



Appeal Decision

Site visit made on 19 October 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2021

Appeal Ref: APP/J1535/W/21/3268028

Garden Centre, Crown Hill, Waltham Abbey EN9 3TF

- 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 consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Paul Bundy against Epping Forest District Council.
 - The application Ref: EPF/2596/20, dated 10 November 2020, sought approval of details pursuant to conditions Nos 3, 4, 5, 7 and 8 of a planning permission Ref: EPF/2030/17 granted on 26 January 2018.
 - The development proposed was described as a "*resubmission of Planning Consent EPF/0537/17 for 4 no semi-detached houses.*"
 - The details for which approval is sought are surface water disposal; the types and colours of the external finishes, including doors and windows; hard and soft landscape works; a Tree Protection Plan Arboricultural Method Statement; and wheel washing or other cleaning facilities for vehicles leaving the site during construction works.
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Decision

1. The appeal is dismissed.

Procedural Matter and Main Issue

2. The Council granted planning permission¹ for 3 houses on the appeal site in 2017. Subsequently an application for 4 semi-detached houses was refused² and was then the subject of an appeal³. The appeal was allowed on 26 January 2018. It was the subject of the usual condition that concerns the statutory 3 year limit for the implementation of the approved development.
3. The appeal decision notice also contains conditions 3,4,5, 7 and 8 that relate respectively to surface water disposal; the types and colours of the external finishes, including doors and windows; hard and soft landscape works; a Tree Protection Plan Arboricultural Method Statement; and wheel washing or other cleaning facilities for vehicles leaving the site during construction works.
4. The appellant submitted details in pursuant of the discharge of these conditions on 10 November 2020. The Council did not make a decision prior to the expiry of the period of implementation for the permission. The appellant then submitted the appeal on 1 February 2021 against the failure of the Council to give notice of its decision within the appropriate period.

¹ Council ref: EPF/0537/17

² Council ref: EPF/2030/17

³ Appeal ref: APP/J1535/W/17/3186698

5. The Council consider that the appeal was not valid on a number of grounds, including that the permission had expired even before the submission of the appeal. In the interests of fairness, I advised both main parties of my preliminary conclusion on this matter and have considered the points that both parties have made.
6. It is therefore necessary to establish whether the planning appeal was correctly made and is thus capable of being lawfully determined. This procedural matter forms the main issue in this case.

Reasons

7. The appeal site comprises a disused garden centre that is set out in a linear form along Crown Hill. The site contains dilapidated structures, hardstanding and areas of overgrown vegetation. A gated security fence runs along the site frontage. It lies in between a row of houses and the M25, and Upshire Business Park is signed to the rear.
8. Section 78 of the Town and Country Planning Act 1990 (the Act) provides the right to appeal against planning decisions and, as is of relevance in this case, the failure to take such decisions. However, for this provision to apply in relation to the discharge of conditions the statutory time limit for the implementation of the permission must not have lapsed. There is also not evidence before me which suggests that the permission has been implemented on the site. As the permission has lapsed, it cannot be lawfully implemented prior to its expiry.
9. Consequently, the appeal is not capable of being determined. As the appeal has not been withdrawn, it must be dismissed.
10. Whilst I can understand the frustration of the appellant over the Council's failure to make a decision, this does not alter that it is not possible to discharge conditions on a planning permission that has expired. There is also no provision for it to be deemed that the discharge consent was in place prior to the expiry date on the permission if this appeal was to be granted. Procedural validity must be established first. Nor does that the permission was itself granted on appeal have a bearing on this matter.
11. The appellant is concerned that if such an approach is correct, it would enable Local Planning Authorities to frustrate and prevent a planning permission from being implemented. However, this is not a matter that can be resolved by way of a planning appeal decision. In addition, the extension that Central Government gave to planning permissions that related to the Covid-19 pandemic has expired and has not been extended. As such, it does not provide a pathway for the appeal to be considered favourably on a procedural basis. None of these matters change my conclusion.
12. With this matter leading to the position that the appeal must be dismissed, there is also not cause for the planning merits of the case to be considered, whether these relate to housing supply or the details submitted in pursuant of the discharge of conditions.
13. The Council also raised a number of other validity issues with the appeal. Even if the Council did not receive the questionnaire, I am not persuaded that it has led to any particular prejudice. The Council also stated that the details in pursuant of the discharge were refused. However, once an appeal is lodged,

the Council lose the right to make the decision and so if the details were refused after that date the Council's refusal would have only been on a putative basis. With regard to further applications⁴ on the site that my attention has been drawn to, my decision concerns only the issues that arise from the case that is before me.

Conclusion

14. I conclude that the planning appeal was not correctly made and thus is not capable of being lawfully determined under Section 78 of the Act, irrespective of the planning merits. For the above reasons, the appeal should be dismissed.

Darren Hendley

INSPECTOR

⁴ Council refs: EPF/1255/20, EPF/0249/21