

DELEGATED DECISION REPORT

| | |
|---|--|
| Application Reference Number | 14NP0046 |
| Description / Site Address | Approval of details reserved by conditions 6, 8, 9 & 11 of planning permission 08NP0057 in respect of construction of new dwellinghouse at land adjacent to The White House, Harbottle, NE65 7DQ |
| Applicant | Mr A Davidson |
| Agent | Nicola Allan |
| Expiry date of publicity / consultations | 13 June 2014 |
| Last date for decision | 17 July 2014 |

1. Planning Policy

NNPA Core Strategy and Development Policies Document

Policy 1
Policy 3
Policy 18

National Planning Policy Framework

2. Relevant Planning History

13NP0107 – Application for Lawful Development Certificate in respect of construction of new dwelling (Certificate refused)

08NP0057 – Construction of new dwelling (Granted, subject to conditions)

3. Consultations/Representations

Harbottle Parish Council: No objections

NCC Highways: Condition 8 - Details acceptable in respect of the submission of details.

Condition 9 - Details acceptable in respect of the submission of details.

Condition 11 - Details acceptable in respect of the submission of details.

NNPA Historic Environment: I am happy to approve the details set out in the archaeological condition and therefore the programme of archaeological work has been secured thus satisfying the condition, this will be subject to carrying out the work set out in the written scheme of investigation as approved.

4. Assessment

This application seeks to discharge four conditions of 08NP0057. Works to connected to the mains sewer occurred on 25th January 2012 without discharge of the four pre-commencement conditions that this application now seeks to discharge. The permission clearly states that the development must be lawfully commenced by 16th February 2012. The

permission has expired because it was not lawfully implemented within this three year period from the date of the decision.

The key material planning considerations are;

- Archaeological impacts;
- Parking provisions and highway safety impacts;
- The legal status of the planning approval 08NP0057

Archaeological Impacts

Condition 6 required a programme of archaeological recording to be undertaken in accordance with a written scheme of investigation to be agreed in writing with the National Park's archaeologist. Details of a written scheme of archaeological investigation have been provided as part of this application. Subject to implementation of this scheme in accordance with the submitted details, NNPA's Historic Environment Officer has confirmed that the scheme is suitable to meet the requirements of condition 6 of 08NP0057.

Parking and Highway Safety Impacts

Conditions 8, 9 and 11 require further information to be submitted in writing relating to the temporary provision of a parking area for construction vehicles and operatives, storage of materials and permanent parking for four spaces. The highway authority is satisfied that the information submitted is acceptable to meet the requirements of each of these conditions without having an adverse impact on the highway network.

Legal Status of Planning Consent 08NP0057

An application for an LDC (13NP0107) was submitted to the local planning authority, which was refused on 10th January 2014, on the basis that when a connection was made to the mains sewer) within three years of the approval, the four pre-commencement conditions (that are the subject of this application) had not been discharged prior to this and therefore the development has not been commenced lawfully. This is clearly set out in the delegated report and decision notice for 13NP0107.

Following this assessment of the position, the local planning authority takes the view that this application does not change that position. While case law (*Whitley & Sons v SSW, London & Stamford v Stoke on Trent City Council*) provides that operations not complying with pre-commencement conditions can be remedied whilst keeping a permission live and lawful, this only applies to cases where the pre-commencement conditions have been discharged or complied with prior to the expiry of the time limit of commencement of the development. In other cases where the breach of the conditions remains unremedied by the time the permission has expired (*Henry Boot Homes v Bassetlaw DC*), the permission is considered to have expired and is then lost. This case clearly falls into the latter category. As there is accordingly no valid and live planning permission, then it is not possible to deal with this permission as a live permission and discharge the conditions.

It is asserted on behalf of the applicant in the covering letter accompanying the application, that NPA officers have stated that the conditions could be dealt with in phases or waived. There is no formal legal authority for officers to waive conditions, or to resolve them in some other way than set out in the formal legal process, in accordance with the requirements of the conditions (i.e details as specified prior to commencement), so the LPA takes the view that this does not allow for the conditions to be discharged after the permission has expired.

The case officer dealing with the case at that time had confirmed in writing on 2nd June 2011 that the conditions had to be fully discharged prior to commencement. Subsequent correspondence was submitted to other planning officers and the planning technician to obtain alternative advice. This advice was given at officer level and was not a formal view of the local planning authority and accordingly it should not be treated as a binding determination.

With regard to the allegation that the NPA has stated after the permission had expired that it was possible to discharge the conditions, this is not the case. This is a reference to correspondence in 2011. This was clearly prior to the expiry of the time period for commencement of lawful implementation of the scheme, which was not reached until February 2012.

Taking the above into account, the applicant cannot be regarded as having established claim for estoppels by representation or that he has a legitimate expectation that the works carried out on site in breach of conditions would be regarded as a lawful commencement of development under section 56 of the Town and Country Planning Act 1990.

Recommendation & Conditions

It is recommended that the local planning authority refuse the application to discharge the planning conditions for the following reason:

1. The development permitted under application reference number 08NP0057 has not been lawfully commenced within three years of the approval as required, as works have been carried out on site without discharging pre-commencement conditions that go to the heart of the permission. As in excess of three years have passed since the grant of permission, without lawfully commencing development, the permission has therefore expired. Despite the submission of details to the local planning authority that meet the requirements of the pre-commencement conditions 6, 7, 8 and 11, originally imposed by application 08NP0057, it is not legally possible to discharge the planning conditions, due to the fact that there is no longer a valid and live permission to which these planning conditions relate.

| | Signature | Date |
|------------------------------|------------------|-------------|
| Planning Officer | | |
| Development Manager | | |
| National Park Officer | | |