



Appeal Decision

Site Visit on 25 May 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/E2340/W/20/3264685

Site of former Barnsay Shed, Long Ing Lane, Barnoldswick BB18 6JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant subject to approval of details required by a condition of a planning permission.
- The appeal is made by Seddon Homes Limited against the decision of Pendle Borough Council.
- The application Ref 20/0035/REM, dated 10 January 2020, sought approval of some reserved matters pursuant to the requirements of conditions Nos 1, 2 and 4 of outline planning permission Ref 13/16/0054P granted on 18 January 2017.
- The development proposed is the approval of Reserved Matters for 129 dwellings and associated roads, infrastructure and parking including details of appearance, landscaping, layout and scale.
- The condition in dispute is No 4 which states that:
As part of any reserved matters application and prior to the commencement of any development, the following details shall be submitted to, and approved in writing by the local planning authority in consultation with the lead local flood authority.

Surface water drainage scheme which as a minimum shall include:

- a) Information about the lifetime of the development design storm period and intensity (1 in 30 & 1 in 100 year +30% allowance for climate change), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance and easements where applicable, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and or surface waters including water courses and details of flood levels in AOD;
- b) The drainage scheme should demonstrate that the surface water run off must not exceed the peak greenfield runoff rate for same event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- c) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and head walls or removal of unused culverts where relevant);
- d) Flood water exceedance routes, both on and off site;
- e) A timetable for implementation, including phasing where applicable;
- f) Site investigation and test results to confirm infiltrations rates;
- g) Details of water quality controls where applicable.

The scheme shall be fully implemented and subsequently maintained in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- The reason given for the condition is: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site, to reduce the risk of flooding to the proposed development, elsewhere and to future users and to ensure that water quality is not detrimentally impacted by the development proposal.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Seddon Homes Limited against Pendle Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. This appeal relates to site drainage details, not a defined reserved matter in itself, but tied to the outstanding reserved matters details, including layout, as part of the outline permission by Condition 4. The drainage scheme forms part of the infrastructure for the development which is referred to in the description of development for which detailed approval is sought. Condition 4 clearly sets out what the surface water drainage scheme should include as a minimum and, it seems to me, is within the parameters of what was approved at the outline stage. Whilst I have noted the appellant's comments in that regard, no appeal against that condition has been made.
4. Notwithstanding, on plain reading, it is clear that the Council is seeking to ensure that a satisfactory surface water drainage scheme can be achieved in connection with the proposed development of the site. As the requirements of Condition 4 potentially have implications for accommodating water within the site, there is a direct link to its layout.
5. I note that there is no dispute between the parties that there is currently a drainage issue at the site. Moreover, the appellant has had the opportunity, through this appeal, to address the reason for refusal and indeed has submitted detailed evidence in that regard. Therefore, I am satisfied that no party would be prejudiced by my consideration of the appeal on the basis of the Council's determination of the reserved matters application.
6. During the course of the Council's consideration of the planning application, an additional plan was provided showing surface water from the development site being discharged to the Leeds-Liverpool Canal (Drawing ref 40-27 Rev P1). The Council reconsulted on this amendment. Accordingly, I consider that no party would be prejudiced by my consideration of those details upon which the Council made its decision.
7. Since the Council's determination of the application for approval of details, a revised version of the National Planning Policy Framework (the Framework) was issued on 20 July 2021. As the document includes some changes regarding flood risk, I have sought the further comments of the main parties. I have had due regard to their representations in my determination of this appeal.

Background and Main Issue

8. The site benefits from planning permission for up to 148 dwelling houses with vehicular access from Long Ing Lane and a new access via Footpath 10. The permission was granted in outline subject to planning conditions with the details of access approved.
9. The parties accept that the site accumulates standing water following moderate rainfall event conditions. Conditions 4-9 (inc) of the permission relate to site drainage requirements and the protection of surface waters. Condition 4 of the

- permission includes a requirement to submit details of a surface water drainage scheme alongside any application for the consideration of the details of any of the outstanding reserved matters (RM). Amongst other things, the condition was imposed to achieve the aim of reducing the risk of flooding elsewhere.
10. The wording of the remaining drainage conditions are distinct in that details and implementation can be approved/carried out at a later stage in the development process.
 11. For the purposes of the outline permission a flood risk assessment was prepared by Paul Waite Associates Ref. 15196/FRA/01 (FRA). This included the identification of existing drainage infrastructure on the site, calculation of the greenfield run-off rate and an indicative scheme showing attenuated surface water disposal to a nearby watercourse.
 12. At the reserved matters stage, a drainage report by Atkinson Peck Consulting Engineers Ref JSD/C20280 Rev A (DR) included a more detailed drainage strategy for the site. This identified additional opportunities for the disposal of foul and surface water from the development following the hierarchy of sustainable drainage systems advocated in the Planning Practice Guidance. Three options for attenuated surface water flow discharge were suggested.
 13. Since the time of the Council's consideration of the planning application, the appellant has confirmed that a licence to discharge attenuated flows from the development site to the Leeds-Liverpool Canal has been granted by the Canal and Rivers Trust. Other surface water flows arising from off-site sources would be directed to an existing ordinary watercourse close to the southern corner of the site.
 14. The main issue is whether or not the proposal would meet the requirements of Condition 4 as it relates to preventing an unacceptable risk of flooding elsewhere.

Reasons

15. The site is approximately 5ha. It consists of a levelled terrace of land where the former Barnsay Mill once stood and an area of lower lying undeveloped rough grassland. The upper part of the site has remnants of hard surfacing and piled rubble which are largely covered by pioneer species of vegetation.
16. The site is bordered by houses and a treed area on rising land to the north. The Leeds-Liverpool Canal runs the length of the south-western boundary and the remaining boundaries abut open fields. The general land fall is from north-east to south-west.
17. The proposed drainage regime shown for the site consists of three elements. Foul water from the development would be pumped into an existing combined main sewer. This is located in the north-western corner of the site and there is no dispute that this would be an appropriate solution for foul drainage arisings from the site.
18. In relation to site surface water management, the DR provides details of a system of below ground pipework, including oversized pipes, storage capacity and flow restriction mechanisms served by an adoptable pumping station. This would pump surface water arising from the water collecting on the hard surfaces of the development to the canal at an attenuated rate of up to 40l/s.

This is below the calculated greenfield runoff rate and, according to the appellant, has now been licenced by the Canal and Rivers Trust. As the responsible body for the maintenance and management of the receiving waters, I am satisfied that their agreement to accept the attenuated surface water flow would not give rise to an elevated flood risk within the canal system or to watercourses affected by it.

19. According to the FRA the site currently drains to an ordinary watercourse in an adjacent field beyond the southern tip of the site. This outfall takes surface water arising from the site; flows from higher land to the north-east, some of which collects in a partly culverted watercourse along the south-eastern boundary; and, an input from an existing surface water sewer (Little Cut culvert) running from the New Cut waterbody, also to the north-east.
20. Under moderate rainfall event conditions, surface water collects in the impermeable lower parts of the site. This is reflected in the Environment Agency's Surface Water Flooding Map based on LIDAR data, which shows parts of the lower site and a series of fields to the south of it to be susceptible to surface water flooding. An example of such flooding is evidenced in photographs provided in the Council's statement.
21. In addition to a natural dip in the topography, the FRA and DR identify that surcharging of the existing culverts may contribute to standing water on the site. The FRA calculates the capacity of the existing 225mm pipe lying to the eastern side of the site would be insufficient to serve its existing catchment. It promotes a proposed cut-off drain which would intercept off-site flows from part of the north-eastern boundary. These flows would otherwise flow across the site. Calculations for the catchment of the central drain also indicate a requirement for an upgrade of its culvert should it be retained.
22. The proposed 450mm filter/cut-off drain would intercept the overland flows from the north-east in order to manage received surface water flows from the higher ground above the site. This could include the flows from the central Little Cut culvert. The drain would direct water along the north-eastern edge of the site and then the eastern boundary to the ordinary watercourse flowing southwards from the southern tip of the field. The DR identifies that 450mm diameter pipes would have an increased flow capacity. It would prevent surcharging but bypass the existing site holding capacity relating to off-site flows which act to temporarily retain or slow the rate of water discharge from the lower part of the site.
23. From the information in the FRA and DR, the estimated intercepted flows could be considerable. This would be gravity piped through a purpose-built field drain system which the DR describes as having a free unobstructed flow. Although the principle of the cut-off drain was approved at the outline, Condition 4 requires detail of the method to delay and control surface water discharged from the site. Condition 8 also identifies that the FRA should be revised to accommodate findings as appropriate.
24. Although the detailed design of the cut-off drain could slow the rate of infiltration to the pipe, there is little information before me of that detail. Moreover, there is little to demonstrate or compare before and after outfall rates for the intercepted and transferred flows to a downstream area identified as subject to surface water flooding.

25. According to the appellant, the standing water arises from a collapsed culvert lying on third party land to the south of the site. It is asserted that, as an obstruction to flows, this causes water to back up onto the site. The appellant suggests that this could be remedied through an Improvement Order under s24 of the Land Drainage Act (the Act). However, the FRA and DR indicate that, at the time of writing, further investigation was required in regard to the condition of any off-site drainage and culverts. The FRA recommended that the part of the existing eastern culvert located on land outside of the site should be investigated to ensure structural soundness and hydraulic capacity. Although the appellant's statement suggests the condition of the off-site culvert has been verified, there is little substantive evidence before me to qualify that a blockage exists within the drainage system on the neighbouring land or further downstream.
26. Moreover, there is little to suggest that any off-site works to accommodate the resultant piped flows could be achieved through the Act in the event that flows were demonstrated to be higher and/or quicker than the existing outputs. The FRA identifies that if the landowner of the adjacent field is unwilling to allow the developer to increase the culvert within their land then flows from the proposed filter drain will need to be attenuated on site prior to discharge into the culvert. This would ensure flood risk downstream of the site is not increased. There is little evidence to suggest such an agreement has been secured or that the flow could be suitably attenuated within the site.
27. In support of the development, the appellant points me to the responses of drainage bodies who were consulted during the Council's consideration of the planning application. The Lead Local Flood Authority (LLFA) raised no concerns subject to compliance with the outline conditions. It is unclear if they appreciated the implications of the timing required in Condition 4 with respect to the RMs. Nevertheless, the 'compliance' referenced in the response included Condition 4 and therefore the timing associated with it.
28. I note the appellant's statement in response to Earby and Salterforth Internal Drainage Board (IDB) and the potential to consider off-site investigations under Condition 8. However, it is clear from the IDBs response, dated 16 September 2020, that there was a shortfall in information in relation to the proposed 450mm culverts. The IDB subsequently also encouraged the use of the requirements under Conditions 4-9.
29. A suggested additional condition by the LLFA in relation to the culverting of the existing watercourses is supported by the appellant. However, as any necessity for attenuation of the intercepted and diverted surface water is unknown so are the potential associated effects on the RMs – particularly in relation to layout. As a condition aimed at ensuring there is no flood risk on or off the site resulting from the proposed development and which may conflict with the layout of development provided, I find this would fail the test of reasonableness and be in direct conflict with the Condition 4 requirements.
30. The appellant has also directed me to an appeal decision elsewhere. However, in that instance the scheme would reduce the total rate of surface water discharging from the site to one lower than its undeveloped greenfield rate including during storm events. Whilst it is accepted that that would be the case in respect of surface water arising from the developed area of the site, I find there is inconclusive evidence in relation to the management of off-site flows

which currently surcharge onto the site. It is therefore distinct from the case before me, a case I have considered on its own merits.

31. For the above reasons, I find the degree of information provided would not meet the requirements of Condition 4 to adequately assess discharge rates and volumes (both pre and post development), nor provide sufficient information in relation to temporary storage facilities, or the methods to delay and control surface water discharged from the site and measures to prevent flooding of the receiving watercourse. There is limited detail in relation to the suggested off-site works and whether they would ensure adequate discharge of surface water without causing flooding.
32. In my judgement, there is an absence of conclusive evidence to demonstrate that the proposed drainage regime for the site would not cause elevated flood risk elsewhere. This would include land identified as at risk of surface water flooding by the Environment Agency. It would not therefore meet the requirement of Policy ENV7 of the Local Plan for Pendle Core Strategy 2011-2030 [2015] and Paragraph 167 of the revised Framework as they require that the design of new developments must consider the risk the proposed development may pose to areas downslope/downstream.

Other Matters

33. I acknowledge the additional concerns of third parties. The effects of the development both on the medical and educational services, and the local highway capacity to accommodate traffic were matters for the Council to consider at the outline application stage. Although there are no requirements to contribute to local medical or educational services, the permission requires appropriate standards of highway infrastructure including the upgrade of a nearby controlled traffic junction to improve signalling efficiency.
34. Noise assessments have been undertaken by the appellant to consider the likely effects of the nearby Silentnight works on prospective residents of the development. The proposed mitigation works have been considered by the Council and found to be acceptable. Accordingly, the implementation of those works is capable of being secured by planning condition.
35. It is possible that specialised foundation construction may be required on the site; however, this is subject to the agreement of further detail with the Council under the terms of the outline permission. The appellant's report into wildlife interests on the site provides a number of recommendations including precautionary works, additional surveys and mitigation. In the circumstances of the case these are matters which can also be appropriately secured by planning conditions to avoid adverse wildlife impacts.

Conclusion

36. The development would be contrary to the adopted development plan and there are no material considerations indicating a decision otherwise than in accordance with it. For those reasons, I conclude that the appeal should be dismissed.

R Hitchcock INSPECTOR