



Appeal Decision

Site visit made on 25 January 2016

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 02 June 2016

Appeal Ref: APP/Q3305/W/15/3137574

Land to the south of Longmead Close, Norton St. Philip, Frome BA2 7NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to approve matters reserved under an outline planning permission.
 - The appeal is made by Mr Malcolm Lippiatt of Malcolm Lippiatt Homes (Ltd) against the decision of Mendip District Council.
 - The application Ref 2015/1517/REM, dated 26 June 2015, sought approval of reserved matters pursuant to condition No 3 of an outline planning permission (Ref 2014/1877/VRC) which was granted on 9 February 2015.
 - The application was refused by notice dated 23 October 2015.
 - The development proposed is described as "application for the removal or variation of conditions 4 and 6 of planning permission 2013/1821".
 - The details for which approval is sought are: appearance, landscaping, layout and scale.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely the details of appearance, landscaping, layout and scale submitted in pursuance of condition No 3 attached to planning permission Ref 2014/1877/VRC dated 9 February 2015, subject to the following conditions:
 - 1) The development hereby approved shall be carried out in accordance with the following approved plans: Drawing nos 2045/01/B, 603/PL/01/D, 602/PL/02, 03, 04, 05, 06/A, 07/A, 08, 09/B, 10/A, 12 and 14.
 - 2) The development hereby approved shall be carried out using materials, windows, doors, paving, fencing and walling as specified on the Schedule of External Materials and Finishes.
 - 3) The soft landscaping shown on the approved plans shall be completed no later than the first planting season following the occupation of the dwelling to which it relates. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with the same planting or such other planting as may be approved in writing by the local planning authority.
 - 4) Plot 14 of the development hereby approved shall not be occupied unless the first floor window within the west elevation has been glazed with obscured glass. The window shall also be non-opening unless the parts of the window that can be opened are more than 1.7 metres above the floor of the room in which the window is installed. The window shall thereafter be permanently retained in accordance with the requirements of this condition.
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Application for costs

2. An application for costs was made by Malcolm Lippiatt Homes (Ltd) against Mendip District Council. This application is the subject of a separate decision.

Procedural Matters and Background

3. The description of development above is taken directly from the decision notice. However, the proposal would be more properly described as the erection of 8 market dwellings, 24 sheltered retirement homes and a warden's dwelling together with ancillary buildings and the construction of an estate road. This is the wording used on planning permission Ref 2013/1821 to which the above decision refers.
4. The appeal site has a complex planning history and it would be helpful for me to summarise the relevant parts to provide the context for the appeal.
5. Outline planning permission was granted on appeal in January 2014¹ for the erection of houses and garages and associated works on part of the appeal site. Reserved matters approval² was subsequently given for a development of six large detached houses and a pair of semi-detached dwellings.
6. In June 2014 another outline planning permission³ was granted, again on appeal, for the erection of 8 market dwellings, 24 sheltered retirement homes and a warden's dwelling together with ancillary buildings and the construction of an estate road. This permission relates to a larger parcel of land, of which the appeal site comprises the northern half.
7. An application (Ref 2014/1877/VCR) was subsequently made to vary conditions attached to the above permission. This was approved by the Council in a decision dated 9 February 2015. The new outline planning permission stands in its own right and the application for approval of reserved matters, which is the subject of the current appeal, was submitted pursuant to this decision.
8. The Council has advised that the decision notice includes an error, referring to the incorrect outline permission. I have considered the appeal on the basis that reserved matters approval is being sought in relation to permission Ref 2014/1877/VRC. This was the decision reference cited on the application form and as such it forms the legal basis for the submission.
9. Approval of reserved matters is being sought for only part of the site for which outline planning permission was granted. This is because an application for Village Green Status has been made in relation to the southern half of the site. Reserved matters applications in respect of that land have been held in abeyance pending the outcome. There is nothing in law to preclude the submission of multiple applications for reserved matters, providing that the details are compatible with the terms of the outline permission.
10. The outline permission is for a scheme of 8 market dwellings, 24 sheltered retirement homes and a warden's dwelling together with ancillary buildings and the construction of an estate road. The proposal before me is for a total of 15 dwellings, comprising 8 open market units and 7 age restricted homes. The latter would effectively form part of the sheltered retirement homes and their

¹ APP/Q3305/A/13/2202224

² Ref 2014/0497/REM

³ APP/Q3305/A/14/2212628 – Council Ref 2013/1821

occupancy would be restricted to persons aged 55 or over by the unilateral undertaking submitted at outline stage. The Council has raised no concerns with regard to consistency with the outline permission and I have no reason to take a different view. I am content to determine the appeal on the basis that approval of reserved matters is being sought in relation to part of the permitted scheme.

11. Clearly, further reserved matters applications may be submitted in relation to the remainder of the scheme. However, my formal decision relates only to that part of the development which is being sought at this stage.
12. I noted during my visit that development is already underway on site. I am told that this is in accordance with the first planning permission. The design and layout has close similarities to the proposal before me, with a number of units being common to both schemes. However, it should be noted that the appeal proposal includes additional units on land not covered by the first permission.

Main Issue

13. The Council refused to grant reserved matters approval on the basis that the mix of houses proposed, in terms of sizes/number of bedrooms, fails to reflect the identified local need within the sub-market housing area or the District as a whole. The main issue in this appeal is whether this is material to the consideration of the application for reserved matters.

Reasons

14. The application seeks the approval of reserved matters in respect of the layout, scale, appearance and landscaping of the development. The Council contends that the issue of housing mix is relevant to the consideration of layout and scale.
15. Article 2(1) of The Town and Country Planning (Development Management Procedure) (England) Order 2015⁴ ("the Order") includes definitions which provide a helpful starting point and a legal basis for determining what can and cannot be considered at the reserved matters stage.
16. The term scale is defined as "the height, width and length of each building proposed within the development in relation to its surroundings". Layout should be interpreted to mean "the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development".
17. I agree that, in general terms at least, the number of bedrooms contained within a dwelling is proportional to its size. However, it would be stretching a point to argue that the local planning authority has influence over the configuration of the internal accommodation, simply by virtue of its ability under the Order to exercise control over the external dimensions.
18. The phraseology used within the Order indicates to me that, in the context of an application for reserved matters approval, the issues of scale and layout are principally concerned with the manner in which the buildings physically relate to one another and their surroundings. They are not, as has been suggested, a mechanism for controlling the mix of housing.

⁴ SI 2015/595

19. My attention is drawn to Policy DP14 of the adopted Mendip District Local Plan Part 1: Strategy and Policies 2006-2029. This policy, consistent with paragraph 50 of the National Planning Policy Framework (the Framework), seeks to ensure that proposals for residential development provide an appropriate mix of dwelling types and sizes which reflects local need.
20. It is apparent, therefore, that the Council's position has a sound basis in policy. However, the mix of housing in a development is a matter to be determined at the stage of granting planning permission. In the current case, planning permission already exists. There are no conditions stipulating the housing mix, or requiring further details to be submitted for approval.
21. Moreover, the Design and Access Statement (DAS), which forms an important link between the outline planning permission and the consideration of reserved matters, makes clear that the general scale and form of all of the development will follow that of the existing housing in Longmead Close, with a preference being expressed for houses of the same design and appearance. I observed during my visit that the latter are predominantly large detached properties.
22. The Council has referred me to an appeal decision⁵ where the mix of housing was considered in the context of an application for reserved matters. I am told that there were no relevant conditions on the outline permission. However, I do not have sufficient detail on this case to determine whether there are direct parallels with the current appeal. For example, I have not had sight of the DAS and do not know whether this included any information on housing mix.
23. In any event, the above decision is not determinative of the legal position. Ultimately, the starting point for my consideration of this appeal must be the Order. This, together with the absence of any condition or relevant reference in the DAS, leads me to the conclusion that housing mix lies outside of the scope of this particular reserved matters application.
24. I note that more recently planning permission has been granted⁶ to enable the development to be considered and carried out in three different phases (Ref 2015/0541/VRC). A condition attached to this permission requires the submission of details of the mix of dwellings (types/sizes) for each phase. However, the condition does not bite as the appellant is seeking to implement an earlier permission, to which there is no condition attached.
25. Aside from its concerns about housing mix, the Council has raised no objections to the design of the proposed dwellings, or the manner in which the site would be laid out or landscaped. Architecturally, the proposed dwellings would mirror the style of housing which already exists in Longmead Close to the north. Having regard to this, and the strong similarities between the appeal scheme and the development which has already been permitted for the site, I consider the proposal to be acceptable. I therefore consider that a grant of reserved matters approval is appropriate. Given my conclusions in respect of the main issue, there is no need for me to consider the Council's detailed evidence in respect of housing mix.

⁵ APP/H1840/A/13/2203524

⁶ Ref 2015/0541/VRC

Other Matters

26. I understand that the land to the south of the appeal site is the subject of an application for Village Green Status. The development itself would not directly affect this land. Although concerns are raised regarding the location of the temporary construction compound, this is controlled by a condition attached to the outline planning permission. It is therefore a matter for the Council.
27. The proposal is unlikely to affect any of the public footpaths running across adjacent land. Nevertheless, if any diversion is required then this can be sought via a separate application under planning legislation. Interested parties have requested that a partially constructed permissive footpath, previously agreed and now not required, be removed. However, this lies beyond the scope of this reserved matters application.
28. Whilst I acknowledge the concerns regarding foul drainage, this is not a matter for consideration as part of the reserved matters. A condition attached to the outline planning permission will secure further details in respect of surface water disposal.
29. I note the concern that the proposal makes no provision for a warden's dwelling in relation to the sheltered housing element of the scheme. However, there is nothing within the outline planning permission to require the provision of this unit, or to secure its completion prior to the occupation of any of the age restricted dwellings which it is intended to serve.
30. I have given careful consideration to all other matters raised in representations but none is of such substance or weight as to outweigh my main findings.

Conditions

31. I have considered the Council's suggested conditions having regard to paragraphs 203 and 206 of the Framework and advice contained in the Planning Practice Guidance. Conditions are required to ensure that the development is carried out in accordance with the approved plans and particulars, for the avoidance of doubt and in the interests of certainty.
32. Implementation of the landscaping scheme also needs to be secured, in the interests of the character and appearance of the area. I have amended the condition to secure planting in the first planting season following first occupation of the dwelling to which it relates. This seems to me to be more reasonable than the Council's suggested wording.
33. Finally, I have attached a condition to require obscured glass in the first floor window in the side elevation of Plot 14. Although the appellant has questioned the need for this condition, I consider that it is necessary to protect the privacy of neighbouring residents.

Conclusion

34. For the reasons given above, I conclude that the appeal should succeed.

Robert Parker

INSPECTOR