



Appeal Decisions

Inquiry held on 22, 23, 24 and 25 February 2011

Site visit made on 25 February 2011

by **Brendan Lyons BArch MA MRTPI IHBC**

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

Decision date: 11 April 2011

Croft House, 2 Tees View, Hurworth Place, Darlington DL2 2DQ
Appeals made by Cecil M Yuill Ltd against Darlington Borough Council

Appeal A: Ref. APP/N1350/A/10/2134839

- 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 consent, agreement or approval to details required by a condition of a planning permission.
 - The application Ref 07/00152/RM2, dated 20 November 2009, sought approval of details pursuant to Condition No.1 of an outline planning permission Ref 07/00152/OUT granted on 17 July 2007.
 - The development proposed is the conversion of existing dwelling to form 4 No. apartments and erection of 2 No. detached and 13 No. town houses with access road and associated landscaping.
 - The details for which approval is sought are the reserved matters: scale, appearance and landscaping.
-

Appeal B: Ref. APP/N1350/A/10/2134838

- 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 consent, agreement or approval to details required by conditions of a planning permission.
 - The application Ref 07/00152/OUT, dated 20 November 2009, sought approval of details pursuant to Conditions Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 24 of an outline planning permission Ref 07/00152/OUT granted on 17 July 2007.
 - The development proposed is the conversion of existing dwelling to form 4 No. apartments and erection of 2 No. detached and 13 No. town houses with access road and associated landscaping.
 - The details for which approval is sought are set out below.
-

Appeal C: Ref. APP/N1350/A/10/2139200

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The application Ref 07/00152/RM3, dated 6 July 2010, sought approval of details pursuant to Condition No.1 of an outline planning permission Ref 07/00152/OUT, granted on 17 July 2007.
 - The application was refused by notice dated 27 August 2010.
 - The development proposed is the conversion of existing dwelling to form 4 No. apartments and erection of 2 No. detached and 13 No. town houses with access road and associated landscaping.
 - The details for which approval is sought are the reserved matters: scale, appearance and landscaping.
-

Appeal D: Ref. APP/N1350/A/10/2142870

- 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 consent, agreement or approval to details required by conditions of a planning permission.
 - The application Ref 07/00152/CON, dated 6 July 2010, sought approval of details pursuant to Conditions Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 24 of an outline planning permission Ref 07/00152/OUT granted on 17 July 2007.
 - The development proposed is the conversion of existing dwelling to form 4 No. apartments and erection of 2 No. detached and 13 No. town houses with access road and associated landscaping.
 - The details for which approval is sought are set out below.
-

Decisions

1. Appeal A is allowed and approval granted for the details submitted pursuant to Condition No.1 attached to outline planning permission Ref 07/00152/OUT granted on 17 July 2007, namely the reserved matters of scale, appearance and landscaping, in accordance with the application Ref 07/00152/RM2, dated 20 November 2009, subject to the conditions set out in the schedule annexed to this decision.
2. Appeal B is dismissed and approval refused insofar as it relates to details pursuant to Conditions No. 3; 4, 6, 7, 8, 9, 10, 13, 16, 17, 18, 19, 20, 21 and 22. Appeal B is allowed and approval granted insofar as it relates to details pursuant to Condition No. 5 (Landscaping scheme) and Condition No.24 (Archaeological assessment) attached to outline planning permission Ref 07/00152/OUT granted on 17 July 2007, in accordance with the application Ref 07/00152/OUT, dated 20 November 2009, and the plans and information submitted with it, namely Landscape Proposals Plan No.2990/90/01 Rev.E and the report entitled *Archaeological Desk-Based Assessment: Croft House, Hurworth Place, County Durham*, dated January 2008.
3. Appeal C is allowed and approval granted for the details submitted pursuant to Condition No.1 attached to outline planning permission Ref 07/00152/OUT granted on 17 July 2007, namely the reserved matters of scale, appearance and landscaping, in accordance with the application Ref 07/00152/RM3, dated 6 July 2010, subject to the conditions set out in the schedule annexed to this decision.
4. Appeal D is dismissed and approval refused insofar as it relates to details pursuant to Conditions No. 3, 4, 6, 7, 8, 9, 10, 13, 16, 17, 18, 19, 20, 21 and 22. Appeal D is allowed and approval granted insofar as it relates to details pursuant to Condition No.5 (Landscaping scheme) and Condition No.24 (Archaeological assessment) attached to outline planning permission Ref 07/00152/OUT granted on 17 July 2007, in accordance with the application Ref 07/00152/CON, dated 6 July 2010, and the plans and information submitted with it, namely Landscape Proposals Plan No.2990/90/01 Rev.E and the report entitled *Archaeological Desk-Based Assessment: Croft House, Hurworth Place, County Durham*, dated January 2008.

Application for costs

5. At the Inquiry an application for costs was made by Cecil M Yuill Ltd against Darlington Borough Council. That application is the subject of a separate Decision.

Preliminary matters

6. The appeal site comprises a large detached house and its grounds, situated at the edge of the village of Hurworth Place, on the eastern bank of the River Tees. The house dates from the mid-nineteenth century and the grounds contain a number of mature trees that are protected by tree preservation orders. The site is separated from the open field to the north and from the main road facing the river by tall brick walls. The entrance to the site adjoins The Lodge, which is a house of similar style and date to the appeal property. Close to the southern boundary lie a modern flat-roofed bungalow, *Cumana*, and a distinctive terrace of single-storey houses, Nos.3-7 Tees View, which are listed Grade II.
7. Outline planning permission (Ref 07/00152/OUT) was granted in July 2007 for the conversion of the existing dwelling to form 4 apartments and the erection in the grounds of 2 detached houses and 13 town houses, with an access road and associated landscaping. As part of the outline planning permission, the layout of the development and the access were granted full approval. The details of the scale of the buildings, their appearance and the landscaping of the site were reserved for later approval, and are referred to as 'the reserved matters'. The outline planning permission was granted subject to 24 conditions, the first of which requires that approval shall be obtained for the reserved matters before development is begun. Although not confirmed by a condition in this case, the statutory time period for the submission of reserved matters is three years from the date of the grant of outline planning permission.
8. Two of these four appeals (Appeals A and C) relate to applications for approval of the reserved matters. The applications are identical in their content. The first was submitted in November 2009 (Ref 07/00152/RM2) and Appeal A was made in August 2010 against the Council's failure to reach a decision on the application within the agreed timescale. The second application (Ref 07/00152/RM3) was made in July 2010 and was refused by the Council in August 2010. The Council has subsequently confirmed that it would have refused the first application for the same reasons as the later one, had the appeal not been made first.
9. The other two appeals (Appeals B and D) relate to two identical applications for approval of details required by other conditions attached to the original outline planning permission. The first of these applications (Ref 07/00152/OUT) was submitted at the same time as the Appeal A application and the second (Ref 07/00152/CON) at the same time as the Appeal C application. Both Appeal B and Appeal D are made against the Council's failure to reach a decision within the required timescale.
10. The main parties agreed at the Inquiry that full discharge of many of the conditions would only be possible after the development had been completed. It was agreed that Condition No.23, which stipulates a minimum ground floor level for the houses, does not require advance submission of details and should be omitted from the appeals. Condition No.1 can only be discharged by the

approval of the reserved matters. The outstanding details for which approval is sought can be summarised as:

- Condition No.3: Upgrading of access and proposed access road extension;
- Condition No.4: Maintenance regime for access road;
- Condition No.5: Landscaping scheme;
- Condition No.6: Advanced planting scheme;
- Condition No.7: Trees and shrubs along boundaries;
- Condition No.8: Boundary treatments;
- Condition No.9: Tree protection measures;
- Condition No.10: Routes of drains and services;
- Condition No.13: Foul drainage;
- Condition No.16: Flood risk assessment;
- Condition No.17: Schedule of works;
- Condition No.18: Maintenance of flood alleviation system;
- Condition No.19: Surface water drainage;
- Condition No.20: Storage pond discharge system;
- Condition No.21: Water storage system;
- Condition No.22: Storage pond design;
- Condition No.24: Scheme of archaeological assessment.

11. The appellant's submission for Appeals C and D included plans that had been revised since the Council's refusal of the second reserved matters application. The appellant had sought to carry out an informal consultation with local residents and other interested parties on these plans in advance of the Inquiry. It was requested that these plans be substituted for the plans on which the Council had made its decision. Following submissions from both main parties, I concluded that the revised proposals would materially alter the nature of the proposal and that parties who would normally have been formally consulted on the proposals would be prejudiced by the substitution of the revised plans. An outline of the reasons I gave for reaching this conclusion is attached as an Annex to this decision. The appeals therefore proceeded on the basis of the plans refused by the Council.
12. It was explained at the opening that the Inquiry could not re-consider matters of principle that had been established by the outline planning permission. Despite continuing concerns raised about such matters by some local residents, particularly in the light of the revision, since permission was granted, of the Environment Agency's model for flooding of the Rivers Tees and Skerne, the appeals are only to consider the reserved matters and details for which approval is now sought. The feasibility of constructing the proposed houses is not a matter before me.

Main Issues

13. It was agreed at the Inquiry that the main issue in Appeals A and C is:

Whether the proposed reserved matters would be consistent with the outline planning permission and acceptable in all other respects, having regard in particular to:

- the character and appearance of the area, including the setting of the adjoining listed buildings;
- the effect on protected trees;
- living conditions for residents of neighbouring properties and of the proposed houses.

14. It was agreed that the main issue in Appeals B and D is:

Whether the details that have been submitted for approval would satisfy the terms of the relevant condition in each case, having regard to the reasons for which the condition was imposed on the outline planning permission.

Reasons

Appeals A and C: Reserved matters

Scope of the outline planning permission

15. The outline planning permission establishes the principle and amount of development. There is no dispute that permission has been granted for the conversion of the existing house to four apartments and for the erection of 15 new houses, 2 of which are described as "detached" (although shown on all plans as attached to each other under a continuous roof over their garages) and 13 as "town houses". The term "town house" is not defined in planning law, but the Council confirmed at the Inquiry that it expected it to mean a form of terraced housing of at least two storeys in height.
16. The outline planning permission also gives full approval to matters of layout and access. The Town and Country Planning (Development Management Procedure) (England) Order 2010 ('the DMPO') defines that "...*'layout'* means 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..." and that "...*'access'* means the accessibility to and within the site, for vehicles, cycles and pedestrians, in terms of the positioning and treatment of access and circulation routes..."¹.
17. It is agreed, therefore, that a number of important aspects of the proposed development are now fully approved and are not subject to alteration by consideration of the reserved matters, which are also specifically defined in the DMPO. In particular, the location of buildings and of the access road, paths and parking areas within the site is established by the outline planning permission.
18. From the definition of "layout", it is clear that this is the matter under which the relationship of the proposed buildings and routes with adjoining buildings, routes and open spaces should be considered. Therefore, any concerns about the location of the proposed terraces relative to *Cumana* and to the listed

¹ DMPO Article 2

buildings to the south, and about the location of the pair of houses on the northern boundary relative to the adjoining public footpath, needed to be addressed as part of the approval of the layout. Potential harm could be prevented either by securing amendments to the proposed layout or by defining the outline permission to ensure that later submissions of reserved matters, such as scale, would be suitably constrained.

19. Consideration of those issues needed to take account of relationships in the vertical plane as well as on the horizontal. It was accepted by the Council at the Inquiry that changes in ground level, other than those purely "for the purpose of enhancing or protecting the amenities of the site"², fall to be considered under the matter of layout. In this case, the changes in level arose from the response to flooding.
20. Therefore, any concerns raised by the Council about the impact of development owing to the proposed elevated position of the houses and access routes should have been taken into account during consideration of layout at the outline stage. At that time, it was clear from the Flood Risk Assessment (FRA) that the houses would need to be considerably higher than the prevailing ground level, as confirmed by the imposition of Condition 23, which requires finished floor levels to be no lower than 32.4m AOD.
21. The approved section drawing (no. W1685/05A) shows, albeit in quite sketchy form, the raised terrace on which the houses would sit. Further detail is provided by the existing and proposed plans and sections (Drawings No. SK-005/1 and SK-006/1) that form part of the FRA. Condition 16 requires the development to proceed in accordance with the findings and recommendations of the FRA, so that these proposed ground levels effectively form part of the outline planning permission.
22. The outline permission does constrain the development with regard to the potential impact of the proposed buildings. A specific amendment to the plan (drawing no. W1685/10A) was secured to confirm that the house closest to the listed Nos.3-7 Tees View would be 2 storeys, with an attached garage, rather than the 2.5 storeys of the other terraced houses. But no such special provision was made for the house nearest to *Cumana*, nor was any condition imposed to fix the spacing of those houses from the southern boundary of the site.

Scale: Terraces A, B and C

23. As required by the DMPO³, some parameters of scale were added to the outline application, with the plan labelled to specify maximum heights above ground for eaves and ridges, along with the lengths of the terraces (including one obvious slip of the pen) and their maximum depth. Minimum heights were not specified, but it was plain that the eaves height of 5m was already set at or close to the effective minimum for a 2 storey house and that, as outlined in the Design and Access Statement (DAS), the dormers would be at roof level.
24. The definition of "scale"⁴ relates only to the proposed buildings themselves. Altered ground levels are not part of the consideration. This would be borne out in reality, as perceptions of the scale of the finished houses would not be

² DMPO Article 2 : definition of "landscaping"

³ DMPO Article 4 (4)

⁴ DMPO Article 2