



Appeal Decision

Site visit made on 5 September 2019

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2019

Appeal Ref: APP/R3325/W/19/3228725

Land rear of 18 to 24 Westcombe, Templecombe BA8 OLH

- 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr R Thorner of Flower & Hayes Developments against South Somerset District Council.
 - The application Ref 19/00184/S73A is dated 18 January 2019.
 - The application sought planning permission for the erection of 13 dwellings without complying with a condition attached to planning permission Ref 17/04047/S73A, dated 23 November 2018.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans numbered F1325/200B, F1325/203B, F1325/205C, F1325/206C, F1325/207C, F1325/208C, F1325/210C, F1325/212C and F1325/215 received 29/07/2016 and F1325/216F received 06/10/2017 and F1325/217Q, F1325/202D, F1325/209 and F1325/214F received 15/01/2018.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 13 dwellings at land rear of 18 to 24 Westcombe, Templecombe BA8 OLH in accordance with the application Ref 19/00184/S73A, dated 18 January 2019, without compliance with condition 1 previously imposed on planning permission Ref 17/04047/S73A dated 23 November 2018 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr R Thorner of Flower & Hayes Developments against South Somerset District Council. This application is the subject of a separate Decision.

Background and Procedural Matters

3. Planning permission was granted for the erection of 13 dwellings on the site under application 09/03037/FUL in April 2010. There were two subsequent planning permissions (11/02147/S73 and 16/03330/S73A) which varied the approved plans attached to this original permission. These approvals resulted in further free standing permissions for the development of the site.

4. A further application (17/04047/S73A) sought to vary the scheme for 13 units by replacing the approved plans to application 16/03330/S73A. This proposal sought to replace the bungalows on Plots 2 and 3 with 2 storey dwellings. While refused by the Council this scheme was permitted on appeal on 23 November 2018¹. This resulted in another free-standing permission for the site. This approval showed a bungalow on Plot 1.
5. Another application (18/01071/S73A) sought to vary the condition detailing the approved plans under Application 09/03037/FUL to allow the bungalow on Plot 1 to be replaced by a 2 storey dwelling. This was permitted in August 2018 and again established a further free standing permission for the 13 dwellings on the site. However, with this amended application, Plots 2 and 3 were still retained with bungalows.
6. While the schemes for each permission stand alone, giving the developer a choice of which to implement, the information indicates that the intention of the present proposal is to amalgamate all the various options into a single free standing approval. This in effect would enable Plots 1, 2 and 3 to all be constructed as 2 storey dwellings. The present proposal seeks a new free standing permission by varying the plans condition (condition 1) of application 17/04047/S73A. This permission (17/04047/S73A) has 2 storey dwellings on Plots 2 and 3 and the only matter that would be different with the present proposal from that approval is a 2 storey dwelling on Plot 1 rather than a bungalow. The dwelling proposed for Plot 1 under this latest scheme is the same dwelling as that permitted on that plot under application 18/01071/S73A.
7. As the permission (17/04047/S73A) was granted at appeal there is no listed reason for the imposition of condition 1. However, as it is the standard plans condition, I consider that it has been imposed to provide certainty.
8. The application the subject of this appeal was not determined within the statutory period and the appellant appealed on the basis of non-determination. The Council, however, subsequently indicated in their appeal statement, following a committee resolution, that were it had the opportunity to determine the application it would have been refused on the basis that the proposal would result in unacceptable overlooking of three neighbouring properties, 28 and 30 Bowden Road and Plot 2 within the development.
9. The Council has stated that, as this revised scheme does not propose any uplift in the overall house numbers across the site, it accepts that the proposal does not trigger the need for any additional planning obligations over and above those already secured through the existing Section 106 agreement attached to the original application (09/03037/FUL), which is said to be equally applicable to any future amended schemes including this appeal. Consequently, I do not need to consider this matter further.

Main Issue

10. In the light of the above analysis, the main issue is the effect that the 2 storey dwelling on Plot 1 would have on the living conditions of the occupiers of 28 and 30 Bowden Road and the future occupiers of Plot 2, with particular regard to overlooking.

¹ Appeal reference APP/R3325/W/18/3200600

Reasons

11. Plot 1 is located on a slightly higher area of land than the road leading up to the development and the land further back into the site where other dwellings have been completed. The 2 storey dwelling would be sited adjoining the 2 storey dwellings permitted on Plots 2 and 3 and be of a similar design to other dwellings within the site.
12. The rear first floor windows of the proposed dwelling on Plot 1 would look towards the rear garden area of 30 Bowden Road. However, beyond the rear boundary of the Plot, within the garden of No 30, are well established trees. The trees would help to screen, to a large extent, views into this adjoining property from the first floor windows of the proposed dwelling. I have no clear evidence to believe that the trees are likely to be removed in the future. Given the presence of the trees, the distance between the rear windows of Plot 1 and the garden of No 30, and the area of garden that the dwelling windows would look towards, the living conditions of the occupiers of No 30 would not be unduly affected by the dwelling on Plot 1.
13. The side wall of the proposed dwelling on Plot 1 would face the dwelling at 28 Bowden Road. Subject to a condition in any approval that there would not be any windows added to this side wall, there would be no overlooking in this respect. The rear windows of Plot 1 would allow for some angled views towards a section of the rear garden of No 28. However, having regard to the reasonably limited area of garden that would be visible and its location within the garden of No 28, there would be an acceptable relationship between properties. In such circumstances, the living conditions of the occupiers of No 28 would not be affected to a harmful extent by overlooking from the windows of the dwelling proposed on Plot 1.
14. The dwelling on Plot 1 would have a first floor side window that would light the landing. This would look predominantly towards the side wall of Plot 2 and its side passageway. Any angled views towards the rear garden of Plot 2 would be limited. Views from the rear first floor rear windows from the dwelling on Plot 1 towards the rear garden of Plot 2 would also be limited by the angle as well as partially obscured by the detached garage. Overall, there would be a satisfactory relationship between these properties. In these circumstances, the occupiers of Plot 2 would not be overlooked to an unacceptable extent by the proposed dwelling on Plot 1.
15. The Council would also have considered these relationships and, I assume found them acceptable, when it permitted the same 2 storey dwelling on Plot 1 under application 18/01071/S73A. I have not been presented with any robust evidence or information that indicates that planning circumstances or policy has changed since the Council approved that application.
16. For the reasons explained above, I conclude that the dwelling on Plot 1 would not unduly affect the living conditions of the occupiers of the adjoining properties by way of overlooking and therefore would comply with Policy EQ2 of the South Somerset Local Plan (2006-2028) which seeks, amongst other things, to protect the residential amenity of neighbouring properties.

Other Matters

17. I have taken into account all the representations from local residents and the Parish Council. I note that there are concerns that 2 storey dwellings would replace the bungalows on Plots 1, 2 and 3. It is said that this would alter the original design concept, provide no financial benefit, undermine the need for bungalows on the site and in the area, and that this change would be contrary to what residents understood would be developed. However, the loss of the bungalows has already been agreed by the Council under other permissions and I have not been presented with a policy reason why this would be unacceptable or material planning harm identified that would result from this change to the original scheme. I therefore afford these matters limited weight.
18. I have taken into account the concerns with the potential loss of daylight and sunlight that it is said would occur to neighbouring properties from the development. Objections have also been raised regarding overlooking from the dwellings on Plots 2 and 3 to the properties within the wider development site to the west. However, the dwellings have already been approved under different permissions and given the spacing between properties and the overall positioning of the development, I am satisfied that the impact of the scheme on neighbouring properties would be acceptable in these respects. Consequently, I attribute these matters limited weight.
19. Comments have been raised regarding car parking and highways. My attention has not been drawn to any objections from the Highway Authority and it appears that sufficient car parking would be provided on Plot 1 in this case. Consequently, I attribute this matter limited weight.
20. Concerns are raised regarding drainage issues and the unfinished nature of the road. However, these are not matters directly related to the main issue in this case and therefore I attribute them limited weight.
21. I have noted the issues regarding the legal position of the boundary fence and the siting of the dwelling on Plot 1, as well as the comments regarding the background history to the development on the site. However, these are not matters for my consideration in terms of assessing the planning merits of this appeal and therefore these matters afford very little weight in the overall analysis.

Conclusion and Conditions

22. For the reasons given above, and taking all other matters into account, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but it is necessary in the interests of certainty to attach another condition listing the revised plans and restating those conditions that are subsisting and capable of taking effect, having regard to the conditions suggested by the Council in the event that the appeal was to be allowed.
23. In this regard the Planning Policy Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the previous planning permission, unless they have already been discharged. As I have little information before me about the status of all the other conditions imposed on the previous planning permission, I shall impose all those that I consider to be relevant. In the event that some

have in fact been discharged, that is a matter that can be addressed by the parties. I have made minor modifications to the recommended conditions in the interests of accuracy and clarity.

24. Condition 2 (external materials) and 7 (ground levels) are necessary in the interests of the character and appearance of the area. Conditions 3, 4 and 5 are necessary in the interests of highway safety and the convenience of all highway users. Foul and surface water drainage details need to be implemented as specified to prevent flooding and provide adequate drainage (condition 6).
25. In the interests of the character and appearance of the area it is necessary to ensure the planting scheme is implemented and retained (condition 8) and that trees are protected during construction (condition 9). Exceptionally, it is necessary to remove permitted development rights to control the future frontage treatments to the site, as detailed in condition 10, to ensure the appearance of the development is maintained.
26. Conditions 11, 12 and 13 are necessary to prevent overlooking and therefore help to maintain the living conditions of the occupiers of neighbouring properties.

David Wyborn

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans numbered F1325/217X, F1325/205F, F1325/214G, F1325/209A, F1325/203B, F1325/200B, F1325/215, F1325/206C, F1325/207C, F1325/208C, F1325/210C, F1325/212C and F1325/216H.
2. The external wall, roof and chimney materials, the materials and external finish for all external windows and doors, internal and external boundary treatments and surfacing materials for the access drive, paths, turning and parking areas shall accord with those agreed under discharge of condition application 13/00878/DOC, unless otherwise agreed in writing by the local planning authority.
3. Notwithstanding the plans listed in condition 1, prior to any other works commencing in respect of the development hereby permitted the visibility splays shown on drawing no. F1325/217D shall be provided in full and shall thereafter be permanently maintained in this fashion.
4. The proposed roads, including footpaths and turning spaces where applicable shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

5. Notwithstanding the plans listed in condition 1, at the proposed access there shall be no obstruction to visibility greater than 300mm above adjoining road level within the visibility splays shown on the submitted plan F1325/217D, such visibility splays shall be permanently retained and maintained thereafter.
6. The foul and surface water drainage details to serve the development shall accord with the details set out on drawing number F1325/225B received 29/07/2016, unless otherwise agreed in writing by the local planning authority. Such approved drainage details shall be completed and become fully operational before the development hereby permitted is first brought into use. Following its installation such approved scheme shall be permanently retained and maintained thereafter.
7. The development shall be carried out in accordance with the internal ground floor levels set out on drawing number F1325/217X, unless otherwise agreed in writing by the Local Planning Authority.
8. The development shall be carried out in accordance with the landscaping scheme detailed on drawing number J46-01A received 31/01/2013. All changes to existing ground levels and all planting, seeding / turfing comprised in the approved details shall be carried out in the first planting and seeding season following the first occupation of the dwellings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
9. The tree protection measures detailed on drawing number J46/-01A received 31/01/2013 shall be implemented and kept in place until the approved development is completed, unless otherwise agreed in writing by the local planning authority.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road.
11. Prior to plot 16 being first brought into use the first floor window in the south elevation shall be fitted with obscure glass (and fixed closed) and shall be permanently retained and maintained in this fashion thereafter.
12. Prior to plot 3 being first brought into use the first floor window in the north elevation shall be fitted with obscure glass and shall be permanently retained and maintained in this fashion thereafter.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no openings within the south elevation of Plot 1 without the prior express grant of planning permission.

End of Schedule