

Condition No.8: Boundary treatments

65. At the Inquiry, I was asked to disregard landscape and boundary information shown on the Proposed Site Plan (No. CH Plan 01 Rev.A). The submitted landscaping drawing (No.2990/90/01 Rev.E) gives an indication of proposed boundary treatments, but insufficient detail, particularly of the public-facing northern and eastern boundaries.

Condition No.9: Tree protection

66. As well as seeking to control implementation of the works, the condition requires submission and approval of details of tree protection measures and a method statement for works to be carried out, to include details of agreed areas of "no dig" construction and the cellular system to be utilised. These are all addressed in the submitted Arboricultural Implications Assessment, Tree Constraints Plan (No. ARB/AE/409-TCPa), and Arboricultural Method Statement and Tree Protection Plan (No. ARB/AE/409/TPP).

67. However, while the reports are very helpful in identifying areas of potential conflict between development and tree protection, they and the plans are less specific on precise solutions in key areas such as the formation of steps and changes of level within the crown spread and root protection areas of trees to be retained, including those at the south-west corner of the site and those just outside the southern boundary. In my view, these areas require specific detailed proposals, linked to the details of the access road.

68. Furthermore, as outlined above, tree protection is closely linked with the detailed proposals for storm detention and drainage. It is agreed that the proposed pond shown on the Engineering Layout (No. 307:03:103:01 Rev.B) would be unnecessarily harmful to the trees on the road frontage. The extent of pruning required to the weeping beech tree to accommodate vehicles passing under the crown is not sufficiently clear. Revised detailed proposals for tree protection should follow from approval of details of the storage pond under Condition No.22 and of the access road under Condition No.3.

Condition No.10: Routes of drains and services

69. The reason for this condition is the protection of trees. Approval of details should follow from approval of final proposals for the pond, other storm water storage and finished ground levels. It was accepted at the Inquiry that underground piping of storm water might be an alternative to the open channels shown on the Engineering Layout, subject to the effect on trees.

Condition No.13: Foul drainage

70. There appears to be no objection in principle to the proposals, but they will be affected by revisions to the Engineering Layout. I agree with the Council that there would be value in awaiting consideration of a detailed submission under the Building Regulations before seeking approval to these details.

Conditions No.16 and 17: Flood risk assessment and Schedule of works

71. Condition 16 does not require submission of details and must be read in conjunction with Condition No.17, which demands a schedule of works to show compliance with the FRA. The Environment Agency (letter dated 8 April 2010) has indicated no objection to the proposals then submitted for a larger volume

of storage than required by the FRA. But, as outlined above, revised proposals are now required for the pond and storage provision. The proposal to opt for higher floor levels than required by the FRA has consequent effects on the raising of levels throughout the site and on the construction of roads, paths and retaining structures, with implications for tree protection. The current details cannot be approved.

Condition No.18: Maintenance of flood alleviation system

72. There appears to be no objection in principle to the proposed arrangements for maintenance by a private contractor but, as with the access road, formal approval should await approval of the final details of the provision to be maintained.

Conditions No.19, 20, 21 and 22: Surface water drainage, Storage pond discharge, Water storage system and Storage pond design

73. These conditions can best be considered together. Expert evidence submitted to the Inquiry showed that a range of design solutions is available to ensure compliance with the requirements of the FRA. The final details will depend on the review of the pond design in the interests of tree protection and of site levels, with consequent implications for the underground storage element, all of which would inform a revision of the Engineering Layout plan (No. 307:03:103:01 Rev.B). Although it appears that there is no objection to the storage pond discharge system and river outfall and that the approval of the Environment Agency has now been obtained, it would be premature to approve details for Condition No. 20 in isolation from other potential revisions.

Condition No.24: Scheme of archaeological assessment

74. It was common ground before the Inquiry that this Condition was satisfied by the submission of the report prepared by Northern Archaeological Associates entitled *Archaeological Desk-Based Assessment: Croft House, Hurworth Place, County Durham*, dated January 2008. I see no reason to disagree.

Conclusion on Conditions Appeals

75. I conclude that only those details that have been submitted for approval in connection with Conditions No.5 and 24 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.

Overall conclusion

76. For the reasons set out above, I conclude that the two reserved matters appeals should be allowed and the submissions in respect of scale, appearance and landscaping approved subject to some outstanding details. However, other important issues remain outstanding from the outline planning permission, particularly with regard to the protection of trees and proposals for storm water detention, so that further details are required to satisfy most of the conditions attached to the original permission.

Brendan Lyons

INSPECTOR

APPEARANCES

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INTERESTED PERSONS:

Councillor Martin Swainston
Jean Peacock
Ian Dell
Ken Paterson
Adam Baldwin

Ward Councillor, Darlington Borough Council
Hurworth Parish Council
On behalf of six local residents
Hurworth Parish Council
Local resident

DOCUMENTS

Submitted by the Council

- 1 *Design of New Development* Supplementary Planning Document
- 2 Letter from Environment Agency dated 21 February 2011
- 3 Opening/Preliminary Submissions
- 4 Statement of Community Involvement
- 5 Memo from T Crawshaw to D Nelson, dated 10 June 2010
- 6 Schedule of dimensions (amended)
- 7 TPO report, 5 January 1989
- 8 TPO (No.1) 1989
- 9 Closing Submissions
- 10 Response to Application for Costs – Notes

Submitted by the appellant

- 11 Opening Statement
- 12 Schedule of house types
- 13 Proposed conditions
- 14 Appendices A-D of Mr Hurd's evidence
- 15 Costs Application
- 16 Closing Submission

Submitted by third parties

- 17 Copy of Councillor Swainston's statement
- 18 Copy of Mrs Peacock's statement
- 19 Copy of Mr Dell's notes

PLANS and PHOTOGRAPHS

- A Front Elevation Plots 14C-12C
- B House Type B: Typical Section and Side Elevation—Plan No.B 20 06
- C White Young Green Flood Risk Assessment Plans No. SK005 Rev.1,
SK006 Rev.1, SK007 Rev.1
- D Section through southern boundary (M Wildblood)
- E Proposed elevation to northern edge of development as viewed from
adjacent field (as refused in Appeal C application)
- F Colour copy of photo at para 9.1 of Mr Crawshaw's proof of evidence

Annex 1

Schedule of conditions

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

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

- 1) No development shall take place until details, including samples, of the materials to be used in the construction of the external surfaces of the buildings whose appearance is hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 2) No development shall take place until details of the windows, dormer windows and doors of the buildings whose appearance is hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until details of boundary treatments, fencing, and railings within the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the landscape treatment of the area immediately to the south of Terrace B have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Annex 2

Outline of Reasons for Refusal to Accept Substitute Plans⁶

1. This is not a straightforward issue, with legal precedents offered by both sides that I have sought to absorb and to reach a resolution.
2. The basic principle of the Planning Inspectorate's role in appeals is fairness—to appellants, to third parties and to local planning authorities. This decision turns on whether it is fair to accept these amended plans. The *Wheatcroft*⁷ principles referred to by both parties are also very much about fairness.
3. The Planning Inspectorate has issued Good Practice Advice Note 09/2009 specifically to deal with the issue of amendments to proposals at appeal. I have taken account of this Advice Note in reaching my decision.
4. The document⁸ handed up by Mr Williamson was an earlier note, which effectively advised that inspectors were going to be less lenient in accepting amendments in future and more rigorous in applying the *Wheatcroft* principles.
5. Advice Note 09/2009 is clear that the 'default position' is that appeals should be determined based on the plans and proposals decided by the local planning authority. Paragraph 3 states:

"For all appeals, in the interests of fairness and ensuring that decisions are made locally where possible, it is important that what is considered by the Secretary of State is essentially what was considered by the local planning authority. The appeal process should not be a means to progress alternatives to a scheme that has been refused or a chance to amend a scheme so as to overcome the reasons for refusal."

6. The Advice Note applies to all appeals –I see nothing in it to say that it relates only to applications for full planning permission. The principles of fairness and consultation should apply equally to reserved matters appeals as well as to planning applications.
7. Reserved matters can be of great significance, particularly to interested parties: for example, what the proposed building will look like, and where it will go (although that is not at issue in this case). Reserved matters are not second class issues. This is recognised in the Council's Statement of Community Involvement, which allows the same consultation for reserved matters as for full planning applications.
8. I have considered the points made about different procedural requirements for reserved matters cases and applications for full planning permission, but I have not seen anything in the *Inverclyde* judgement⁹ or the other decisions tendered to conclude that the basic principle of *Wheatcroft* fairness should be set aside for a reserved matters case.
9. There are two key tests arising from the *Wheatcroft* judgement, which concluded that "...the main, but not the only, criterion on which...judgement should be exercised is whether the development is so changed that to grant it

⁶ This is not a *verbatim* transcript but is closely based on notes made at the Inquiry.

⁷ *Bernard Wheatcroft Ltd v SSE* [1982] JPL 37

⁸ Planning Inspectorate Newsletter Issue 10: *Submission of revised proposals at appeal* September 2008

⁹ *Inverclyde District Council v Secretary of State for Scotland* [1982] SLT 200

would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation”.

10. Applying the first test to this case: Is the development significantly changed? In my view, it is. The two houses to the north are significantly different and other houses are changed in appearance (although less significantly). The groundworks are different in relation to protected trees and in their role in storm detention. It is important to remember that these plans would also apply to the conditions considered under Appeal D, where details of drainage and flood control are to be approved.
11. The second test is whether anyone would be prejudiced by the lack of opportunity for consultation. Again, the answer is 'yes'. In particular, there would be significant effects for the residents of the house adjoining the site on the north on which they ought to be consulted, due to the effect of the different houses now proposed and also of the proposed different groundworks, when we know that the house is already affected by flooding.
12. I consider that the proposed amendments would fail the Wheatcroft tests.
13. Advice Note 09/2009 goes on to outline instances where amendments after the local planning authority decision might be appropriate. I consider that those conditions do not apply in this case.
14. I conclude that the amended plans should not be accepted and that the Appeals C and D should proceed on the basis of the plans refused by the Council in the Appeal C reserved matters application.

