



Appeal Decision

Site visit made on 20 December 2022

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/Y3425/W/22/3300824

Land at Silkmore Lane, Stafford, Staffordshire ST17 4JD

- The appeal is made under section 78 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 William Harp, Harixon Ltd, against the decision of Stafford Borough Council.
 - The application Ref 19/30484/DCON, dated 26 April 2019, sought approval of details pursuant to conditions Nos. 4,6,10,11,16,17 of a planning permission Ref 15/23463/FUL granted on 25 May 2016.
 - The application was refused in respect of condition 11 by notice dated 10 December 2021.
 - The development proposed is a residential care home (Use Class C2).
 - The details for which approval is sought is a detailed surface water drainage scheme.
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Decision

1. The appeal is allowed, and the details submitted are approved, namely a detailed surface water drainage scheme for the site, in pursuance of condition 11 attached to planning permission Ref 15/23463/FUL, dated 25 May 2016.

Application for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. Despite the length of time since planning permission was granted, the Council has confirmed that this discharge of conditions application is valid as in its view some works have commenced on site and the application was submitted before the expiry date of the planning permission (the original permission). The Council has discharged the conditions under application Ref 19/30484/DCON, with the exception of Condition 11 which is the subject of this appeal. This relates to the submission of a detailed surface water drainage scheme for the site and reads as follows:

Condition No. 11: No development shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The scheme must be based on the design parameters and proposed strategy set out in the Drainage Design Documents (13/03/2016) and Additional information (01/04/2016). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall demonstrate:

- *Surface water drainage system(s) designed in accordance with the non-statutory technical standards for sustainable drainage system (DEFRA, March 2015).*
 - *SuDS design to include 30,000 litre rainwater harvesting tank, up to 70,000l attenuation tanks, permeable paving, water butts, and planters to function as rain gardens.*
 - *Infiltration testing to BRE365 to determine whether infiltration will be feasible, in accordance with the drainage hierarchy.*
 - *Limiting the discharge rate generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm to 5/s in total, to be discharged to the existing surface water sewer connection.*
 - *Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.*
 - *Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system.*
 - *Provision of an acceptable management and maintenance plan for surface water drainage to ensure continued performance of the system for the lifetime of the development. This should include a schedule of required maintenance activities, frequencies, and contact details for the organisation responsible for carrying out these duties.*
 - *Finished floor levels to be set at a minimum of 150mm above existing ground levels.*
4. The reason given for this condition, as set out in the decision notice for Ref 15/23463/FUL is to prevent flooding by ensuring the satisfactory storage of /disposal of surface water from the site (Policy N2 of The Plan for Stafford Borough).
5. The Council has stated that, following advice from the Lead Local Flood Authority (LFA), the information received in order to discharge condition 11 is considered insufficient and the application to discharge that condition has been refused. Although the Council has provided little evidence as to what information is insufficient, it is apparent that the Council's refusal of condition 11 is related to concerns as to whether condition 13 can be complied with and it is attempting to link the two.
6. Condition 13 of the original permission requires the development to be carried out in accordance with the flood risk assessment and mitigation measures which were approved as part of the original permission. The Council has confirmed that this is a compliance condition for which no further information is required to be submitted for approval. However, since the original permission, significant flooding events have resulted in the revision of the Environment Agency Flood Zones. The appeal site area now lies primarily in Flood Zone 3(b) stated as being a functional flood plain with the highest probability of flooding. The LFA consider that circumstances have changed since the original permission and that the approved site layout would not be permissible as the flood risk and vulnerability of the site has increased. The LFA has advised the Council that the site is no longer in compliance with the requirements stipulated in condition 13, hence it is advising that the details referred to in condition 13 need to be revised before the details to discharge condition 11 can be considered by them.

7. Planning permission was granted in 2016 based on the flood zones and documentation submitted with the application at that time. The layout has been approved (pursuant to condition 2, approved plans condition) and the documentation referred to in condition 13 has also been approved. Regardless of the Council's concern as to whether condition 13 can be complied with, in my view, condition 11 is solely related to a scheme for surface water drainage of the site itself (based on the approved documentation) and is therefore independent of condition 13. Condition 13 is therefore not relevant to the appeal before me, and I will therefore focus solely on the adequacy of the information submitted in relation to condition 11.

Main Issue

8. The main issue is whether the details submitted in respect of the surface water drainage scheme for the site meet the requirements of condition 11 with regard to flooding.

Reasons

9. The development approved under the original permission would involve the erection of a residential care home. The LFA consultation on the original planning application stated that based on the drainage strategy and design parameters established in the submitted documents, an acceptable drainage design could be achieved within the proposed development. Condition 11 was added to the permission at the request of the LFA and requires a detailed surface water drainage scheme for the site to be submitted and approved in writing.
10. In seeking to discharge condition 11, the appellant provided additional information in response to the LFA's requests between 2019 and 2021, but the LFA consistently advised that the information submitted was insufficient to enable its discharge. Although the Council issued its decision notice in respect of the Discharge of Condition application in October 2019, addressing the other conditions, it continued to accept further details in respect of condition 11 in an effort to resolve the matter until it was ultimately refused in December 2021.
11. The appellant instructed a second drainage designer to provide a new drainage design drawing, schedules, micro drainage simulation and a drainage maintenance and management plan in February 2021. The appellant states that they have now addressed all of the requirements of condition 11 and for the sake of completeness this has been provided in Appendix 27 of their appeal statement, together with copies of correspondence between the appellant and the Council/LFA. This view is confirmed in the appellant's rebuttal statement submitted by Betts Hydrology.
12. Beyond saying that the information submitted to discharge condition 11 is inadequate, neither the Council nor the LFA in their appeal statements have provided any indication as to the adequacy of the submitted information to discharge condition 11. Instead, they have focussed on the LFA's concerns as to whether condition 13 can be complied with and endeavoured to link this to condition 11. As I have stated above, condition 13 is a separate matter to the discharge of condition 11.
13. I accept that the documents referred to in condition 11 show plans with the 1 in 100-year flood outline shown and development being located outside this

flood outline and that the LFA considers that the drainage strategy should now take into account the Flood Zone changes. However, as I have already stated, permission has been granted for the development and it was based on the flood risk associated with the site at the time that the permission was approved. The drainage strategy must, therefore, be required to comply with the information applicable at the date of the planning permission and it would be unreasonable to change the supporting documentation which is clearly identified in the permission. Condition 11 does not need to consider the subsequent changes to the Flood Zones.

14. Neither the Council nor LFA has provided adequate evidence to explain why the information submitted to discharge condition 11 is inadequate to prevent the flooding of the site by ensuring the satisfactory storage of /disposal of surface water, and I have no other evidence to suggest that it isn't. Therefore, in the absence of anything to suggest the contrary, I conclude that the details submitted are sufficient and acceptable for condition 11 to be discharged.

Other Matters

15. The Environment Agency has registered their objection to a more recent planning application on this site for a care home on the basis that the site is now located within Flood Zone 3b. However, the appeal before me is for a development which already has permission and at the time in granting permission the Council, based on the advice of its consultees, considered that the location and flood risk was acceptable and attached relevant conditions. The comments in relation to this development therefore have little relevance to the appeal before me.

Conclusion

16. For the reasons set out above, I conclude that the appeal should be allowed.

G Bayliss

INSPECTOR