



Appeal Decision

Site visit made on 18 June 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/Z3825/W/19/3226051

Birchfield Nursery, Kidders Lane, Henfield BN5 9AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Robert Dunckley of Jack Dunckle Ltd against the decision of Horsham District Council.
 - The application Ref DISC/18/0371, dated 21 November 2018, sought approval of details pursuant to conditions Nos 6 and 7 of a planning permission Ref DC/17/1067, granted on 29 August 2017.
 - The application was refused by notice dated 12 March 2019.
 - The development proposed is described as proposed creation of new access and vehicle crossover (VCO).
 - The details for which approval is sought are the closure of the existing access, verge reinstatement, new access gate with associated fencing and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Robert Dunckley of Jack Dunckle Ltd against Horsham District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal is against a refusal to grant approval to details required by a condition of a planning permission. There is a preliminary matter I need to determine.
4. By way of background information, planning permission was granted in 2017¹ for the creation of a new access and vehicle crossover to Birchfield nursery, subject to a number of conditions. The appellant then made an application for approval of details reserved by conditions 6 and 7 imposed on the 2017 permission. The details relate to the closure of the vehicular access onto Kidders Lane, verge reinstatement, new access gate, fencing and landscaping works. A Deemed Discharge Notice (the 'DDN') was subsequently served on 26 February 2019 and confirmed to have been received by the Council on 28 February 2019.
5. Having regard to the requirements of Article 29 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as

¹ Local Planning Authority Reference DC/17/1067, granted 29 August 2017.

amended (the 'DMPO'), the DDN was submitted more than 6 weeks after the written application for approval of the details required by conditions 6 and 7. The DDN confirms that no appeal had been made under Section 78 of the 1990 Act, as well as the date after expiry of a further 2 weeks on which deemed discharge was to take effect, that is on 13 March 2019.

6. The Council's decision to refuse to grant approval of the details submitted pursuant to conditions 6 and 7 was issued by email communication on 12 March 2019 at 2235. The appellant claims that, as this electronic communication was received outside the recipient's business hours, it should be considered to have been received on the next working day, that is when deemed discharge would take effect. As a result, this would mean that the Local Planning Authority's consent, agreement or approval of the submitted details to any matter as required by the conditions would be deemed to have been given, and the Council would be unable to take enforcement action or stop development on site on the basis that the conditions had not been complied with.
7. The appellant submits no legal authority to support his claim that the Council's decision must be received within the recipient's business hours. Nor is there any legislative provision that I have been made aware of. In the absence of clear and precise evidence demonstrating otherwise, I consider that the Council's decision was appropriately issued within the prescribed period, before the DDN came into effect.
8. Even if the DDN had been found to have taken effect, Article 30 of the DMPO clearly states that deemed discharge does not apply to conditions attached to the grant of planning permission, where the conditions in question fall within the exemptions listed in Schedule 6. These notably include conditions relating to access between the development and the highway. Condition 6 relates to an existing access which, at the time of the planning application, provided vehicular access to the appeal site from the public highway and the DDN would therefore not apply in this instance. Equally, part of the requirements in respect of condition 7 relate to the new access of the A281 and the closure of the existing access onto Kidders Lane. Conditions 6 and 7 would therefore fall within exemption 7(a) listed in Schedule 6, which means that deemed discharge would not apply to the conditions in dispute.
9. I therefore find that there is no deemed consent for the discharge of conditions 6 and 7 imposed as part of the 2017 permission. Consequently, it is necessary to consider the merits of the appeal and assess whether or not the submitted details are acceptable in planning terms.

Main Issue

10. The main issue is whether the details submitted would be acceptable, having regard to the character and appearance of the area.

Reasons

11. Located within an area of rural character, the appeal site comprises a prominent corner plot located at the junction between Kidders Lane and the A281. As detailed above, the decision to grant permission for a new access of the A281 was subject to the closure of the access off Kidders Lane and

subsequent reinstatement of a verge, as required by the Local Highway Authority.

12. I observed that the access off Kidders Lane had been blocked by a van parked across it. The proposed plans show that a 2-metre high close-boarded fence would be installed to physically close this access. Whether or not such fencing could be constructed using permitted development rights is not a matter for me to determine in the context of this appeal. I am required to determine whether the submitted details would be acceptable.
13. The claim is that land ownership issues currently prevent the details required by condition 6 from being implemented. However, a plan, dated 11 May 2018, shows the extent of the adopted public highway. Based on the evidence before me, the adverse possession claim to the Land Registry by a third party only relates to part of the land affected by the condition in question. It would not, therefore, prevent the appellant from submitting details to enable the reinstatement of the verge within the area of land identified as public highway, as required by condition 6. Concerns have been raised regarding the processes followed by Land Registry, but this is not a matter for me to consider.
14. The submitted details as required by condition 7 show that substantial metal gates, supported by large pillars, would be installed to the new access onto the A281. The gates would be set back from the road frontage, which is considered acceptable by the Local Highway Authority, and there is no reason for me to take a different view in that regard.
15. Nevertheless, by reason of their height and appearance, the gates and supporting pillars would be highly visible within the public realm and unduly stand out as alien features within an area which is clearly defined by its rural and open character. The proposed gates, combined with the installation of closed-boarded fencing and the planting of a laurel hedge alongside the boundary shared with the A281, would lead to an urbanisation of the site. Once established, the laurel hedge would have an artificially imposed appearance, which would harmfully contrast with the character of the rural surroundings.
16. The submitted plans show existing bunding which, according to the Council, does not benefit from planning permission, and no substantive evidence appears to have been submitted to demonstrate otherwise. Given its extent and scale, the existing bunding, which it is also proposed to extend, may need to be assessed as part of a separate planning application, rather than as part of an application for approval of details reserved by condition.
17. Having regard to the submitted details, it is considered that the effect on highway safety would be acceptable, and find no conflict with Policy 40 of the Horsham District Planning Framework – 2015 (HDPF). However, the proposed conditions details would not comply with the requirements set by conditions 6 and 7 of planning permission Ref DC/17/1067, and would unacceptably cause visual harm to the rural character and appearance of the area. The details submitted would be insufficient to discharge the disputed conditions, and result in development that would be at odds with the aims of Policy 33 of the HDPF, which notably requires development proposals to be sympathetic to the landscape character of the surroundings.

Conclusion

18. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR