

Appeal Decision

Site visit made on 16 August 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th September 2022

Appeal Ref: APP/M2840/W/21/3288068

16 - 18a Horsemarket, Kettering, NN16 0DQ

- 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
 - The appeal is made by Mr K Odunaiya against North Northamptonshire Council.
 - The application Ref NK/2021/0692, is dated 4 August 2021.
 - The development proposed is a mixed-use development consisting of 28 no. flats and ground floor commercial unit.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr K Odunaiya against North Northamptonshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. As noted above, this appeal is against a failure to give notice of a decision within the prescribed period. The Council have issued a statement which sets out that they consider the proposal to be acceptable, subject to a planning obligation under section 106 to secure the transfer of a piece of land for highways improvements.
4. Following the submission of this appeal, a duplicate application, identical to the appeal scheme¹ was submitted to the Council. In their statement to this appeal, the Council made clear that their Committee had resolved to grant planning permission for that application, subject to the resolution of an obligation under section 106, the same as that submitted with this appeal, to secure the transfer of land for highways improvements. A unilateral undertaking (UU) to secure that obligation has now been completed and that planning permission has now been granted by the Council². Nevertheless, this appeal remains before me to consider.
5. The application and this appeal were made by Mr K Odunaiya. The application was made on behalf of Newlands Development Ltd, but the appeal was made on behalf of Idera Estates Ltd³ or Idera Real Estates Ltd⁴. On the basis of the evidence before me, I am however satisfied that the appellant and the applicant are the same in this case and my banner heading above reflects this.

¹ Application reference NK/2021/0957

² Decision notice dated 8 June 2022

³ Appeal Form, Questionnaire, Costs Application

⁴ Unilateral Undertaking, Statement of Common Ground

Main Issues

6. As a result, the main issue in this appeal is whether or not the submitted UU would secure land for the Council for highways improvements.

Reasons

7. A previous appeal on this site, reference APP/L2820/W/21/3269021, determined immediately prior to the submission of the appeal application concluded that the proposal was acceptable, but that the accompanying UU was not. Most of the failings identified in that undertaking which were fatal to its effectiveness have now been resolved.
8. However, the UU before me now still contains one of those fatal failings. It simply states that the developer's obligation is "*to transfer to the council the land shaded in blue the attached plan*". There is no trigger, either within the schedule that contains the obligation, or within the preceding text to cause that action (which is the sole obligation within the UU) to take place. Annex N of the Procedural Guide: Planning appeals – England (specifically, paragraph N.6.6) makes it plain that an obligation must make it clear when each of its requirements is triggered.
9. The aim of the UU, to secure land for highways improvements, is consistent with the requirements of Policy 10 of the North Northamptonshire Joint Core Strategy 2011-2031 (the JCS), and it meets the tests laid out in the National Planning Policy Framework (the Framework) and those set out in Regulation 122 of the Community Infrastructure Regulations 2010. The need for it, and indeed, the mechanism to secure it is therefore appropriate.
10. However, in light of the specific wording and detail of the UU, like my colleague before me, I have little choice but to find that I cannot be certain that the UU would be effective and would secure the timely transfer of land required for highways improvements. That this failing is fatal is reinforced by the UU which accompanied the subsequently approved application to the Council (referred to in my Preliminary Matters above) which includes a trigger requiring the Developer "*to transfer the Highway Land to the Council prior to the Occupation of the Development*".
11. The proposal would therefore be contrary to the aim of Policy 10 of the JCS to secure the timely delivery of infrastructure, services and facilities required to meet needs arising from development.

Conclusion

12. I therefore find that the proposal conflicts with the development plan, and there are no material considerations, including the subsequent grant of planning permission by the Council for the same development, which indicate that a decision be taken other than in accordance with it.
13. The appeal should therefore be dismissed, and planning permission refused.

S Dean

INSPECTOR