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Mr A Burton

Group Leader – Inner Area Team

Development Management

Planning and Building Control

Barnsley MBC

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BARNSLEY

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Dear Andrew,

Section 73 application to vary/remove conditions 2, 8 and 9 of planning permission 2008/1700 for the erection of 24 two bedroomed apartments at 155 Wakefield Road, Barnsley S71 1NG

You will no doubt recall our discussions in respect of planning application 2008/1700 earlier this year.

The Extant Permission

As you are aware, we have an email from you dated 7 February 2019 which confirms that the development approved under 2008/1700 has been lawfully implemented and therefore remains extant.

We also have earlier correspondence from the Council (Joe Jenkinson) which confirms that the completion of the Section 106 legal agreement required by condition 10 and the Section 278 agreement and the works undertaken required by condition 9, as well as other conditions that have been discharged, and the clearance works carried out on site, together mean that a material start was made on the development approved under 2008/1700.

We also have emails from you confirming that the Council is willing to consider a Section 73 application to vary conditions, which further confirms that 2008/1700 is a 'live' permission.

Why the Development Stalled

Once implemented, the approved development stalled for two reasons:

1) The financial/housing market crash
2) The fact that the highways conditions on the planning permission prevented the development from being implemented

When the UK housing market crashed Taylor Estates Ltd were not in an appropriate position to continue with the development. This also meant that it was not the correct time to challenge the planning conditions.

As the housing market has now to a large extent recovered, the applicant is keen to bring this site forward to enable the approved scheme of 24 apartments to be completed.

In addition to the housing market/financial issues that developers across the UK experienced in 2008/09 and beyond, the applicants were also not able to continue with the approved development because of the highways conditions imposed by Barnsley MBC when 2008/1700 was granted.

Taylor Estates Ltd remain unable to comply with condition 2, 8 and 9 of the planning decision 2008/1700. This is because the highway requirements imposed on the planning approval for the 24 apartments inherently require highway works to be carried out on private land owned by a third party. The development cannot continue until this matter is satisfactorily resolved.

Benefits of the Development

This approved development will deliver 24 apartments to contribute to the housing market in this sustainable location. 24 apartments will make a valuable contribution to the housing delivery figures.

The proposed development would deliver short term economic benefits through the provision of construction jobs and trade for local suppliers and contractors during the construction period.

Once occupied, the scheme would also result in 24 households living and working in this area who would contribute to the local economy by utilising the shops and services in the Borough. This will benefit the local economy and community. The site is situated close to public transport links, shops, services and sources of employment.

The development will deliver financial benefits in terms of Council tax and potentially New Homes Bonus, and the financial benefits are a material planning consideration.

This vacant development site is currently an unattractive blight on this urban environment and the proposed development would therefore result in the significant visual enhancement of this site.

The proposal to provide a junction off Wakefield Road solely to serve the approved development would benefit the occupants of the existing dwellings along Old Road and Quarry Street as the traffic that will be associated with the approved development would not need to pass their properties, thus removing any risk of disturbance or inconvenience caused by the development traffic. This is a social benefit for the existing residents.

The considerable benefits of bringing forward the approved development of 24 apartments should be weighed in the planning balance when considering the Section 73 application.

The Need to Remove/Vary the Highway Conditions

At our meeting on 6th March 2019 you agreed in principle that planning conditions which require work to be undertaken on third party private land would not meet the tests for conditions set out in paragraph 55 of the NPPF.

The highways conditions imposed on planning permission 2008/1700 inherently require improvement works to be undertaken on third party land at the junction of Old Road and Carlton Road, as these works are required before conditions 2 and 9 can be complied with.

In this case the problem has been exacerbated by the fact that the Council has failed to take legal action in response to non-compliance with an Enforcement Notice previously served on third parties, which sought to require the highway improvements at the Old Road/Carlton Road junction.

We are of course aware of the recent planning permission (2019/0212) granted for junction improvement works at Old Road/Carlton Road. There is however no guarantee that these junction works will ever be started and, even if started, it is questionable whether they would ever be completed and adopted. There is certainly no timescale fixed for these works to be carried out and for the new junction to become part of the public highway. The critical point is that Taylor Estates has no influence on whether these highway works are undertaken.

It is not reasonable for Taylor Estates to be effectively be held ransom by a third party as a result of unreasonable planning conditions imposed by BMBC, compounded by the failure of the Council to ensure that the junction improvement works are implemented.

One of the tests for planning conditions (as previously set out in Circular 11/95 and now set out at paragraph 55 of the NPPF) is that conditions must be reasonable. It is inherently unreasonable for the Council to require works on third party private land as part of planning conditions.

The Way Forward

The highway requirements imposed on the approved scheme did not meet the tests for conditions because the conditions relied on highway improvements being carried out on private land, by a third party. There is a letter on your files from Richard Bayes dated 24 March 2009 (before 2008/1700 was granted) and addressed to Joe Jenkinson, which set out concerns about the condition that was proposed at that time.

The Council did not pay heed to the concerns raised with them about the condition at the time of the application and these concerns have proven to be correct.

Unfortunately, the Council has inadvertently prevented Taylor Estates from implementing their planning permission through the imposition of unreasonable conditions and due to the failure to enforce the junction improvement works by a neighbouring developer.

We hope therefore that the Council will be willing to assist with resolving the situation in which the applicants now find themselves.

Revised Access Proposals

Taylor Estates Ltd employed Inspire Design and Development Ltd, an experienced and well-respected highways engineer, to review the access arrangements for the approved development. This has included extensive survey work of the existing highway environment.

The research and findings of Inspire are set out in their detailed Transport Statement.

As a result of the advice from Inspire, the applicants now propose to create an 'in and out' junction at the western end of Quarry Street where it meets the A61 Wakefield Road.

To the east of the development site entrance Quarry Street would then be closed with bollards to prevent Quarry Street being used as a 'rat-run'. This means that only the approved development of 24 apartments would use the improved junction of Quarry Street with the A61.

The proposed access solution is explained in full in the submitted Transport Statement and detailed evidence is provided to demonstrate that the proposed access would function successfully and would be safe.

Whilst it is understood from the Highway Authority that they might 'prefer' access to the development site to be via Old Road, we have provided evidence with this Section 73 application that the proposed junction with Wakefield Road would not result in an unacceptable impact on highway safety. We have also demonstrated that the residual cumulative impacts on the road network would not be severe. The proposed junction therefore meets the tests of paragraph 109 of the NPPF and therefore should be approved.

Whether there may be an alternative access to the site (via Old Road) is not a material consideration (although we don't believe there is an alternative due to third party land control). The relevant consideration is whether the proposed access meets the policy and technical requirements, which it does.

Revised Planning Conditions
This Section 73 application is to enable the approved apartments to be implemented with the revised junction now proposed.

The application is therefore for a new permission with the following amendments to the conditions:

Condition 2 -This condition should be amended to remove reference to the site plan received 9th Jan 2009 and to include the site plan showing the access arrangements submitted with this application.

Condition 8 – This condition was previously discharged as a result of the completion of a Section 278 agreement based on the previously approved site plan. This condition is not necessary, and it is requested that it be deleted. The appropriate highway permissions would be obtained for the highway works but this is controlled by the Highways Act and does not require a planning condition which would be ultra vires.

Condition 9 – This condition should be amended to require implementation of the junction shown on the site plan submitted with this Section 73 application.

Condition 1 relating to the time limit for implementation of the planning permission would no longer be applicable as the development has already been implemented. Condition 1 should therefore be deleted.

The other conditions with a pre-commencement trigger should be reviewed (in the light of Town and Country Planning (Pre-commencement Conditions) Regulations 2018) to determine whether a pre-commencement trigger is necessary or should be reworded to require the submission of the details at an appropriate stage in the development.

I hope this explains the proposals. If any matters arise during the course of processing the application, I would be grateful if you could contact me either via email or telephone. I look forward to receiving your feedback on the application in due course.

Yours Sincerely

Charlotte

Charlotte Stainton MRTPI
Chartered Planning Consultant

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