dispute are Nos 3 and 26.
Condition 3 states: The details submitted in accordance with condition 1 shall include all building materials and finishes; surface materials for the highways, footpaths, private drives and all other hard surfaces, screen walls, fences and other means of enclosure, existing and proposed ground levels, proposed finished floor levels and building heights.
Condition No 26 states: Any application which seeks approval for reserved matters pursuant to condition 3 of this Outline permission, shall include a schedule of details of the financial contribution for on site or off site infrastructure provision to meet the requirement for demand resultant of this 20 dwelling development as shown on layout plan Ref: 241 Scheme A1 rev C-Proposed Site Layout. The schedule of details shall include, but not limited to, the timetable of developer contributions which will be related to the timing of the requirement for infrastructure delivery.
 - The reason given for condition No 3 is: The application is granted in outline only in accordance with the provisions of Article 4 of the Town and Country Planning (Development Management Procedure) Order 2015. Any application for reserved matters must be in accordance with and/or not exceed the parameters established as part of this permission.
The reason given for condition No 26 is to ensure that the development makes a proportionate contribution towards the provision and future maintenance of local infrastructure in order to avoid a deficiency in the quantity and quality of local infrastructure for community benefits in accordance with the requirements of the Craven Local Plan and the National Planning Policy Framework.
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Decision

1. The appeal is allowed insofar as it relates to condition No 26 and the planning permission Ref 2019/21188/VAR for outline application with all matters reserved for the construction of twenty houses with the exception of access, layout and scale at land at Ling Haw Hill/ Brow Top, Cononley Road, Glusburn, North Yorkshire granted on 11 June 2020 by Craven District Council is varied by deleting condition No 26.

2. The appeal is dismissed insofar as it relates to condition No 3 of the planning permission Ref 2019/21188/VAR for outline application with all matters reserved for the construction of twenty houses with the exception of access, layout and scale at land at Ling Haw Hill/ Brow Top, Cononley Road, Glusburn, North Yorkshire granted on 11 June 2020 by Craven District Council.

Application for costs

3. Applications for costs have been made by Mr and Mrs B H Green against Craven District Council and by Craven District Council against Mr and Mrs B H Green. These are the subject of separate decisions.

Preliminary Matters

4. The appeal has arisen subsequent to the Council's determination of an application made under section 73 of the Town and Country Planning Act 1990 ('the Act') regarding several planning conditions that had been attached to outline planning permission 32/2016/17327. The new planning permission¹ which was issued was granted subject to a number of conditions including conditions Nos 3 and 26 which are the subject of this appeal.
5. A separate appeal² has been lodged in respect to the Council's failure to determine the reserved matters for that new outline planning permission and that is the subject of a separate Decision.

Main Issues

6. The main issues are:
 - whether or not the scope of condition No 3 is necessary to secure an acceptable appearance of development and meets the nationally prescribed tests for planning conditions; and
 - whether or not condition No 26 is necessary to ensure that the infrastructure requirements of the development permitted are secured and meets the nationally prescribed tests for planning conditions.

Reasons

Appearance

7. Condition No 3 sets the scope of the matters that are reserved in respect to outline planning permission 2019/21188/VAR and explicitly includes the matter of finished building heights. This condition replicates condition No 3 of the original outline planning permission relating to application 32/2016/17327 which was allowed at appeal subject to conditions. That condition seeks to ensure that all remaining reserved matters are made known to all parties. The implication of condition No 3 is that in this particular case the consideration of building heights was reserved as part of the outstanding matter of appearance. This fact sets the parameters for my determination of this appeal.
8. The appellant had sought a number of changes to an original outline planning permission through an application made under section 73 of the Act. That application included a change the plans listed in condition No 2 and those

¹ 2019/21188/VAR

² APP/C2708/W/20/3265538

revised plans include details of finished building heights. In issuing the new outline planning permission it is evident that the Council approved the revised list of plans as demonstrated by the wording of condition No 2. However, the Council disputes that the matter of height was determined through the acceptance of those revised plans as it was a reserved matter falling out with the scope of the matters approved at the appeal stage.

9. Nonetheless, condition No 3 of the original outline permission is explicit of the details that were reserved for future consideration. I concur with the Council that it is not possible to approve reserved matters details under the terms of an application made under section 73 of the Act, other than those which form part of the original outline permission. Their stance clearly demonstrates that it was not the Council's intention to assess any of those clearly defined reserved matters as part of that subsequent application. The imposition of condition No 3 to the new outline permission reaffirms that position and demonstrates that they have not inadvertently done so.
10. The appellant's arguments about the relationship of the matter of height with the consideration of scale and the Inspector's acceptance in principle of a 2 storey scale development on the site are understood. However, the scope of the reserved matters in respect to appearance and landscaping was set at that appeal stage and the appellant did not lodge an appeal against that. Furthermore, the exposed location of the appeal site, its sloping topography and the interface with the surrounding dwellings place significant constraints on how the site is developed to attain a development whose appearance is appropriate to its context.
11. For all of these reasons, I find that condition No 3 is necessary and reasonable to ensure that all of the relevant planning matters are fully considered through the course of the outline and reserved matters stages and accords with Policy ENV3 of the Craven Local Plan. Furthermore, condition No 3 is precise in its wording, relevant to planning and the permitted development and therefore enforceable.
12. I therefore conclude that the scope of condition No 3 is necessary to secure an acceptable appearance of development and meets the nationally prescribed tests for planning conditions.

Infrastructure

13. Condition No 26 requires the submission of a schedule of details of the financial contributions for on site or off site infrastructure provision to meet the requirements of the proposed development and an associated delivery timetable. This is an additional condition to those imposed on the original outline permission. The Council considers this condition is necessary and reasonable to reflect the requirements of the subsequently adopted Local Plan.
14. The submitted evidence demonstrates that the policy requirements regarding affordable housing and public open space have been agreed through a duly signed section 106 legal agreement and subsequent deeds of variation. The main parties do not dispute that these planning obligations are binding to the most recent outline planning permission. The appellant has evidenced that they have sought to clarify the specific requirements of condition No 26 with the Council to no avail. The submitted evidence does not indicate that there are additional infrastructure requirements or outstanding matters relating to the

delivery of the existing planning obligations. Moreover, during this appeal the Council has not specified the type or level of infrastructure provision to which condition No 26 refers, despite being provided with the opportunity to do so. Therefore, no conflict with the development plan has been demonstrated through the evidence before me should condition No 26 be deleted.

15. For these reasons, I conclude that condition No 26 is unnecessary and does not meet the nationally prescribed tests for planning conditions.

Conclusion

16. Under s79(1)(b) of the Act, I have the discretionary power to split my decision. I am satisfied that condition No 3 and condition No 26 are clearly severable and their existence or otherwise have no implications on one another. As the merits of both have been the subject of this appeal there would be no injustice to any of the parties. Hence, in this particular case such an action is justified.
17. For the reasons given, I conclude that the appeal should succeed in part only in respect to the proposed deletion of condition No 26 of outline planning permission Ref 2019/21188/VAR, and the proposed variation or removal of condition No 3 of that outline planning permission should be dismissed.

C Dillon

INSPECTOR