



Appeal Decision

Site visit made on 29 October 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2024

Appeal Ref: APP/D1265/W/23/3334996

Nutwood, Osborne Road, Sherborne, Dorset DT9 3RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval of details required by a condition of a planning permission.
 - The appeal is made by Mr and Mrs Jane and Nigel Kerridge against the decision of Dorset Council.
 - The application Ref WD/D/19/003171 sought approval of details pursuant to condition No.s 6, 7, 8 and 9 of a planning permission Ref WD/D/19/003171.
 - The development proposed is Outline application for the erection of 1no. dwelling.
 - The details for which approval was sought are set out as follows:
 - Condition 6 – Before works above damp proof course commence materials to be used for walls (including method of pointing and coursing) and roof shall be submitted to and approved by the Local Planning Authority.*
 - Condition 7 – No development shall be commenced above damp proof course until details of external vents, flues, meter boxes and letter boxes shall have been submitted to, and approved in writing by, the Local Planning Authority. Thereafter, unless otherwise agreed in writing by the Local Planning Authority the development shall proceed in strict accordance with such materials as have been agreed.*
 - Condition 8 – Notwithstanding the front door design shown, before works above damp proof course commence, the front door shall be constructed in timber and alternative details shall be submitted to, and approved in writing by the Local Planning Authority not including a semicircular fanlight. The door shall thereafter accord with the approved details.*
 - Condition 9 – No development shall commence above damp proof Course until a schedule and detailed sections (1:10) of all new windows in the development have been submitted to and approved in writing by the Local Planning Authority. All windows shall be constructed of timber and shall be painted white or other colour to be agreed. The schedule shall include additional information relating to the method of opening and the depth of the reveal from the face of the wall. Thereafter, unless otherwise agreed in writing by the Local Planning Authority, the development shall proceed in strict accordance with such details as have been agreed.*
 - The reasons given for the conditions are as follows:
 - Condition 6 – To ensure a satisfactory visual appearance of the development.*
 - Condition 7 – To ensure a satisfactory visual appearance of the development.*
 - Condition 8 – The Georgian style door is the wrong design for the building.*
 - Condition 9 – To ensure a satisfactory visual appearance of the development.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted the appeal on the basis that the Council failed to give notice of its decision within the appropriate period. As such, there is a

dispute between the parties with regard to whether the Council made its decision within 8 weeks in accordance with Part 5, Article 27(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended (DMPO). Regardless of this, the Council issued its decision on the 8 November 2023 before this appeal was submitted.

3. As I have not been provided with a copy of any 'Deemed Discharge Notice' (DDN) or any other substantive evidence to demonstrate that a DDN was served in line with the detailed procedures for this under Part 5, Article 29 of the DMPO, I can only conclude that the Council's decision notice is applicable and of effect. In the circumstances, I will progress the appeal on the basis that the Council refused to approve matters required by conditions.
4. In this regard, and as the Council's Notice of Decision discharges condition number 7, I will deal with this appeal as an appeal against the refusal to approve details required by conditions numbers 6, 8 and 9.
5. In determining the appeal, I am only able to consider whether the requirements of the conditions have been met. I am not able to reconsider the planning permission, the wording of the condition, consider the time taken to respond to other planning submissions at the site, or depart from the requirements of the conditions.
6. Following the Council's decision, a revised version of the National Planning Policy Framework (the Framework) was published. As both of the main parties have had the opportunity to comment on those changes, their interests will not be prejudiced if I take the revised Framework into account.

Main Issue

7. The main issue is whether the submitted details meet the requirements of the conditions with particular regard to the effect on the character and appearance of the area.

Reasons

8. The appeal site is located off Tinneys Lane in a residential area. The surrounding properties are predominately two-storey in height comprising mainly natural slate roof tiles with some more limited use of red clay tiles. Windows and doors are predominately constructed of timber or UPVC in a heritage style.
9. Works to construct the dwelling had commenced at the time of my site visit but had not exceeded damp proof course.
10. Condition number 6 requires details of the materials to be used for the walls and roof to be submitted for approval. I note that the Council have indicated their agreement to the use of a non-natural stone (buff Bradstone), and I have no reason to disagree. However, the condition also requires details of the pointing and stone coursing. While I have had regard to reference to the proposed use of flush pointing, and I note reference to the coursing not being 3, 6 or 9 inches but similar to 65 houses in Sheeplands, these details are not precise or sufficiently clear to establish the exact coursing proposed.
11. Furthermore, in light of the predominant use of natural slate roof tiles in the area, I do not find the use of Montana slates acceptable as this would be

harmful to the character and appearance of the area contrary to Policies ENV1, ENV10 and ENV12 of the West Dorset, Weymouth and Portland Local Plan 2015. Amongst other things, these state that development should be designed so that it does not detract from, and where reasonable, enhances the local landscape character, contribute positively to the maintenance and enhancement of local identity and distinctiveness, and only permit development where materials used complements and respects the character of the surrounding area.

12. Condition numbers 8 and 9 require the provision of a timber front door and timber windows. In light of the proposal seeking consent for the use of UPVC windows and doors, and regardless of any cost, maintenance, or other reasons for proposing the use of UPVC windows and doors, the proposed materials conflict with the use of timber materials as required by the condition.
13. In these circumstances, procedurally, if I was to agree to a flexible approach in respect of the requirements set out in condition numbers 8 and 9, this would effectively vary the condition. Separate legislation and a separate application process exists for this.
14. In light of the above, I conclude that the details pursuant to condition number 6 are insufficient and unacceptable and that the details pursuant to condition numbers 8 and 9 conflict with the requirements of the conditions. As a result, I have no option but to dismiss the appeal.

Other Matters

15. The Councils' evidence raises concerns regarding the effect of the proposal on the Somerset Levels and Moors 12 Sites of Special Scientific Interest, Special Protection Area and Ramsar site. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter or the related duties under the Conservation of Habitats and Species Regulations 2017 further.

Conclusion

16. For the reasons given above the appeal should be dismissed.

C Rose

INSPECTOR