



Appeal Decision

Site visit made on 7 June 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/V2635/W/22/3312436

Appletrees, Herrings Lane, Burnham Market, King's Lynn PE31 8DW

- 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 Mark Crane against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00984/F, dated 31 May 2022, was refused by notice dated 7 October 2022.
 - The application sought planning permission for: Proposed replacement dwelling and garage/store without complying with a condition attached to planning permission Ref 21/02160/F, dated 08 February 2022.
 - The condition in dispute is No. 2 which states that: the development hereby permitted shall be carried out using only the following approved plans; 624-21-04 A (Proposed Floor Plans); 624-21-05 (Proposed Elevations and Materials); 624-21-06 A (Proposed Garage and Site Plans); and 624-21-07 (Proposed Section Plan).
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Mark Crane against King's Lynn and West Norfolk Borough Council. This is the subject of a separate Decision.

Background and Main Issue

3. The appeal site benefits from a 2022 planning permission for a replacement dwelling and garage/store, subject to condition 2 which sets the approved plans. The appeal proposal is to vary condition 2 by adding a phasing plan, with the effect of phasing the development as follows:

Phase 1 - Demolition works and trial pits

Phase 2 - Groundworks, including substructure and utility connections

Phase 3 - Superstructure construction works (above ground) for the erection of a dwellinghouse, through to completion.

4. The main issue is therefore whether the proposed amendment to condition 2 is necessary to make the development acceptable in planning terms, and reasonable in all other respects.

Reasons

5. The site comprises a vacant plot on Herrings Lane in the settlement of Burnham Market, within a ribbon of detached dwellings in front of open countryside. A detached dwelling within the plot was demolished prior to February 2022, when the permission as the subject of this appeal was granted.
6. The imposition of conditions must reflect the 6 tests outlined in paragraph 56 of the National Planning Policy Framework ('the Framework') (2021) and the Planning Practice Guidance (PPG). Conditions are intended to enhance the quality of development, and enable it to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the development's adverse effects. They should be only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
7. If I were to allow this appeal then a new planning permission would be created. Its new phasing plan would have the effect of not generating any Community Infrastructure Levy (CIL) liability for the new permission until commencement of phase 3, and would also allow for the submission of a CIL self-build exemption claim. The possibility of such a financial benefit or disbenefit to the Council should not be taken into account in making a planning decision, and indeed the Council highlights that this did not form a reason for refusal. However, the appellant's justification does relate to financial viability matters including CIL payments, so it is reasonable to consider the CIL within these parameters.
8. The appellant identifies that cashflow is difficult for self-build schemes, linked to the funding of self-build mortgages being released in phases and tied to the self-build warranties. The phasing plan would thus provide improved viability for the scheme, including in relation to the CIL. However, I have no evidence before me that a specific mortgage lender is requiring the appeal scheme to be phased, nor any more general evidence that such phasing is normally or often required for a single dwelling in order to gain such a mortgage.
9. The only provision for phased development within the King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan (SADMPP) (2016), is for affordable housing schemes of 5 or more dwellings in rural areas and 10 or more dwellings in King's Lynn. This indicates that phasing for smaller schemes is not normally considered necessary. Although each decision is to be taken on its own merits, I also have no examples before me of previous permissions for a single dwelling with a phasing plan.
10. The PPG identifies that it is important to ensure that conditions are tailored to tackle specific problems, and also that they can be imposed to ensure that development proceeds in a certain sequence, where the circumstances of the application make this necessary. I do not have sufficient evidence before me that the circumstances of the appeal do make a phasing plan necessary or that there is a specific problem with the scheme.
11. As the previous dwelling has already been demolished, then this further indicates that the first phase in the proposed phrasing plan is not necessary.
12. In conclusion therefore, the proposal would conflict with Policy DM1 of the SADMPP, which reflects the presumption in favour of sustainable development

in the Framework and identifies that where there are no other relevant policies, permission will not be granted if material considerations indicate otherwise. This is because the proposal would conflict with paragraph 56 of the Framework as a material consideration, as it would not fully meet the requirements for conditions to be only imposed where they are necessary, and reasonable in all other respects. Condition 2 as currently phrased does meet those requirements.

Other Matters

13. The Burnham Market Conservation Area (CA) boundary falls directly opposite the site, and Section 16 of the Framework requires that great weight should be given to the conservation of designated heritage assets. Its significance lies in part in its original plan form and layout of lanes around the central Green, as well as its historic buildings in local materials. The addition of a phasing plan would not affect the physical appearance of the CA or how it is experienced. Overall therefore, the significance of the character and appearance of the CA would be preserved in this regard.

Conclusion

14. There are no development plan policies which require the phased delivery of this permission for a single dwelling. The proposed amendment to condition 2 is not necessary to make the development acceptable in planning terms. It would not be required under para 56 of the Framework, and therefore I conclude the appeal is dismissed.

L Hughes

INSPECTOR