



Appeal Decision

Site visit made on 7 February 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2023

Appeal Ref: APP/D1265/W/21/3289147

Land at Goulds Farm, Fox View, Milborne St Andrew DT11 0FX

- 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 MDM Developments Ltd. against the decision of Dorset Council.
 - The application Ref: P/VOC/2021/00510, dated 22 February 2021, was refused by notice on 30 November 2021.
 - The application sought planning permission to erect 7 No. dwellings with garaging and parking, form vehicular access. (Demolish farm buildings) without complying with a condition attached to planning permission Ref: 2/2017/0277/FUL, dated 16 June 2017.
 - The condition in dispute is No.2 which states that: *"The development hereby permitted shall be carried out strictly and only in accordance with the following approved drawings and details: S1206: 01a, 03a, 04d, 05b, 06, 07a, 08a, 09, 10b, 11b, 12a, 13a, 14a, 15a, 16a, 17a and 18b forming the approved application"*.
 - The reason given for the condition is: *"For the avoidance of doubt and to clarify the permission."*
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Decision

1. The appeal is allowed and planning permission is granted to erect 7 No. dwellings with garaging and parking, form vehicular access (Demolish farm buildings) at Land at Goulds Farm, Fox View, Milborne St Andrew, DT11 0FX in accordance with the application Ref: P/VOC/2021/00510, dated 22 February 2021, without compliance with condition 2 previously imposed on planning permission Ref: 2/2017/0277/FUL, dated 16 June 2017, and subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by MDM Developments Ltd against Dorset Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Further to amendments made during determination of a planning application, planning permission for the erection of seven dwellings at the site was granted by the Council in June 2017 under reference: 2/2017/0277/FUL (the Approved Scheme).
4. The application subject to this appeal is made under Section 73 of the Town and Country Planning Act 1990 (the 1990 Act) to substitute the approved scheme drawings with a suite of amended drawings. Thus, if permitted, the development would be carried out without complying with the approved plans

condition imposed on the Approved Scheme. It is not disputed that implementation of the Approved Scheme has been commenced.

5. The Council has refused the application made under Section 73 of the 1990 Act because it considers that the revised plans and drawings would result in a development that would harm the character and visual amenity of the Milborne St Andrew Conservation Area (the Conservation Area).
6. The main issue in this appeal is whether the disputed condition is necessary having regard to whether the proposed development would preserve or enhance the character or appearance of the Conservation Area.

Reasons

7. With the exception of a small area in the northeast corner, the appeal site is located at the edge of and within the Conservation Area. I have been supplied with a Conservation Area plan and from observations made on my visit, I consider that the significance of the Conservation Area is predominately derived from the age and architectural quality of buildings that reflect Milborne St Andrew's origins as a historic rural settlement.
8. The appeal scheme seeks to substitute the plans included within the Approved Scheme and which would result in the scale, layout and design of the individual proposed dwellings within the site, being altered. In that regard, whilst the Approved Scheme provided three pairs of semi-detached dwellings and a single detached dwelling, the appeal scheme proposes construction of seven detached dwellings. Further amendments to the Approved Scheme would result in the proposed dwellings being relocated southwards within the site.
9. The height of the proposed dwellings would be consistent with those included within the Approved Scheme. The surrounding area within the village is predominately characterised by a mixture of traditional and modern, detached and semi-detached dwellings of various scales. The scale of the proposed detached dwellings would reflect other examples located near to the site and within the Conservation Area. The Appellant's submissions indicate that the appeal scheme for larger detached dwellings would align with identified housing needs for North Dorset, and the Council's submissions in this appeal do not appear to dispute the Appellant's contention in that regard.
10. The proposed dwellings would be designed to retain the appearance of a mixture of cottages and barn style buildings, with roof forms that reflect nearby examples within Fox View. A traditional palette of materials would be used in the construction of the proposed dwellings that would reflect those included within the Approved Scheme. As such, I do not conclude that the proposed units would be too repetitive in terms of design when compared to the Approved Scheme, and that visual variety would be preserved.
11. Further to the above, the proposed dwellings would be located closer to the southern boundary than those permitted under the Approved Scheme. This alteration to the layout of the scheme would allow for increased levels of external amenity space for individual dwellings and a reduction in hardstanding at the site. These amendments would not result in a development that would appear cramped or a site that would appear overdeveloped. In my view the quality of the development would not be materially diminished when compared

to the Approved Scheme, as a result of the changes to the plans and drawings that are proposed.

12. In light of the above, I do not find that, as a result of the proposed amendments to the layout and appearance of the dwellings, the appeal scheme would be of a scale or design that would dominate, draw the eye or adversely affect the character or appearance of the Conservation Area. Consequently, the appeal scheme would preserve the character and appearance of that heritage asset. The proposal would provide benefits in terms of additional housing in a location with convenient access to services and facilities contained within Milborne St Andrew and would provide economic benefits through employment opportunities during construction and through the future spend of residents.
13. For the above reasons, the appeal proposal would comply with the aims and provisions of Policies 5 and 24 of the North Dorset Local Plan Part 1 (2016) which together seek to secure development whose design improves the character and quality of the area within which it is located, and which sustains and enhances the significance of heritage assets. The proposal would also comply with Policy MSA14 of the Milborne St Andrew Neighbourhood Plan (2019) (the NP) which provides that development should respond to the area's local character and history to reinforce the sense of place.
14. Furthermore, the appeal proposal would accord with those sections of the National Planning Policy Framework (the Framework) which seek to ensure that the quality of development is not materially diminished between permission and completion and which concern rural housing, achieving well designed places and conservation and enhancement of the historic environment.
15. In reaching the above conclusions, I have, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Other Matters

16. Further to matters described above, interested parties raise additional objections to the appeal scheme on the grounds of the impact on living conditions of nearby residents, surface water drainage, arrangements for waste collection and impact on a public right of way.
17. With regards to rights of way, an interested party maintains that part of the development, namely a garden space, would encroach upon a public right of way. However, the Council has confirmed to me that that public right of way is located outside of the appeal site. Furthermore, whilst I note that it has been put to me that the same part of the development would encroach on land outside of the Appellant's ownership, this would be a civil matter that would also fall outside the scope of this appeal.
18. In terms of the impact on living conditions of nearby residents with regards to overlooking, loss of privacy and outlook, I find that by reason of the differences in land levels, presence of landscaping that would be subject to approval by the Council and the separation distances to the nearest dwellings, there would be no significant or unacceptable loss of privacy or outlook. Whilst I acknowledge concerns regarding the hedge located between the site and Fox View, such

matters can be adequately controlled through landscaping to be approved by the Council.

19. With regards to arrangements for servicing of non-adopted areas and waste collection, and in respect of surface and foul water drainage, the evidence before me from the Council confirms that such matters have been discharged as part of the pre-commencement conditions that were attached to the Approved Scheme.
20. Whilst I note that the Council has not referred to the impact of the proposal on listed buildings within their reasons for refusal, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
21. In that respect, the NP does identify nearby listed buildings and having regard to separation distances, intervening modern built form and presence of landscaping, I find no harm to the setting or significance of those identified listed buildings within Milborne St Andrew. Similarly, and in accordance with the Framework, I have also considered the effect of the proposal on Gould's Farmhouse which from observations made, whilst not being a listed building it is a building of architectural and historic merit that contributes positively to the character and appearance of the area. As such Gould's Farmhouse could be considered as a non-designated heritage asset (NDHA). However, for the same reasons given above, the appeal proposal would not increase the height or dominance of development at the site and given the existing surrounding built form, I find no harm to the significance of that NDHA.
22. In March 2022, Natural England informed the Council about unfavourably high levels of phosphorous and nitrogen in the Poole Harbour Special Protection Area (the SPA) and RAMSAR site, and that it is likely that the waste water generated by new residential development would create an additional load which could harm water quality.
23. The evidence before me confirms that the Council has in place a scheme of mitigation in respect of nitrogen and that payment towards matters concerning nitrate nutrients has been made to the Council in accordance with the requirements. However, it has also been confirmed that the Council currently does not have a scheme of mitigation in respect of phosphorous. Nonetheless, following consultation and as a result of recently received advice, Natural England have advised me that phosphorous is not a concern for Poole Harbour.
24. For these reasons and given that there would be no increase in numbers of houses as a result of this appeal, following Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (as amended), I conclude that the development would not give rise to significant adverse effects upon protected habitats.

Conditions

25. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As noted above, I

have been provided with information concerning the discharge of some of the planning conditions previously applied. The Council has further suggested conditions in the event that the appeal was allowed.

26. There is no dispute that the development has commenced, and I have therefore omitted the standard time limit condition as this is no longer necessary. In addition to the condition that specifies approved drawings to provide certainty, conditions relating to sample materials, rooflights, design of doors and windows, rainwater goods, meter boxes, restriction of permitted development rights, landscaping and planting are necessary and reasonable to ensure that the development does not have an unacceptable adverse effect on the character or appearance of the area, including the Conservation Area.
27. A further planning condition relating to provision of parking and turning areas prior to occupation are necessary and reasonable in the interests of the living conditions of future and nearby residents. A condition requiring that one of the window openings on the proposed unit 1 be glazed with obscured glass, is necessary to maintain the privacy of a nearby property which adjoins the site. Conditions requiring that the development to be carried out in accordance with the recommendations of a tree report and biodiversity mitigation plan are necessary to protect trees of amenity value and in the interests of ecology.
28. It is noted that some of the planning conditions suggested by the Council require that certain details or information is provided to the Council for approval, within "3 months of the commencement of development". Whilst I acknowledge that those conditions are not the subject of this appeal, the evidence before me confirms that the development has already commenced. However, I have not been provided with any details of dates when such development was commenced at the site, and therefore I cannot be certain as to whether the proposed scheme would be capable of complying with such requirements given that more than three months could have passed since the Approved Scheme was implemented.
29. In light of the above, and in the interests of certainty, I have amended the wording of those conditions so as to require the submission of details and information within three months of the date of this decision. I conclude that, by reason of the scale of the proposed development, that timescale would be appropriate and reasonable.

Conclusion

30. For the reasons given above and having regard to all other matters raised, the appeal is allowed.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out strictly and only in accordance with the following approved drawings and details: Site and Block Plan 9403/100 rev B, Unit 1 9403/101 rev B, Unit 2 9403/102 rev B, Unit 3 9403/103 rev B, Unit 4 9403/104 rev A, Unit 5 9403/105 rev A, Unit 6 9403/106 rev A, Unit 7 9403/107 rev A and Indicative Street Scene 9403/08.
2. No development above ground level shall take place until samples of materials (to include brick, flint panels, timber cladding, natural slates, plain clay tiles) to be used in the construction and finish of the development shall be made available on site and retained in that location thereafter for the inspection and approval of the Local Planning Authority. Any such samples shall require approval to be obtained in writing from the Local Planning Authority and the development shall thereafter accord with the approved materials.
3. No development above ground level shall take place until a sample panel measuring at least 1 metre by 2 metres, using the approved facing brick and flint panel demonstrating the proposed coursing, mortar mix and pointing detail, shall be constructed on site. Construction of the development hereby permitted above ground level shall not commence until a sample panel of the stonework has been approved in writing by the Local Planning Authority, thereafter, the stone panel shall remain on site until the external walls of the dwelling have been constructed to eaves height.
4. All new rooflights shall be top hung with vertical glazing bar(s) and fitted flush to the roof plane.
5. No windows or doors shall be installed until detailed drawings (at a scale of not less than 1:20) showing the design, materials (timber windows) and construction specifications of external doors and windows shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter accord with the approved scheme.
6. All new rainwater goods shall be painted cast metal of half round profile of a form to be agreed in writing by the Local Planning Authority before installation of any rainwater goods.
7. The location of any meter boxes to be installed externally shall be approved in writing by the Local Planning Authority before any are installed. Meter boxes must be fitted in accordance with the details of that scheme prior to the occupation of the development.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) (with or without modification) no garages, sheds or other outbuildings permitted by Class E of Schedule 2 Part 1 of the 2015

Order shall be erected or enlarged, nor shall any means of enclosure be constructed within the land shown edged red on drawing: Site and Block Plan 9403/100 rev B.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order)(with or without modification) no enlargement, improvement or other alteration permitted by Class A, B, C or D of Schedule 2 Part 1 of the 2015 Order shall be erected or constructed, other than those expressly authorised by this permission.
10. Before the development is occupied or utilised the access, geometric highway layout, turning and parking areas shown on Drawing Number: Site and Block Plan 9403/100 rev B must be constructed, unless otherwise agreed in writing by the Local Planning Authority. Thereafter, these must be maintained, kept free from obstruction and available for the purposes specified.
11. All existing trees and hedges to be retained and as shown on the TCPFV Tree Constraints Plan contained within the Tree Survey and Arboricultural Impact Assessment dated January 2017, shall be fully safeguarded during the course of site works and building operations. No works shall commence on site until all trees to be protected on and immediately adjoining the site shall be protected from damage for the duration of works on the site to the satisfaction (to be confirmed in writing) of the Local Planning Authority in accordance with BS 5837:2012 (Trees in relation to construction - recommendations) or any new Standard that may be in force at the time that development commences. No unauthorised access or placement of goods, fuels or chemicals, soil or other material shall take place within the tree protection zone(s). Any trees or hedges removed without the written consent of the Local Planning Authority, or dying or being severely damaged or becoming seriously diseased before the completion of development or up to 12 months after occupation of the last dwelling shall be replaced with trees or hedging of such size, species in a timescale and in positions as may be approved in writing by the Local Planning Authority.
12. Within 3 months of the date of this Decision full details of both hard and soft landscape proposals shall, by reference to site layout drawings of an appropriate scale, be submitted to and approved in writing by the Local Planning Authority. The details shall include, as appropriate, the following information:
 - (a) Proposed finished levels or contours.
 - (b) Car parking layouts.
 - (c) Means of enclosure.
 - (d) Vehicle and pedestrian access and circulation.
 - (e) Hard surfacing materials.
 - (f) Proposed and existing functional services above and below ground.
 - (g) Minor artefacts and structures.

- (h) Planting plans.
- (i) Historic landscape features and proposal for restoration where relevant.
- (j) Written specifications.
- (k) Schedule of plants, species, size, proposed numbers and densities.
- (l) Implementation timetables.

The development shall thereafter accord with the approved details.

13. Within 3 months of the date of this Decision precise details of all tree, shrub and hedge planting (including positions and/or density, species and planting size) shall be submitted to and approved in writing by the Local Planning Authority. Planting shall be carried out before the end of the first available planting season following substantial completion of the development. In the five year period following the substantial completion of the development any trees that are removed without the written consent of the Local Planning Authority or which die or become (in the opinion of the Local Planning Authority) seriously diseased or damaged, shall be replaced as soon as reasonably practical and not later than the end of the first available planting season, with specimens of such size and species and in such positions as may be agreed with the Local Planning Authority. In the event of any disagreement the Local Planning Authority shall conclusively determine when the development has been completed, when site conditions permit, when planting shall be carried out and what specimens, size and species are appropriate for replacement purposes.
14. Within 3 months of the date of this Decision a landscape management plan shall, by reference to site layout drawings of an appropriate scale, be submitted to and approved in writing by the Local Planning Authority and shall include long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens. The subsequent management of the development's landscaping shall accord with the approved plan.
15. The biodiversity mitigation measures set out in the approved Report dated 04 August 2016 shall be implemented in full in accordance with the timetable set out in the report, or in the absence of a specific timetable, prior to the development hereby approved being first brought into use and the site shall thereafter be maintained in accordance with the approved mitigation proposals.
16. The first floor window in the south elevation of plot 1 shown on drawing 9403/101 Rev B serving the living room shall be glazed with obscure glass to a level equivalent to Pilkington Level 3 or above (or the nearest equivalent standard) and shall be permanently retained as such unless otherwise agreed in writing by the Local Planning Authority.