

**REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND
REGULATORY SERVICES**

TO: EXTRAORDINARY COUNCIL MEETING

DATE: 18th OCTOBER 2002

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PLANNING APPLICATIONS

PURPOSE OF REPORT

To determine the attached planning applications.

Application Ref: 22/0544/FUL

Proposal: Full: Major: Erection of 57 No. dwellings with associated works including car parking and landscaping (Resubmission of application 21/0564/FUL).

At Fields To The West Of Foster Road, Barnoldswick

On behalf of: McDermott Homes

Date Registered: 11/8/2022

Expiry Date: 10/11/2022

Case Officer: NW

Site Description and Proposal

The decision before Council today is not on determining whether planning permission should be granted or not. The decision is whether to decline to determine the application or proceed to determine it.

Planning permission was granted and refused on this application site as detailed in the planning history section below.

Relevant Planning History

21/0564/FUL. Erection of 67 dwellings. Refused and appeal dismissed 29/4/2022

Planning Law

The Town and Country Planning Act 1990 has provisions within it to decline to determine planning applications in certain circumstances. In their submission the applicant has quoted the Welsh version of the legislation.

Section 70A indicates:

“(1) A local planning authority may decline to determine a relevant application if–

(a) any of the conditions in subsections (2) to (4) is satisfied, and
(b) the authority think there has been no significant change in the relevant considerations since the relevant event.

(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application made to the Secretary of State under section 62A referred to him under section 76A or 77.

(3) The condition is that in that period the Secretary of State has dismissed an appeal–
(a) against the refusal of a similar application, or
(b) under section 78(2) in respect of a similar application.

(4) The condition is that–
(a) in that period the local planning authority have refused more than one similar application, and

(b) there has been no appeal to the Secretary of State against any such refusal or, if there has been such an appeal, it has been withdrawn

Applications are required to be validated when received and then the Local Authority needs to decide if in its opinion the application is to be declined in accordance with the parameters set out in section 70A as set out above.

There is no right of appeal against a local planning authority declining to determine an application. Any challenge would be by way of a judicial review.

Officer Comments

For ease of reference the report will refer to the first application (21/0564/FUL) which was dismissed at appeal as “Application 1” and this current application as “Application 2”.

Applications 1 and 2 are on the same site. They are both for housing although Application 2 proposes 57 houses which is 15 less than Application 1.

The applicant indicates that the reduction in the size of the scheme and new landscaping proposals means that the scheme was not the same or substantially the same as Application 2. The applicant indicates that whilst the development plan has not changed there has been a change in the landscaping proposals as demonstrated in the Visual Impact Assessment and that this is a relevant material consideration since this formed the principal reason for the appeal being dismissed. This includes mitigation proposals for the setting of the footpath and new planting around the perimeter of the site for longer term mitigation.

Application 21/0111/FUL is referred to by the applicant as being approved at appeal which in the view of the applicants is a material change since the original dismissal.

The applicant concludes:

In conclusion, Paragraph 38 of the NPPF states that local planning authorities should approach decisions on proposed development in a positive and creative way. They should work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Whilst it was ultimately dismissed, the original appeal decision does confirm that the proposal would bring benefits such as “contributing positively to the overarching Government agenda of boosting housing land supply” and provide “enhancements to biodiversity and the potential for an increase in economic activity within the local area” and the resubmitted scheme seeks to supplement these benefits, and therefore should be received positively by the Council.

In this spirit, we would ask that the resubmitted proposals are validated without delay (as Section 70A does not relate to matters of validation).

Moving on to matters of determination in the context of Section 70A, it is irrelevant whether they consider the new proposal to be acceptable from a landscape impact point of view. The two questions which must be answered are whether the dismissed appeal was similar and whether there have been any significant changes to material considerations.

The resubmitted scheme has been informed by significant additional design and landscape work, including an LVIA and amended landscape proposals, in order to address the Inspector’s comments, and this represents a material change for the better. What’s more the recent approval for 19 age-restricted specialist bungalows on an adjacent site (application ref 21/0111/FUL) is a

further material change from the previously submitted scheme, in terms of the wider local context and character of the area.

Therefore, the contextual background and the change in the landscape impact between the old and new proposal, as demonstrated in the new Landscape and Visual Impact Assessment (LVIA) 5 is a relevant material consideration and it is considered that the resubmitted application would not be subject to Section 70A of the Town and Country Planning Act 1990.

Accordingly, we would ask that you validate the application and consider the amended information in a positive and proactive manner, in line with your obligations under the NPPF.

The power to decline to determine applications is there mainly to prevent repeat applications to put pressure on authorities to approve schemes.

The law behind this is set out above. It requires that an appeal must have been dismissed for a refused similar application within the last two years. An appeal has been dismissed with the question being if this is or is not a similar application.

The second limb of section 70A is that in the opinion of the authority there has been no significant change in the relevant considerations since the refusal.

The development plan has not altered since Application 1 was dismissed.

The test in the second limb is one that there have been no significant changes in the relevant considerations between the two schemes. The requirement is for those changes to be significant. The applicant puts forward a case for the merits of the scheme in their conclusions detailed above.

The applications are both for residential units on the same site. Application 2 draws the built form slightly further away from the western boundary and creates more of a gap but it is similar in nature to Application 1. There was a buffer then and although the buffer has increased they are similar in nature. The remainder, and the substantial parts of the site, of the built form remains in the same locations for both applications.

Alterations have been made to the landscaping around the footpath. The route has not altered. The footpath passes open land on the north side then past a group of houses on the site then passes on land outside of the site until joining in the site on the south of the site. That is the same for each application.

The landscaping proposals do not alter the route of the footpath which is the same for both applications. Although there is some additional landscaping at the side of the footpath the applications are similar and the landscaping proposals do not take the application to a point where it would be considered materially different to Application 1 and the relevant considerations are not significantly different.

The existence of the appeal site to the north has been referred to as a material change in circumstances. Planning permission has been granted indicating that that application was acceptable on its own merits. The question is whether this constitutes a significant change to a relevant consideration. The context in which an application site lies will always be an issue for consideration. However the application and appeal were considered based on the individual merits of this site. Having a site nearby approved does not alter the material consideration of the merits of this site in a significant way.

Recommendation.

The application site is the same for Applications 1 and Application 2. The applications are very similar in nature and there have been no changes to the development plan and no significant changes to other material considerations since Application 1 was dismissed at appeal. The relevant considerations are similar for both schemes and are not significantly different. It is therefore recommended that the Council declines to determine the application as in its opinion it is a similar application to one dismissed at appeal and there have been no significant changes to the relevant considerations since the appeal.