



Appeal Decision

Site visit made on 10 September 2019

by J E Jolly BA (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2019

Appeal Ref: APP/C3810/W/19/3232378

Inglecroft, 1 Toddington Lane, Littlehampton BN17 6JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr M Hartnett against Arun District Council.
 - The application Ref LU/133/19PL, is dated 12 April 2019.
 - The development proposed is for the demolition of the existing vacant dwelling and workshop and the erection of 10 detached dwellings (9 dwellings net) as described on the submitted plans.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M Hartnett against Arun District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The proposal was not dealt with by the Council in the required time-frame. Therefore, the Appellant has appealed against non-determination of the application.
4. I note that the Council does not have any objection in principle to the development as identified in the Officers' Recommendation Report. I see no reason to disagree. However, the Council considers that for the proposal to be acceptable in practical terms pre-commencement conditions need to be imposed.
5. At the application stage the Appellant stated that they did not agree with the pre-commencement conditions sought by the Council. The Appellant was contacted at the appeal stage on 29 August 2019 by the Inspector and asked to provide any comments on the suggested pre-commencement conditions and their imposition. The Appellant has confirmed by email on 30 August 2019, as per sections 100ZA (4-6) of the Town and Country Planning Act 1990, that they do not agree with the pre-commencement conditions.

Main Issue

6. Whether the imposition of pre-commencement conditions would meet the requirements of Paragraph 55 of the National Planning Policy Framework (the Framework) as supported by the national Planning Practice Guidance.

Reasons

7. The appeal site, a former horticultural nursery, is located in a residential area and surrounded on all sides by dwellings of varying age, design styles, heights and density. The cleared site is spacious and contains what appears to be a former storage building to one corner, paths and hard-standings as well as a void detached two-storey brick and tile dwelling.
8. The existing buildings on the site would be demolished and replaced with, at adequate separation to the surrounding properties, 10 residential detached dwellings. The scheme would be set out neatly along an extended access road from Barn Close and be constructed of materials akin to the nearby area which include; rendered weather-board cladding, flint block work, brickwork and tiled roofs.
9. Paragraph 55 of the Framework states that conditions which are required to be discharged before development commences should be avoided unless there is a clear justification not to. Such conditions are also known as pre-commencement conditions. In this case the Council have suggested 3 pre-commencement conditions within the Recommendation Report.
10. Firstly, a pre-commencement condition that requires *'development shall not commence, other than works of site survey and investigation, until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority'*.
11. The Local Lead Flood Authority (LLFA), in this case West Sussex County Council, indicates that the site is considered to be at low risk from flood. However, following a review of the proposal in respect of flood risk an approved Surface Water Management Plan (SWMP) pre-commencement condition was suggested by the LLFA and the Council.
12. The Appellant has provided some drainage details that include; winter ground-water monitoring, infiltration test results, calculations and scheme drawings. However, such information is very limited and does not enable the LLFA to assess the potential impact with regard to flood risk arising from the proposed development. Moreover, the Appellant has not provided the Council with an approved drainage scheme that includes a SWMP.
13. An approved SWMP would seek to reduce the flood risk related to the proposal and include the required soakaway locations. I note the current positioning of the proposed soakaways; as well as the need for their relocation to comply with building regulations.
14. Resultant changes to the scheme could lead to other harm due to the potential re-positioning of the proposed dwellings. However, as I have limited evidence before me, I am unclear as to whether the layout and cumulative effect of the proposed development would have a negative impact on the flood risk for the surrounding area or not.
15. In this respect the proposal would conflict with Policies WDM2 and WDM3 of the Arun Local Plan 2018, (ALP) which state amongst other things that all development proposals must take account of relevant Surface Water Management Plans.

16. For similar reasons, the proposal does not align with Paragraph 163 of the Framework which requires that there is a satisfactory solution to manage flood risk to ensure that risk is not increased elsewhere.
17. As such, I find that a pre-commencement condition in respect of the provision of a SWMP is necessary in this case. The imposition would inform the final layout if needed, and is reasonable to ensure it complies with the Development Plan. As such it will reduce the risk of flooding in the locality, and the associated effects this can have on human safety and property.
18. The imposition of such a pre-commencement condition in this case is therefore clearly justified as per the requirements of Paragraph 55 of the Framework.
19. The Council have suggested a pre-commencement condition in respect of a Construction Management Plan in order to manage the impact on the neighbouring occupants.
20. Given that the appeal site is located within a residential area with dwellings on all sides such a condition would be necessary in this case in order to protect the living conditions of neighbouring occupiers.
21. Pragmatically such information is reasonable to require prior to work on site in order to ensure that matters such as hours of work, parking of vehicles and the like, are agreed before works take place on site. In this case I find that there is a clear justification for the imposition of such a pre-commencement condition as per Paragraph 55 of the Framework.
22. Finally, a pre-commencement condition related to potential contamination on the site. The appeal site was previously a horticultural nursery. It is unclear whether the appeal site, and its former use, was subject to the application of pollutants or not.
23. In the absence of such information, it is not possible to fully assess whether the site contains any contamination and what works, were such contamination to be found, would be required. This is not dissimilar to the advice provided by the Council's Environmental Health Team, who suggested the use of a pre-commencement condition.
24. Paragraphs 178 and 179 of the Framework indicate that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from contamination. Given the previous use of the site, it would be reasonable to seek the provision of such information prior to works starting on site.
25. I therefore, find that such a pre-commencement condition is clearly justified and would be reasonable and necessary in this instance as per Paragraph 55 of the Framework.
26. I note the agreed position that the Council cannot demonstrate a five-year housing land supply. Typically, Paragraph 11 of the Framework would be engaged. However, the main issue in this case revolves around the use of pre-commencement conditions, and not the principle of the development in itself.

Overall Conclusion

27. I have found that for the proposed development to be acceptable, all three suggested pre-commencement conditions would need to be imposed. Moreover, there is clear justification for these to be conditions which would have to be discharged before development commences.
28. Given that the Appellant has not agreed in writing to their imposition as required by legislation, the only conclusion that I can come to, having found such conditions would meet the requirements of Paragraph 55 of the Framework, is that the appeal must fail.
29. For the reasons given above I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR