



Appeal Decisions

Site visit made on 11 April 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal Ref: APP/K2420/W/21/3281844

23 Wood Street, Hinckley, Leicestershire LE10 1JQ

- 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 outline planning permission
 - The appeal is made by Onyx Rose against Hinckley and Bosworth Borough Council.
 - The application Ref 21/00692/OUT, is dated 26 May 2021.
 - The development proposed is redevelopment of existing site to residential.
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Decision

1. The Appeal is dismissed.

Applications for costs

2. An application for costs has been made by Onyx Rose against Hinckley and Bosworth Borough Council. This matter is the subject of a separate decision.

Preliminary Matters

3. The proposal was not validated by the Council and hence has not been subject to a decision. It therefore falls to me to decide whether it should have been validated and whether planning permission should be granted for this proposal.

Main Issue

4. The main issue is whether the submitted information is deemed to be sufficient to validate the application and if so whether planning permission should be given.

Reasons

5. The Council required the submission of a full application as it stated that an outline application could not include a material change of use. If the proposal was submitted as a full application a greater application fee and full plans would be required, including layout plans. Also, a fee would also seem to be necessary to enable the Council to undertake a financial assessment to test the viability of the project.
6. An application for a material change of use is distinctly separate to an application for outline planning permission and subsequent reserved matters. These are separate types of planning consent and subject to different regimes with different fee structures. Being mutually exclusive this illustrates that an outline application cannot be used to consider or determine a proposal for a material change of use.

7. The email from the appellant (8/7/21) and the letter before claim (9/8/21) assert that the Council's decision failed to accord with Article 5(2) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)(DMPO). Article 5 of the DMPO relates to the consideration of an outline application. However, as the proposal includes a material change of use, and is therefore not an 'outline' application, Article 5 would not be relevant in this case.
8. Turning to the matter of required plans, the application was made with a site plan, street elevations and a Design and Access Statement. Article 34(6) of the DMPO states that a Council's requirement for further information should be reasonable, having regard to the nature and scale of development and be about a matter that would be a reasonable consideration in the determination of the application. For the Council to properly consider the effect of the converted building it would have required internal layout plans showing how it would be segregated, the size of units, room sizes, access points and location of windows. Consequently, layout plans would enable the Council to properly assess the effect of the proposed development on the living conditions of future and neighbouring occupiers. As a result, the requirement for further plans satisfies Article 34(6) in being reasonable and in scale with the nature of the proposal.
9. Article 12 of the DMPO is concerned with dispute resolution in the event that a Local Planning Authority does not make an application valid. This requires a notice to be served on the Council if the applicant considers that the application was made invalid without good reason. This requires the applicant to explain which particulars or evidence requested do not meet the requirements of article 34(6). Having seen both the appellant's email and letter before claim I am unconvinced that an Article 12 Notice was correctly served or that the applicant addressed the simple matter of why it considered that an application for outline approval could incorporate a material change of use. As such, I also find that the appellant failed to pursue this matter using the correct approach established by Article 12.
10. With respect to matters of inconsistency it is recognised that the larger scheme also included the conversion of block C. However, this also included a significantly greater element of new build. This had the effect of reducing the overall proportion of floorspace that amounted to conversion. It is therefore inaccurate to characterise both schemes as being exactly the same. Therefore, whilst concerning for its apparent inconsistency, the different approach taken did not result in the Council making an irrational decision. I am also cognisant that the Council admitted that the application should not have been validated and therefore squarely accepts it made a mistake in validating that application.
11. Having found that the proposal was made invalid for reasonable reasons, this appeal is dismissed.

B Plenty

INSPECTOR