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# Appeal Decision

Site visit made on 4 January 2024

**by A M Nilsson BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 February 2024**

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**Appeal Ref: APP/U2750/W/23/3331335**

**East Villa, Main Street, Shipton by Beningbrough, North Yorkshire  
YO30 1AB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs C Shepherd against the decision of North Yorkshire Council.
  - The application Ref 23/00458/FUL, dated 22 February 2023, was refused by notice dated 22 June 2023.
  - The development proposed is the demolition of existing outbuilding with its rebuilding slightly larger as a two-bed house.
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## Decision

1. I decline to determine the appeal and propose to take no further action.

## Reasons

2. The proposed development includes the demolition of an existing outbuilding. The evidence also sets out that the material from the outbuilding, which is proposed to be demolished, would be reused in the proposed dwelling.
3. Article 7(1) of the Order<sup>1</sup> requires, amongst other things, that an application for planning permission must be accompanied by a plan which identifies the land to which the application relates. Section 327A of the Act<sup>2</sup> requires the local planning authority not to entertain such an application if it fails to comply with any requirement of the Act, or any provision made under it, as to the form or manner in which the application must be made. This is further reflected in the Guidance<sup>3</sup> which states that such a plan should ensure that the exact location of the application site is clear, that the application site should be edged clearly with a red line on the location plan and advises how this area should include all land necessary to carry out the proposed development.
4. In the application submitted to the Council, the outbuilding, which is proposed to be demolished, is not within the application site boundary. Furthermore, the evidence shows that, during their consideration of the application, the Council expressed concerns over the size of amenity space that was to be provided. The applicant subsequently increased its size; however, this exceeded the application red-line boundary. It also appears that this increase encompassed the amenity space of an adjacent dwelling. On this matter, the Council, have outlined how the matter was raised to the applicant at the time of the

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<sup>1</sup> Town and Country Planning (Development Management Procedure) (England) Order 2015

<sup>2</sup> Town and Country Planning Act 1990

<sup>3</sup> Planning Practice Guidance – Making an Application Paragraph: 024 Reference ID: 14-024-20140306

application but no formal alterations were made and therefore the Council determined the application on the basis of the original plan.

5. The appellant, however, outlines that the revised plans which show the additional garden area and elevation changes were accepted by the Council and then fully consulted upon, with the Council's decision being made on the basis of these updated plans. There is therefore a clear lack of clarity on the procedural undertakings in the application.
6. Having regard to the application site boundary, the appellant has sought to rectify the situation during the appeal through the submission of new application site plans. These, are not, however, the plans as submitted and considered by the Council. The correct consultation has not been carried out on these plans, and potentially, the correct certifications and notices have not been carried out. It would be a fundamental change to the application and result in a different application. If accepted, it would cause unlawful procedural unfairness to any interested parties.
7. The extent of remediation required would go well beyond the terms of relevant case law<sup>4</sup>. More generally, the Procedural Guide advises that if an appeal is made, the appeal process should not be used to evolve a scheme and explains how it is important that what is considered by the Inspector is essentially what was considered by the local planning authority and by interested parties at the application stage.
8. In short, to be valid, a materially different application site to that considered by the Council would need to be formulated and then progressed. To proceed otherwise would be both inappropriate and incur a risk of serious prejudice to interested parties, something which the Act, the Order and the Guidance all seek to avoid.

## **Conclusion**

9. Section 79(6) of the Act provides that if, before or during the determination of an appeal, the Secretary of State forms the opinion that planning permission for that development could not have been granted by the local planning authority, he may decline to determine the appeal.
10. For the reasons given above, I conclude the appeal to be invalid. I am therefore not in a position to progress matters and so proceed to consider the planning merits of the case. Accordingly, I decline to determine the appeal and propose to take no further action.

*A M Nilsson*

INSPECTOR

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<sup>4</sup> Procedural Guide: Planning appeals – England – paragraph 16.3