

Appeal Decision

Site Visit made on 15 March 2021

by Mr Andrew McGlone BSc(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Appeal Ref: APP/C3240/W/20/3260920

Park Inn Ironbridge Road, Madeley, Telford, TF7 5JU

- The appeal is made under section 78(1)(b) of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr John Kuschnir against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2013/0190, dated 7 August 2020, sought approval of details pursuant to condition No 5 of a planning permission Ref TWC/2013/0190 granted on 24 May 2013.
 - The application was refused by notice dated 6 October 2020.
 - The development proposed is discharge condition 5 of planning permission TWC/2013/0190.
 - The condition in dispute states that: 'development shall not take place until a scheme of foul and surface water drainage, which shall include proposals for sustainable urban drainage, has been submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be completed before occupation of the first dwelling on the site, or in accordance with a timetable to be submitted to and agreed in writing by the Local Planning Authority.'
 - The reason given for the condition is: 'to ensure satisfactory drainage of the site and to prevent the increased risk of flooding by ensuring a satisfactory means of surface water disposal.'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr John Kuschnir against Telford and Wrekin Council. This application is the subject of a separate decision.
3. The Council made a request to have a late application for an award of costs considered against the appellant. However, the Council did not reply to correspondence confirming that the application was considered late, and therefore the Secretary of State has determined that there is no justification to admit the Council's late application for further consideration.

Background and Preliminary Matters

4. Planning permission was granted by the Council on 24 May 2013 for the erection of 7no. two-bedroom terraced houses following demolition of existing public house ('the approved scheme'), subject to various conditions.
5. In 2015 a request was made to the Council to discharge condition no. 5. The appellant submitted a Drainage Strategy, dated 24.07.2015. Emails were also exchanged between the main parties and a hydraulic model was submitted by the appellant. The appellant says that the condition was discharged in full on 12 August 2015, however, the Council say that the request to discharge the

condition was refused on 14 February 2018. The latter seems more likely given the correspondence which took place after the 12 August 2015. In any event a fresh application seeking to discharge condition no. 5 was made, and is now subject of this appeal.

6. On 30 October 2018, an appeal decision¹ was issued. The former Park Inn had been demolished in July 2013. As the demolition of the former public house was an essential component of the permitted scheme, and demolition is a 'material operation', it was held that the development of the approved scheme had commenced in July 2013. On this basis, a Lawful Development Certificate was issued confirming that the time limiting condition 1 had been satisfied. However, in this decision, the Inspector said that condition no. 5 could not be 'discharged as it would be an impossibility to complete the drainage scheme before development takes place. The only reasonable interpretation is that the details must be approved before work involving the drainage scheme commences.' Thus, 'some development on site, including demolition work, could, therefore commence before discharging condition no. 5 without necessarily being a breach of that condition. The condition is not a true condition precedent.'

Main Issue

7. The appellant is seeking approval for the details submitted in respect of condition no. 5. It is not for me to reconsider the planning permission or whether the condition satisfies the six tests relating to the imposition of them. As such, the main issue is whether the submitted drainage strategy would provide an adequate means for foul and surface water disposal.

Reasons

8. The appellant has submitted a Drainage Strategy, dated 24.07.2015 ('the Strategy'). The Strategy in respect of foul and surface water drainage is the same as that submitted to and refused by the Council in 2015.
9. The condition states that the submitted scheme shall include proposals for sustainable urban drainage. The Planning Practice Guidance (the Guidance) says that sustainable drainage systems are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible. They provide opportunities to: reduce the causes and impacts of flooding; and remove pollutants from urban run-off at source. Both are opportunities related to the proposed foul and surface drainage proposals. The Guidance also outlines the hierarchy of sustainable drainage options and the aim to discharge surface run off as high up the hierarchy as reasonably practical.
10. The Strategy proposes to provide betterment to the existing surface water drainage situation. The approved scheme would reduce the amount of hardstanding on site and increase the amount of grass and landscaping. The pre-development area of hardstanding discharged into the main combined sewer in Park Lane. The Strategy includes the use of permeable pavings. It also considers, and then discounts the first three options of the drainage hierarchy. There is no dispute about this or the proposed use of the combined sewer in Park Lane. Again, there is no dispute between the main parties about the principal of this connection or the approach in principle set out in the Strategy. I see no reason to disagree based on the submitted evidence.

¹ Appeal Decision Ref: APP/C3240/X/18/3196732

11. However, in considering a sustainable drainage system, the capacity and resilience of the proposed infrastructure is critical to the sustainability of new development. The Council also requires through Policy ER 11 of the Telford and Wrekin Local Plan 2011 - 2031 (Local Plan) development to demonstrate: how foul flows produced by the development will be drained and the identification of the agreed point of connection to the public foul sewerage network. Local Plan Policy ER 12 further outlines how effective on-site management of surface water can improve water quality; and that development should be designed to effective and to be safe taking into account the lifetime of the development.
12. I note that the appellant wishes for my assessment to be made solely on the Strategy and that it does not refer to a hydraulic model, a hydro-brake or flow control. The wording of the condition does not specifically use these terms, but in the context of the Local Plan Policies ER 11 and ER 12, the Guidance, and the reason for the imposition of the condition, it is logical to consider the hydraulic model that relates to the Strategy prepared in 2015 which the appellant still seeks to rely on. While the appellant has not submitted the hydraulic model, the Council has, and their concerns about the model remain consistent with those expressed to the appellant before the submission of the latest condition discharge request and since then.
13. The Council has pointed out that the Strategy and the model are inconsistent in terms of the total area of hardstanding post-development. I agree. This creates uncertainty about the robustness of either. Secondly, the condition requires consideration of foul and surface water drainage. The Strategy proposes to connect these into a combined drainage system. The hydraulic model includes a hydro-brake (model Md6) which would be for surface water only and it is not of a suitable design to deal with foul flows because they will always be full of water. Hence, it is far from certain that the proposed Strategy would not result in localised flooding of foul water. Thus, the submitted Strategy would not ensure satisfactory drainage of the site or prevent the increased risk of flooding by ensuring a satisfactory means of surface and foul water disposal.
14. The appellant refers to a number of other sites in the area. I do not have the full details or circumstances of these cases. On face value, there are differences in the wording of the conditions imposed on these sites and that relating to the Park Inn, but whether the other conditions cited meet the six tests or not is a matter separate to this appeal which relates to a request to discharge condition no. 5. I have assessed this request based on the Strategy for the site and the evidence relating to that. There is a need for consistency in decision-making, but it is not clear that the Strategy would not result in localised flooding of foul water. Irrespective of which flood zone the site falls into, this is not a situation planning policy, Guidance or any future or existing occupier wish or would wish to see. In any event, by the appellant's own admission some of the sites referred to are not comparable to the appeal site.
15. I conclude that the submitted drainage strategy would not provide an adequate means for foul and surface water disposal. Conflict would arise with Local Plan Policies ER 11 and ER 12 as it has not been satisfactorily demonstrated how foul flows produced by the development will be drained and connected to the public foul sewerage network without reducing the risk of localised flooding.

Other Matters

16. Discussions about foul and surface water drainage have taken place between the main parties for some time and I note the Council's suggested revisions to

the appellant's scheme. It is open to the appellant to discuss these with the Council with a view to finding a solution so that the development can proceed.

Conclusion

17. The appeal is dismissed and approval of the details submitted pursuant to condition no. 5 attached to planning permission Ref: TWC/2013/0190 granted on 24 May 2013 is refused, namely in terms of foul and surface water drainage.

Mr Andrew McGlone

INSPECTOR