



Appeal Decision

Site visit made on 1 September 2020

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Appeal Ref: APP/T1410/W/20/3254939

Land south of Langney Shopping Centre, west of Langney Rise, Eastbourne

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Goldeneye Group against the decision of Eastbourne Borough Council.
 - The application Ref PC/200246, dated 25 March 2020, was refused by the Council by notice dated 19 June 2020.
 - The application sought planning permission for the development of 9 houses without complying with conditions attached to planning permission Ref PC/190668, dated 14 February 2020.
 - The conditions in dispute are;
No 3) which states '*The development hereby permitted shall be carried out in accordance with the approved drawings*', including GEG/1011/2B and 4B, and the reason given is '*For the avoidance of doubt and in the interests of proper planning*'
No 17) which states '*The internal layout of the dwellings shall be as shown on the approved drawings, and not amended or altered unless agreed in writing by the Local Planning Authority*' and the reason given is '*To protect the amenity of future occupiers from the creation of additional bedrooms without the additional living space being provided to support it and thereby resulting in substandard living conditions, in accordance with section 11 of the Revised National Planning Policy Framework (2019), H1 of the National Design Guide (2019) and policy D10a of the Eastbourne Core Strategy*'
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Decision

1. I allow the appeal and grant planning permission for the development of 9 houses at Land south of Langney Shopping Centre, west of Langney Rise, Eastbourne in accordance with the application PC/200246, dated 25 March 2020, without compliance with condition numbers 2) and 17) previously imposed on planning permission Ref PC/190668, dated 14 February 2020 and subject to the conditions on the attached schedule.

Application for Costs

2. An application for costs was made by Goldeneye Group against Eastbourne Borough Council. This application is the subject of a separate Decision.

Main Issue

3. This is whether the changes sought would cause harm to matters of acknowledged importance, having regard to the tests in the National Planning Policy Framework and the Planning Practice Guidance.

Reasons

4. The permitted scheme is for 9 units each with 2 bedrooms, one double and one single, and the effect of the changes sought would be to provide a 'home office' in 5 of the units (numbers 1, 6, 7, 8 and 9) by effectively sub-dividing the single bedroom, through the substitution of drawings 2C and 4C for the equivalent revision B drawings listed in condition 3). It is argued that condition 17) is no reasonable and should not have been attached in the first place.
5. Policy D10a of the Core Strategy includes the need to apply national and regional policies in respect of design, although the thrust of the policy is aimed more at external layout and appearance. Section H1 of the National Design Guide concerns healthy, comfortable and safe internal and external environment, and refers to room sizes. Paragraph 127 states that where a need is identified, Local Plans may adopt the Nationally Described Space Standards. Whilst reference will be made to these as a material consideration, they have not been adopted by this Council. Paragraph 117 of the Framework seeks to ensure safe and healthy living conditions.
6. The development has commenced and at the time of the unaccompanied viewing of the site from the approach road, was seen to be at about ground floor slab level. The development had not therefore progressed to the point where the 2 disputed conditions take full effect.
7. The Standards require 70m² gross internal floor area for a 2-bedroom 3-person unit, and this total is exceeded by 8m² in units 1 and 6, and by 12m² in units 7 – 9. As permitted, the single bedrooms in units 1 and 6 exceed the 7.5m² Standard, being 9.3m², while those in units 7 to 9 are 9.8m², a slightly greater excess. Both unit types would have that bedroom reduced to a new figure of 8.0m² and 8.3m² respectively which is still in excess of the Standard. The concern is that a 'home office' of a stated 5.4m² would be used as a sub-standard single bedroom and would therefore turn the dwellings into 3-bedroom 4-person units which would not be in accordance with the Standards' requirement of 84m².
8. The Council do not claim that the over-sized single bedrooms would risk being double occupancy, and the existing conditions would not appear to prevent that, only subdivision.
9. In the event the advantages of a home office have taken on a greater significance during the early stages of the Covid-19 pandemic through the Government's advice to work from home where possible. That advice has recently changed and there is concern as to the effect continued working from home is having on the town and city centre economy, through lack of trade for service providers.
10. Nevertheless, Government policy includes reducing the need to travel in order to reduce congestion and emissions with a resulting improvement in air quality and public health. In a house with an open plan living/dining/kitchen on the ground floor, the provision of a room separated from those used for sleeping is particularly useful. It allows access to all members of the family for hobbies or homework as well as working from home. Limited weight is attached to the Council's view that a home office is not essential, and it can add to the quality of life of occupiers.

11. Taking all of the above into consideration, the risks of the units becoming, in effect, 3-bedroom 4-person units, has been designed-out by reducing the size of the single bedroom and by the small size of the home office. In any event, on the figures provided, the harm that is sought to be avoided is a difference between the Standard 84m² and the stated actual of 82m² in units 7 – 9, although the shortfall is more in units 1 and 6.

12. The conclusion is that the substitution of drawings GEG/1011/2C and 4C in a revised condition 3) would not cause harm and would accord with the tests in the Framework and Guidance;

Necessary. The drawings should be listed for the avoidance of doubt and in the interests of proper planning.

Relevant to planning. The control of house layouts and room sizes is a legitimate planning interest.

Relevant to the development to be permitted. The development is housing and the control of bedroom sizes is relevant.

Enforceable. The revised condition and resulting layout is no less enforceable than the previous layout as to occupancy, but whether the development has been built to the approved drawings is enforceable.

Precise. The content of the drawings is precisely defined.

Reasonable in all other respects. That requirement is met by the new condition, but there is no reasonable basis for persisting with the previous condition.

13. With regard to condition 17), the risk of harm no longer exists with regard to units 1, 6, 7, 8 and 9 as the scope for further subdivision has been designed-out. The unaltered second bedroom in units 2, 3, 4 and 5 could be subdivided, but for the reasons set out previously, that would not inevitable result in a greater occupancy, due to the small size of any third room thus created, whether called a 'home office' or not. It is for this reason that the Council's suggested additional condition to prevent the 'home office' being used for sleeping would not be reasonable nor enforceable, and no harm would occur if it were used occasionally as a nursery or similar.
14. The Guidance states at Paragraph: 040 Reference ID: 21a-040-20190723 that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on the original permission that continue to have effect. The appellant has referred to the grant of approval under reference PC/200139 to the original conditions 18), 19), 20), 23), 24), 25), 26) and 27) and the wording now used should require compliance with the approval given. In some cases this rectifies the lack of a clearly expressed implementation clause in the original condition.
15. Section 73 cannot be used to extend the time limit for commencement as set by the original grant of permission, and although from observations at the site visit that is now overtaken by events, the date of 14 February 2023 is used in condition 1). Condition 4) includes the requirement for the noise mitigation measures to be carried out 'to the satisfaction of the Local Planning Authority' which is imprecise, as the Assessment defines the works to be carried out, otherwise the Council should not have agreed it.

16. The 24hour clock is substituted for reference to am and pm in condition 5) and a reference to Public Holidays is added for precision. The additional parking bay size referred to in condition 10) is now stated in the same si unit as for the bay sizes.
17. Original condition 22) was amended by the Council as part of the split decision that refused permission for changes to the current disputed conditions, and a new wording has been supplied. This also included reference to works being '*to the satisfaction of the Local Planning Authority*' and that phrase has been deleted from this permission.
18. For the reasons given above it is concluded that the appeal should succeed. A new planning permission is granted substituting the revised conditions referred to above, and deleting 17), and restating those undisputed conditions that are still subsisting and capable of taking effect. For clarity, the original numbering is retained with 17) not used.

S J Papworth

INSPECTOR

Schedule of Conditions.

- 1) The development hereby permitted shall be begun before 14 February 2023.
- 2) Unless agreed otherwise in writing by the Local Planning Authority the external finishes of the development shall be;
Ibstock Leicester Red Facing Brick
Vertical Tiling- Marley Plain Concrete Roof Tiles
Roof Tiles - Marley Ashmore Concrete Roof Tiles
- 3) The development hereby permitted shall be carried out in accordance with the approved drawings.
GEG/1011/1 Rev B - Proposed Site Plan
GEG/1011/2 Rev C - Proposed Floor Plans for Plots 1 – 6
GEG/1011/3 Rev B - Proposed Elevations Plots 1 – 6
GEG/1011/4 Rev C- Proposed Floors Plans & Elevations for Plots 7 – 9
GEG/1011/5 Rev B - proposed Street Scene
GEG/1011/6 Rev B - Proposed Roof Plan
GEG/1011/7 Rev A - Site Entrance Road
2876 Rev B — Landscape Proposals
- 4) The proposed noise mitigation measures set out in the Noise Assessment dated October 2019 (Report Ref: 25433-04-NA-OI) shall be carried out in full unless agreed otherwise in writing by the Local Planning Authority.

- 5) No demolition, site clearance or building operations shall take place except between 0800hrs and 1800hrs. on Mondays to Fridays and 0800hrs and 1300hrs on Saturdays and no works in connection with the development shall take place on Sundays or Bank or Public Holidays unless previously agreed in writing by the Local Planning Authority.
- 6) The Arboricultural Method Statement (section 11 of the Arboricultural Report AR/77019) and associated tree protection plan submitted in support of the application shall be adhered to in full, subject to the pre-arranged tree protection monitoring and site supervision by a suitably qualified tree specialist. This tree condition may only be fully discharged on completion of the development subject to satisfactory written evidence of contemporaneous monitoring and compliance by the pre-appointed tree specialist during demolition and subsequent construction operations.
- 7) No retained tree shall be cut down, uprooted, destroyed pruned, cut or damaged in any manner during the development process and up until completion and full occupation of the buildings for their permitted use within 2 years from the date of the occupation of the building for its permitted use, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority.
- 8) The approved tree pruning works detailed in section 10 of the arboricultural report AR/77019 shall be carried out in accordance with BS3998:2010. The development thereafter shall be implemented in strict accordance with the approved details.
- 9) The development shall not be occupied until parking spaces have been provided in accordance with the approved plans and the parking spaces shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles
- 10) The proposed parking spaces shall measure at least 2.5m by 5.0m (add an extra 0.5m where spaces abut walls/fences)
- 11) The development shall not be occupied until cycle parking has been provided in accordance with the approved plans and the cycle parking shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
- 12) The development shall not be occupied until a turning space for vehicles has been provided and constructed in accordance with the approved plans and the turning space shall thereafter be retained for that use and shall not be used for any other purpose,
- 13) The development shall not be occupied until a Travel Plan Pack for residents has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The Travel Plan shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport and/or as advised by the Highway Authority.
- 14) The development shall not be occupied until footways within the site have been provided and constructed in accordance with the approved plans,

- 15) Throughout the construction period. including any ground works or works of demolition, the submitted Construction Management Plan dated November 2019 shall be implemented and adhered to in full and in particular the applicant will have due consideration of, but not be restricted to, the following matters,
- the anticipated number, frequency and types of vehicles used during construction,
- the method of access and egress and routeing of vehicles during construction,
- the parking of vehicles by site operatives and visitors,
- the loading and unloading of plant, materials and waste,
- the storage of plant and materials used in construction of the development,
- the erection and maintenance of security hoarding,
- the provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
- details of public engagement both prior to and during construction works.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the dwellinghouses shall be carried out, nor any outbuildings or hard surfacing shall be erected other than that expressly authorised by this permission without planning permission obtained from the Local Planning Authority.
- 17) Deleted and number not re-used.
- 18) Prior to the commencement of development, details of proposed measures to be undertaken to divert/protect the public sewers, shall be submitted to and approved in writing by the Local Planning Authority.
- This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.
- 19) Construction of the development shall not commence until details of the proposed means of surface water run off disposal in accordance with Part H3 of Building Regulations hierarchy as well as acceptable discharge points, rates and volumes have been agreed by the Lead Flood Authority in consultation with Southern Water.
- This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.
- 20) Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by, the Local Planning Authority in consultation with Southern Water.

This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.

- 21) A maximum of one car parking space shall be allocated per dwelling, with 4 remaining spaces being retained as visitor parking spaces, unless agreed otherwise in writing by the Local Planning Authority.
- 22) The development hereby approved shall be carried out in accordance with the details and measures set out within the Combined Geotechnical and Ground Contamination Risk Assessment by Ashdown Site Investigation Ltd, dated July 2019.

Prior to the first occupation of any part of the development, the result of testing to be carried out on any imported soils, using the methodology described in para. 9.12 of the above assessment, shall be submitted to and approved by the Local Planning Authority.

All other recommendations contained within the above assessment shall be carried out and if during construction contamination not previously identified is found to be present at the site then no further development on that part of the site (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and written approval for the associated strategy has been obtained from the Local Planning Authority. The remediation strategy shall be implemented as approved.

- 23) Prior to the commencement of development hereby approved detailed drainage drawings and calculations shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include evidence (in the form hydraulic calculations) that surface water discharge rates are limited to 14.0 l/s for all rainfall events, including those with 1 in 100 (+40% for climate change) annual probability of occurrence. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features.

This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.

- 24) Evidence that the public surface water sewer has enough capacity to accommodate runoff from the application site shall support the detailed design of the drainage. In the event the 450mm sewer is utilised, its condition and capacity to accommodate runoff from the site shall be assessed and details submitted to and approved in writing by the Local Planning Authority. Evidence of understanding of the drain's outfall and any potential impact on the flood risk of downstream areas shall be included. Any required improvements to the condition of the drain shall be carried out prior to construction of the outfall.

This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.

- 25) Prior to the commencement of development hereby approved the detailed design of the attenuation tank shall be submitted to and approved in writing by the Local Planning Authority. The detailed design shall be

informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided.

This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.

- 26) The detailed design shall include information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely. Details shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development hereby approved.

This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.

- 27) A maintenance and management plan for the entire drainage system shall be submitted to the Local Planning Authority before any construction commences on site to ensure the designed system takes into account design standards of those responsible for maintenance. The management plan shall cover the following:

- a) This plan should clearly state who will be responsible for managing all aspects of the surface water drainage system. including piped drains.
- b) Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

These details shall be submitted to and approved in writing by the Local Planning Authority and shall thereafter remain in place for the lifetime of the development.

This condition has been discharged under reference PC/200139 and the development is to be carried out only in accordance with the approved details.

- 28) Prior to occupation of the development, evidence (including photographs) shall be submitted showing that the drainage system has been constructed as per the final agreed detailed drainage designs.