

**APPEAL BY MR TIMOTHY COOPER AND MR ARTHUR WILLIAM COOPER AGAINST THE BOROUGH COUNCIL'S FAILURE TO GIVE NOTICE WITHIN THE PRESCRIBED PERIOD OF A DECISION ON AN APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE ERECTION OF A SINGLE DWELLING WITH ALL ASSOCIATED SITE WORKS ON PLOT 40, LAND ADJACENT TO WOODBURY, OFF SNAPE HALL ROAD, WHITMORE HEATH**

**Application Number**                      **16/00395/PLD**

**LPA's Decision**                              **The appeal was made against a failure to give notice within the prescribed period of a decision on an application. Subsequent to the appeal being lodged it was decided under delegated powers that had the appeal not been lodged the application would have been refused.**

**Appeal Decision**                              **Allowed**

**Date of Appeal Decision**                      **3<sup>rd</sup> April 2017**

The Inspector recognises that whilst the appeal was submitted as a result of the Council failing to give notice within the prescribed period the Council have indicated that they would have refused permission to grant a Lawful Development Certificate. The Inspector identified the main issue for this appeal is whether any planning permission has been granted, is extant and is capable of implementation for the proposed erection of a single dwelling with all associated site work on the appeal site.

In dismissing the appeal the Inspector made various observations including as follows:-

- The site lies within a designated Green Belt, but nevertheless surrounded by post-war dwellings set in spacious plots. The properties were built following grants of planning permission for residential development near to the village of Whitmore.
- Outline planning permission, reference NNR780, was granted in 1953 for the development of land for housing at Whitmore Common. The approved plan identified 28 unnumbered housing plots.
- A further outline planning permission, reference NNR1378 was granted in 1958 for the erection of dwellinghouses at Whitmore Heath. The approved plan identified 40 plots indicated that plots 1-28 and 31-40 as developed.
- The majority of dwellings built in this area appear to have been built in accordance with applications that were not definitively made pursuant to NNR780 or NNR1378. However application reference NNR1849 was expressly made pursuant to NNR780 notwithstanding that the officer's report indicated that it was pursuant to NNR1378. In the absence of any statement as to why the Council considered the application to be inaccurate the decision relating to NNR1849 the Inspector indicated that it must be deemed to be approval of what was applied for and as works commenced so NNR780 will be extant.
- NNR1378 is also extant because application reference NNR1689 was made pursuant to it for a single storey dwelling and garage at plots 39,40, approved in 1958 and then implemented.
- It follows that dwellinghouses could still be built on any remaining plots approved under NNR780 or NNR1378 but only after the submission and approval of details as required by condition of those permissions.
- Since NNR1689, built pursuant to NNR1378, involved the erection of a single residential property on plots 39,40 the Council plainly authorised the development of those plots as a single residential property. The dwelling was shown across the line that divided the two plots and it was built as approved and named Woodbury.
- The area of land forming plots 39 and 40 under NNR1378 were also shown as two plots on the plan approved under NNR780 with the unnumbered plots differently subdivided. Woodbury was not approved pursuant to NNR780 but it stands

nevertheless so that it is contained within what would have been the plot on the eastern side of the line on the approved plan to NNR780.

- Whilst the appeal concerns land described as plot 40 which can only be a reference to the annotation on the plans subject to NNNR1378, the site edged red correlates, as a matter of fact and degree, with the plot to the west of Woodbury as shown on the approved plan for NNR780. The site has no buildings upon it, although it was to be used as part of the garden at Woodbury.
- Case law indicates that there can be any number of permissions covering the same area but if one planning permission makes it physically impossible to implement the second planning permission, that second permission cannot then be implemented. Further case law clarified that there is a difference between 'incompatibility' and 'inconsistency' between planning permissions and that where it is physically possible for the second planning permission to be implemented mere incompatibility with the first planning permission doesn't render the second incapable of implementation.
- In this case it is physically possible to construct a dwelling on the appeal site edged red and there is no evidence that the conditions imposed on NNR780 could not be complied with. Therefore, in light of the case law the Inspector did not accept the Council's case that the planning permission and subsequent construction of Woodbury 'extinguished' the outline planning permission for the appeal site granted by NNR780.
- On the balance of probabilities the Inspector concluded that NNR780 is an extant outline planning permission and it is capable of implementation on the appeal site. It does not follow, however, that the appellants could simply proceed to erect a dwelling on the land but it does pave the way for the appellants to submit a reserved matters application in accordance with the conditions imposed on NNR780 and with details of the access to and scale, layout, appearance and landscaping of the proposed dwelling.

### **Recommendation**

**That the decision be noted.**