



Appeal Decision

Site visit made on 8 December 2020

by P B Jarvis BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26/02/2021

Appeal Ref: APP/X1545/W/20/3251053

Landwick Farm, Dengie, Southminster CM0 7UL.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant subject to conditions of consent, agreement or approval of details required by a condition of a planning permission.
 - The appeal is made by Mr Simon Dicker against the decision of Maldon District Council.
 - The application Ref 19/05113/DET, dated 25 July 2019, sought approval of details pursuant to condition 8 of planning permission Ref: FUL/MAL/16/00880 granted on 26 October 2016.
 - The development proposed is an agricultural workers dwelling.
 - The details for which approval is sought are a surface water and foul drainage scheme.
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Procedural Matter

1. The appeal is subject to an application for costs by the appellant Mr Simon Dicker. This is dealt with in a separate decision letter.

Decision

2. The appeal is allowed and the surface water and foul drainage details submitted pursuant to condition 8 of planning permission FUL/MAL/16/00880 granted on 26 October 2016, in accordance with the application ref: 19/05113/DET dated 25 July 2019 and the plans / details submitted with it, namely drawing no. 1159/02 (Foul and Surface Water Drainage Scheme Plan) as amended by the updated information comprising drawing no: IE19/080/200 (Drainage Field Layout and Section; plan ref. 1159/09A (Site Plan) and calculation sheets dated 28/10/2019 and referenced IE19/080 (New Tied Cottage Landwycke Farm, Attenuation Tank Size), are approved.

Main Issue

3. The main issue is whether the details submitted ensure satisfactory means of foul and surface water drainage.

Reasons

4. The appeal relates to the refusal of the Council to approve details required by a condition on the original planning permission for the above development, which was originally approved on the 26 October 2016 under ref: FUL/MAL/16/00880. The application sought approval for the details required by a number of conditions, but it was only the details required by condition 8 for a surface water and foul drainage scheme that were refused by the Council and which is the subject of this appeal. The Council confirmed in the decision notice that the original planning permission would expire on the 26 October 2019.

5. The Council concluded that the details submitted were insufficient to demonstrate that the submitted surface water scheme was acceptable, in particular in respect of outputs for flood risk for storms up to 1440 minutes. During the course of the determination of the application, the Council had requested that additional information be provided. The appellant has provided the correspondence sought to clarify what was required, including the detailed consultation response of the Council's Environmental Health Officer (EHO).
6. Further information was submitted by the appellant on the 15 October comprising a drainage field layout and sections (drawing no. IE19/080/200 Rev. P1) and a series of calculation sheets (pages 1 to 3, with the reference IE19/080 dated 14 October 2019). The Council notes that this information showed that during a 60 minute storm event there would be a risk of flooding but that it did not provide the modelling information for a 360 minute storm event or the requested 1440 storm event. That would appear to be the case.
7. The appellant suggests that the above further information was sufficient for purpose and that the Council should have been able to conclude that the drainage scheme was acceptable. However, whilst the above document does appear to confirm that a comprehensive range of storm durations were modelled, there is only more detailed information for the 30 and 60 minute storms, as confirmed by the appellant in the e mail dated 29 October 2019 from the specialist consultant. There is no detailed information for the above storm events specifically referred to by the Council, and, given that it was necessary for it to be demonstrated that the flood risk in those storm events would be acceptable, this would seem to be an important omission.
8. Further calculation sheets have been provided by the appellant (a longer document of 41 pages, dated 28 October 2019 though still with the ref: IE19/080) as part of the appeal submission. This does provide the detailed information previously sought relating to the above storm events, as well as additional information. As this information is dated after the date of the Council's decision it could not have been taken into account as part of the determination. However, having now sought the further comments of the Council, it has been confirmed that the revised scheme and calculations dated 28 October 2019 are acceptable and satisfy the requirements originally requested as set out in response of the EHO.
9. I see no reason to disagree and conclude that the above further scheme details would ensure a satisfactory means of foul and surface water drainage in accordance with policy D5 of the Maldon District Local Development Plan 2014-2029 (2017) which requires development to not increase flood risk on site and elsewhere. In addition, this would ensure compliance with the National Planning Policy Framework in particular paragraph 163 which seeks to ensure that development does not increase flood risk elsewhere and that development is appropriately flood resistant and resilient.

Other Matters

10. As noted above, the Council had indicated in their decision notice that the original outline expired on the 26 October 2019. However, having regard to relevant case law¹ works comprising material operations that have already been undertaken in respect of the original permission can be taken to have

¹ F G Whitley & Sons Co. Ltd v The Secretary of State for Wales Clwyd County Council 1992 WL 895744

retrospectively implemented that permission, notwithstanding that it has expired.

11. In this respect I note that the appellant has carried out works to provide the vehicular access to the development and that these works were undertaken on the 22 October 2019 prior to the expiry of the original permission. In addition, it is relevant that the appellant submitted the applications seeking approval for the details required by conditions prior to the expiry date of the original permission.
12. As indicated in the above case law, there is no conflict with the intent of legislation if the approval is obtained after the expiration of the time limits as long as the application was made prior to the expiration of specified time limits and either the operations that have taken place are immune from enforcement or the approval is obtained prior to enforcement action. In these circumstances and on the basis that the Council has not indicated that any such enforcement action has been taken, it seems to me that the original permission remains extant.

Conclusions

13. I therefore conclude that this appeal should be allowed and the details of surface water and foul drainage details approved.

P Jarvis

INSPECTOR