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## Appeal Decision

Site visit made on 23 January 2018

by **Nigel Harrison BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> January 2018

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**Appeal Ref: APP/N2739/W/17/3185834**

**DJ Motors, 5a Barff Lane, Brayton, Selby, YO8 9ER**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr David Sanderson and Mr John Eccles against the decision of Selby District Council.
  - The application Ref: 2017/0675/OUT dated 12 June 2017 was approved on 14 August 2017 and planning permission was granted subject to conditions.
  - The development permitted is outline permission (with all matters reserved) for a residential development following demolition of existing vehicle repair garage.
  - The conditions in dispute are Nos 3, 4 and 10.
  - Condition 3 states that: *The development shall be carried out in accordance with the plans/drawings listed below: LOC-01 Location Plan; 02 – Indicative layout Plan.*
  - The reason given for condition 3 is: *For the avoidance of doubt.*
  - Condition 4 states that: *The number of dwellings authorised by this permission shall not exceed two, and any reserved matters application(s) submitted pursuant to conditions 1 and 2 shall be limited to this maximum in total.*
  - The reason given for condition 4 is: *In the interests of the amenities of the adjoining residential properties, having regard to Policy ENV1 of the Selby District Local Plan.*
  - Condition 10 states that: *Notwithstanding the provisions of the Town and Country Planning (General permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order), any garage(s) shall not be converted into domestic accommodation without the granting of appropriate planning permission.*
  - The reason given for condition 10 is: *In accordance with Policies ENV1, T1 and T2 of the Selby District Local Plan and to ensure the retention of adequate and satisfactory provision of off-street accommodation for vehicles generated by occupiers of the dwelling and visitors to it, in the interests of safety and the general amenity of the development.*
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### Decision

1. The appeal is allowed and the planning permission Ref: 2017/0675/OUT for residential development following demolition of existing vehicle repair garage at DJ Motors, 5a Barff Lane, Brayton, Selby, YO8 9ER granted on 14 August 2017 by Selby District Council, is varied by deleting conditions 3, 4 and 10 and substituting for condition 3 the following condition:

The development hereby permitted shall be carried out in accordance with the following approved plans: LOC01 – Location Plan.

### Application for Costs

2. An application for costs was made by Mr David Sanderson and Mr John Eccles against Selby District Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues are:
  - i) Whether condition 3 is reasonable or necessary in the context of an outline application for residential development with all matters reserved.
  - ii) Whether condition 4 is reasonable or necessary having regard to the living conditions of the occupiers of the adjoining residential properties.
  - iii) Whether condition 10 is reasonable or necessary in the interests of highway safety and the general amenity of the development having regard to the adequacy of the parking provision to serve the development.

## Reasons

4. Outline planning permission was granted on 14 August 2017 for residential development following demolition of the existing vehicle repair garage on the site. The permission was subject to 19 conditions in total and the appeal has been made specifically in relation to conditions 3, 4 and 10.
5. Paragraph 206 of the *National Planning Policy Framework* (the Framework) states that conditions should only be imposed where they are necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects. I have also taken into account the advice on conditions set out in the Government's *Planning Practice Guidance* (PPG).

### Condition 3

6. The appellants say condition 3 is unreasonable, as it requires the development to be carried out in accordance with an illustrative layout plan which accompanied the application. This plan is clearly labelled as being an indicative layout plan for illustrative purposes only and shows how three dwellings could be accommodated on the site. PPG paragraph 004 states that where details have been submitted as part of an outline application, they must be treated by the Local planning Authority as forming part of the development for which the application is made. However, this does not apply where (as here) the applicant has made it clear that the details have been submitted for illustration purposes only. In any event, this condition would be unenforceable in that it directly conflicts with condition 4, which states that the number of dwellings authorised by the permission should not exceed two.
7. In its statement of case the Council concedes that this plan should not have been included within condition 4 as all matters are reserved for subsequent approval. I agree and therefore substitute a new condition 3 which refers to the location plan only and omits reference to the indicative plan.

### Condition 4

8. The appellants say restricting the number of dwellings to two at the outline stage severely limits the options for the site, adding that what the site can accommodate in terms of numbers should be determined as part of the detailed design. The appellants also say that a higher number of smaller properties need have no greater footprint than two larger detached dwellings, and would make better use of this accessible brownfield site.

9. In response, the Council considers that due to the shape and size of the site and its relationship to neighbouring properties, it could not accommodate three dwellings without adversely affecting the living conditions of neighbouring occupiers in terms of overlooking and/or overshadowing. However, I find it would be inappropriate and unreasonable to make such a judgement without full details of the site layout being available to inform such an opinion.
10. PPG paragraph 018 says it is best practice for local planning authorities to agree proposed conditions with an applicant before a decision is taken, and the Council says the appellants confirmed in prior discussions that they would be agreeable to a condition restricting the number of dwellings. However, having read the relevant correspondence, I note that the appellants say a condition restricting dwelling numbers to two would only be acceptable if the alternative was refusal of the application.
11. Ultimately what the site can accommodate in terms of numbers will be dependent upon the layout of the site, the disposition of dwellings in relation to surrounding development, and the size and type of the dwellings proposed; all of which have been reserved for future consideration. If, at the reserved matters stage, the details fail to meet residential amenity standards, or are unacceptable for any other reason, then it would be open to the Council to refuse those details or seek amendments that may require a reduction in the number of dwellings.
12. For these reasons I consider the condition fails the tests of being necessary or reasonable. Nor would be enforceable as it conflicts with the requirement in condition 3 for the development to comply with the indicative plan.

#### *Condition 10*

13. Condition 10 relates to the removal of permitted development rights for the conversion of garages into domestic accommodation, and the Council says it was attached at the request of the Highway Authority.
14. PPG paragraph 016 makes it clear that conditions restricting the future use of a development through removal of permitted development rights will rarely pass the test of necessity, and should only be used in exceptional circumstances. Indeed, the Council now accepts that at the outline stage it is not known whether the proposed dwellings would benefit from garages or not, and that on reflection should not have been imposed. In line with the above guidance I agree that such a condition cannot be justified as part of an outline application with all matters reserved. It is not necessary, reasonable, or relevant to the development permitted.

#### *Conclusion*

15. Therefore, having regard to all other matters raised, I have concluded that the appeal should succeed, and the permission is varied by deleting conditions 3, 4 and 10. For the avoidance of doubt and in the interests of proper planning I have imposed a new condition 3 which refers solely to the submitted location plan.

*Nigel Harrison*

INSPECTOR



## Costs Decision

Site visit made on 23 January 2018

by **Nigel Harrison BA (Hons) MRTPI**

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

Decision date: 24<sup>th</sup> January 2018

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### **Costs application in relation to Appeal Ref: APP/N2739/W/17/3185834 DJ Motors, 5a Barff Lane, Brayton, Selby, YO8 9ER**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr David Sanderson and Mr John Eccles for a full award of costs against Selby District Council.
  - The appeal was against the decision of the Council to grant subject to conditions planning permission for a residential development following demolition of existing vehicle repair garage: Ref: 2017/0675/OUT, approved on 14 August 2017.
  - The conditions in dispute are Nos 3, 4 and 10.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

#### **The submissions for Mr David Sanderson and Mr John Eccles**

2. The application was made in writing.

#### **The response by Selby District Council**

3. The Council's response was made in writing.

### **Reasons**

4. Paragraph 030 of the *Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
5. Paragraph 032 says an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. It explains that costs may include the time spent by the appellant in preparing for the appeal, including the use of consultants to provide technical advice. A full award of appeal costs means the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application.
6. Paragraph 049 sets out those circumstances where an award of costs may be made against a local planning authority. These include imposing conditions which are not necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects, and thus

do not comply with the guidance in the *National Planning Policy Framework* (the Framework).

7. I shall now consider the application in relation to the disputed conditions.

*Condition 3 and Condition 10*

8. As explained in my decision, I considered that condition 3, requiring the development to be carried out in accordance with the submitted illustrative layout plan, and condition 10, relating to the removal of permitted development rights for the conversion of garages, were incorrectly applied and failed to meet the tests in the Framework and PPG.
9. In its statement of case the Council, on reflection, accepted that these conditions should not have been attached to the outline permission and could have been attached at the reserved matters stage, if necessary. As such, the Council says it has not unreasonably defended these conditions at the appeal stage. However, whilst correct, this has not prevented the appeal being made in the first instance. Consequently, the appellants have incurred unnecessary and wasted expense in preparation of the appeal statement, including the appointment of a planning consultant, and the expense of making the costs application.

*Condition 4*

10. With regard to this condition, which restricts the number of dwellings permitted, I accept that even at the outline stage, the Council needs to satisfy itself that an appropriate scheme could come forward at the reserved matters stage. I also accept that the Council has set out its position why it considers such a condition to be necessary –namely the shape and size of the site and its relationship to neighbouring dwellings. However, as will be seen from my decision, what the site can accommodate in terms of dwelling numbers is to a large extent dependant on the layout of the site and the type and size of dwellings proposed; all of which matters have been reserved for future consideration.
11. If, at the reserved matters stage, the details fail to meet residential amenity standards, or are unacceptable for any other reason, then it would be open to the Council to refuse those details or seek amendments that may (or may not) require a reduction in the number of dwellings. For these reasons it will be seen from my decision that I found that the condition failed the tests of being necessary or reasonable, and therefore the appellants have incurred unnecessary and wasted expense in the preparation of the appeal statement and making the costs application.

**Summary**

12. In summary, I conclude that the Council has failed to produce adequate evidence to justify the imposition of conditions 3, 4 and 10. The appellants have incurred expense through the appeal process in responding to these conditions, which I have found to be neither reasonable nor necessary in relation to the nature of the development proposed.
13. As such, unreasonable behaviour resulting in unnecessary expense has been demonstrated in this case, as set out in Paragraphs 030, 032 and 049 of the PPG. Consequently, I consider a full award of costs is justified.

**Costs Order**

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Selby District Council shall pay to Mr David Sanderson and Mr John Eccles, the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to Selby District Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Nigel Harrison*

INSPECTOR