
Appeal Decision

Site visit made on 16 June 2015

by P Willows BA DipUED MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 July 2015

Appeal Ref: APP/N2739/W/15/3009006

Land East of Cherwell Croft, Hambleton, North Yorkshire

- 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.
 - The appeal is made by Berkeley DeVeer against Selby District Council.
 - The application Ref 2014/0500/FUL, is dated 14 May 2014.
 - The development proposed is the erection of 22 dwellings with associated access and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 22 dwellings with associated access and landscaping at Land East of Cherwell Croft, Hambleton, North Yorkshire in accordance with the terms of the application, Ref 2014/0500/FUL, dated 14 May 2014, subject to the conditions set out in Schedule 1.

Procedural matter

2. The proposal originally sought permission for 23 dwellings but was revised while the Council was considering it.

Main Issue

3. The appeal is against the non-determination of the planning application within the prescribed period. The Council does not, in fact, oppose the development, but says that the application was not valid because of an incorrect certificate of ownership. Accordingly, the main issue is whether the planning application and appeal are valid.
4. I have also considered the fact that part of the site is not allocated for development in the development plan. Although this is not a point of dispute between the Council and the appellant, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires me to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.

Reasons

Validity of the application and appeal

5. A planning application must be accompanied by the relevant certificate of ownership. The appellant submitted *Certificate A* with the planning application. This indicates that the applicant is the sole owner of the application site. In fact, the appellant was not the sole owner of the land, although the other owner, Mr Price, was known to the appellant. Accordingly, the correct certificate would have been *Certificate B*. Completion of *Certificate B* requires the applicant to serve notice on all other owners of the land.
6. At the time of the planning application, the requirement for the Certificate was set out in Article 11 of The Town and Country Planning (Development Management Procedure) (England) Order 2010 (the DMPO). This states,
‘(1) Subject to paragraph (2), an applicant for planning permission shall give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of the land to which the application relates, or a tenant,—
(a) by serving the notice on every such person whose name and address is known to the applicant; and
(b) where the applicant has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated’.
7. This has now been replaced by Article 13 of the 2015 DMPO, but the substance is the same. ‘Requisite notice’ means notice in the appropriate form, set out elsewhere in the DMPO. The requirement for the Certificates is rooted in section 65 of the Act. Section 65(5) states that, ‘A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied’.
8. Quite clearly, the Council could not ‘entertain’ (let alone determine) a planning application not supported with the correct certificate. However, on realising its mistake (and there is no claim that it was anything other than a mistake) the appellant submitted a Certificate B, confirming that notice had been served on the other owner. A similar certificate has now been submitted with the appeal.
9. The Council argues that the planning application could not be made good by the subsequent submission of the correct certificate. However, it does not appear to me that the Act or DMPO have been designed to be quite so inflexible. Once any requirement of s65(5) has been satisfied, I cannot see that the planning authority is prevented from entertaining an application, even if that is after the application was submitted.
10. Of course, it is important that considerations of natural justice are taken into account. The requirement for certificates of ownership is to ensure that owners of land are aware of development proposals which may affect their property, allowing them the opportunity to become engaged in the application process. However, in this instance the land owner’s interests have not been prejudiced in any way. He was, in fact, fully aware of the scheme, having made an agreement with the appellant to sell the land, subject to securing planning permission. I understand that Mr Price has confirmed in writing that he was

notified of the planning application before it was submitted. The Council has not questioned this claim, and I have no reason to doubt it either. Accordingly, I see no reason why the *Certificate B* could not have been truthfully completed in retrospect.

11. I have been referred to a wide range of appeal decisions and court judgements, but none provides a definitive view relevant to this case, where the error was realised before the local planning authority determined the application. I see nothing in any of the cases to suggest that an error cannot be corrected in order to allow the application to be determined.
12. The Council cites an appeal decision where the inspector concluded that the appeal was not valid due to an incorrect certificate of ownership¹, but the circumstances of that case were quite different, not least because the ownership of part of the site was unknown. Consequently, far from being simply a technical breach, the mistake could have led to injustice.
13. For these reasons I conclude that, once the correct certificate was issued, the planning application became valid. The appeal is therefore valid and can be determined on its merits.

The development plan

14. The development plan consists of the Selby District Core Strategy Local Plan and saved policies of the Selby District Local Plan of 2005. Core Strategy Policy SP2 seeks to direct the majority of new development to existing settlements. In this case part of the site falls outside the designated Development Limits for Hambleton, giving rise to conflict with SP2.
15. However, the development plan must be read as a whole. Core Strategy Policy SP1 sets out a presumption in favour of sustainable development, following the approach established by the National Planning Policy Framework (the Framework). In accordance with SP1, where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
16. In this instance the Council accepts that relevant policies, including SP2, are out of date due to its inability to demonstrate an adequate supply of housing land, as required by the Framework². Furthermore, the Council acknowledges that the adverse effects of the scheme are not such that planning permission should be refused and also considers that the proposal is sustainable development, as defined by the Framework. I have no reason to come to any contrary view and there are no specific policies in the Framework which indicate that development of this site should be restricted. Consequently, despite the conflict with SP2, both SP1 and the Framework indicate that planning permission should be granted. Thus there is no reason to withhold planning permission based on conflict with the development plan.

¹ APP/Q5300/A/10/2124986

² See Para 47

S106 Agreement

17. A deed pursuant to s106 of the Act has been submitted with the appeal. This is to secure the provision of 5 affordable housing units and a financial contribution towards waste and recycling facilities.
18. The need for affordable housing is rooted in local³ and national policy and the planning officer's report sets out in some detail how the specific proposal for this development has been arrived at. Accordingly, I am satisfied that this element of the agreement is necessary, directly related to the development and fairly and reasonably related to it in scale and kind, and I have taken it into account in determining the appeal.
19. I have far less detail regarding how the contribution towards waste and recycling facilities has been calculated. Consequently, I am unable to conclude that the contribution is fairly and reasonably related in scale and kind to the development. Accordingly, I have not attached weight to this element of the agreement in reaching my decision.

Other matters

20. Local people have expressed concerns regarding the effect of the new development on existing roads. I appreciate that 22 new dwellings will add to traffic levels on local roads, and may be especially noticeable on Cherwell Croft. However, the highway authority does not oppose the scheme and I am satisfied that the development would not compromise road safety, subject to the submission of appropriate design details, which can be the subject of a planning condition. The scheme makes adequate provision for car parking.
21. Although the development would clearly change the outlook from a number of existing dwellings, there would be adequate separation distances between the proposed and existing dwellings, and so satisfactory living conditions at neighbouring properties would be maintained.
22. I have noted the suggestion that the site contains bats, but have little objective evidence relating to that or to indicate that roosts are present within the site. The scheme includes the retention of hedgerows which would continue to provide foraging opportunities for wildlife.
23. The planning application form indicates that surface water would be discharged to the surface water sewer, but Yorkshire Water advises that the network does not have the capacity for this. Moreover, national policy now promotes the use of sustainable drainage systems (SUDS). I am also mindful of the concerns expressed by local people regarding surface water drainage difficulties in the area. However, North Yorkshire County Council and the District Council have suggested that an appropriate scheme adopting SUDS principles could be required by a planning condition, and the appellant is agreeable to this. Such a condition could control the run-off from the site to an appropriate rate such that any existing difficulties would not be exacerbated, and is a satisfactory approach to the issue in my view.
24. A wide range of other matters have been raised, but none leads me to any different conclusion on the appeal.

³ Core Strategy Policy SP9 (Affordable Housing)

Conclusion and conditions

25. For the reasons set out above I conclude that the appeal should be allowed. I have attached a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning. A separate condition relating to materials is not needed since they are shown on the plans. A condition requiring the completion of the proposed landscaping and boundary treatment is needed to ensure that the appearance of the development is satisfactory.
26. Conditions are needed to ensure that proper provision is made for foul and surface water drainage and for access to the site, although I have simplified the conditions suggested by the Council, some of which overlapped in their requirements. A condition relating to renewable energy is necessary to give effect to Core Strategy Policy SP16.
27. I have not imposed some of the conditions suggested by the Council. I have insufficient evidence to justify a condition requiring the widening of footways along Chapel Street and Mill Lane. I am not persuaded that it is necessary to restrict the future use of the garages within the development, given the external parking areas available. The purpose of the condition requiring a survey to record the condition of the existing highway is not clear and I am not convinced that it would be enforceable in the form that has been suggested. I am not persuaded that the removal of permitted development rights relating to certain plots is justified on visual grounds. I do not have sufficient evidence to show that a condition relating to contaminated land is needed.

Peter Willows

INSPECTOR

SCHEDULE 1: CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in Schedule 2.
- 3) All hard and soft landscaping works and boundary treatment shall be completed in accordance with the approved landscaping plans and these works shall be carried out for each plot in its entirety within a period of twelve months from occupation of the plot.
- 4) No development shall take place until a detailed design and associated management and maintenance plan for surface water drainage for the site has been submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with the standards detailed in North Yorkshire County Council's SuDS Design Guidance (or any subsequent update or replacement for that document). It shall be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development. It shall demonstrate that the surface water run-off generated during rainfall events up to and including the 1 in 100 years rainfall event, taking account of climate change and urban creep, will not exceed the run-off from the undeveloped site following the corresponding rainfall event.
- 5) The approved surface water drainage scheme shall be implemented in accordance with the approved design prior to the occupation of any part of the development.
- 6) No development shall take place until details of the proposed means of disposal of foul drainage, including details of any off-site works, have been submitted to and approved in writing by the local planning authority. No buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
- 7) Prior to the commencement of development full details of the access, parking and turning areas and all related street furniture shall be submitted to and approved in writing by the local planning authority. The details submitted shall include a programme for carrying out the works. The development shall be carried out in accordance with the approved details and the programme.
- 8) No dwelling shall be occupied until a scheme to demonstrate that at least 10% of the energy supply for the development will be secured from decentralised, renewable or low-carbon energy sources has been submitted to and approved in writing by the local planning authority. The scheme shall include details of physical works on the site and a timetable. The approved scheme shall be implemented in accordance with the approved timetable and retained as operational thereafter.

SCHEDULE 2: PLANS

522/01G
522/03A
522/04A
522/05A
522/06A
522/07A
522/08A
522/09B
522/10A
522/11A
522/12A
522/13A