



Appeal Decision

Site visit made on 6 February 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2024

Appeal Ref: APP/P1133/W/23/3330372

Westhaven, Milbury Farm, Exminster, Devon EX6 8AT

- 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 Paul Jory against the decision of Teignbridge District Council.
 - The application Ref 22/02108/VAR, dated 31 October 2022, was refused by notice dated 1 June 2023.
 - The application sought planning permission for Demolition of existing bungalow and garage and construction of four dwellings, garages, associated parking and infrastructure without complying with a condition attached to planning permission Ref 20/01299/FUL, dated 14 December 2020.
 - The condition in dispute is No 10 which states that: The retaining wall hereby permitted to the west elevation facing the public highway shall be faced reusing the facing stone from the existing wall to be demolished. In the event that additional stone is required, details and a sample shall be submitted to and approved in writing by the Local Planning Authority prior to its first use. The stone clad retaining wall shall be installed prior to the initial occupation of the development hereby permitted and shall thereafter be retained and maintained as approved.
 - The reason given for the condition is: In the interests of visual amenity and the character and appearance of the locality.
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Procedural Matters

1. The original planning permission, Ref 20/01299/FUL, was granted on 14 December 2020, with condition 1 requiring the development to begin before the expiry of three years. That period has now passed and the available evidence indicates that the development has not begun. As such, the original planning permission has lapsed and the expired planning permission had ceased to exist other than as a point of reference in the planning history.
2. Ordinarily, it would have been appropriate for me to write to the parties to raise this matter and invite comments. However, since the main parties were cognisant of it, and the appellant's final comments indicated that they wished to proceed with the appeal nonetheless, this action was not necessary and would have served no useful purpose.
3. Section 73(4) of the Town and Country Planning Act 1990 sets out that section 73 does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun. Consequently, as there is no longer an extant permission, section 73 of the 1990 Act does not apply. It is thus not possible to vary or remove a condition attached to the lapsed permission.

4. For the above reasons, there can therefore be no section 73 appeal and no further action will be taken on the appeal.

Other matters

5. I recognise the appellant's frustration with the original planning permission having lapsed during the appeal. However, the appeal could not have been determined before the appeal timetable had run its course, with all parties having had the opportunity to make their case.
6. I note the appellant's wish for the appeal to continue so that they could be provided with a consideration of the proposal. However, as there is no extant permission to consider under section 73, it is not appropriate for me to deliberate on the merits of the updated drawings and proposed alternative boundary treatment. Nevertheless, it is clear from the submitted evidence that the boundary treatment shown on the proposed plans differs to that of the other recently dismissed appeal on the site. On my visit, I also observed that the existing boundary retains a significant amount of ground above Main Road and that much of the bank and drystone wall is in a relatively poor state of repair. Like other boundary treatments along this section of Main Road, which contains no footway, it also reads as a reasonably enclosing feature along the carriageway, but forms only a relatively short stretch along it. In addition, I note the appellant's reference to starting works to the site's boundaries under permitted development rights.
7. Accordingly, it seems to me that a solution to ensuring a suitable boundary with Main Road could be provided which would be viable as well as visually acceptable. Notwithstanding the appellant's frustrations with liaising with the Council and the associated costs and time, the appropriate course of action is to therefore now progress this directly with the Council, outwith the appeal process, by either submitting a new planning application and/or carrying out pre-application discussions.

T Gethin BA (Hons), MSc, MRTPI

INSPECTOR