



Appeal Decision

Site visit made on 7 March 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal Ref: APP/K2610/W/22/3293053

Land at Dawson's Lane, Blofield, Norfolk NR13 4SB

- 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 approval of details required by a condition of a planning permission.
 - The appeal is made by Mr Philip Rose (Green Acre Developments Norwich Ltd) against Broadland District Council.
 - The application Ref 20211717, dated 20 September 2021, sought approval of details pursuant to condition No 3 of planning permission Ref 20202164 granted on 04 August 2021.
 - Planning permission 20202164 was for 'variation of condition 2 following grant of planning permission 20190844'.
 - The details for which approval is sought relate to the provision of a verification report regarding surface water drainage.
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Decision

1. The appeal is dismissed and the application to discharge condition 3 is refused.

Applications for costs

2. An application for costs was made by Green Acre Developments Norwich Limited against Broadland District Council. This application is the subject of a separate decision.

Background and Main Issue

3. Planning permission was originally granted for 12 residential units on the appeal site in December 2019 under Council reference 20190844. A subsequent application under section 73 of the Town and Country Planning Act 1990 was granted planning permission under Council reference 20202164 in August 2021. The description on the decision notice is 'Variation of condition 2 following grant of planning permission 20190844 - amend site plan'. The latter permission included planning condition 3.
4. This condition requires that a verification report is submitted to the Council and approved in writing. It stipulates that the verification report should demonstrate that the surface water drainage has been installed in accordance with the 'approved scheme' and that it is performing in accordance with the 'design standards'. The condition also outlines provisions for any remediation work to be undertaken where the verification report demonstrates that such work is necessary. The condition clearly states that 'the roof of the last property shall not be completed' until the verification report has been submitted and approved in writing.

5. Pursuant to the discharge of condition 3, the appellant submitted a SuDS Condition Report (September 2021) and Supplementary Infiltration Testing carried out by Norfolk Partnership Laboratory in November 2019. This application was considered under Council reference 20211717.
6. On 5 January 2022 the Council's planning committee resolved to defer the determination of the application. The committee meeting minutes indicate that members elected to do so - against an officer recommendation of approval - for the following reason:

'Reason for Deferral for 12 months to allow for all the houses and the road surface to be completed and for further testing to take place on the approved system. In reaching this decision members acknowledged that the requirement of condition 3 would not be met and no enforcement action would be taken and the houses could be occupied.'
7. The appellant contends that sufficient information has been submitted to allow the condition to be discharged. Notwithstanding this, the appellant and the Council have confirmed that the development has been completed. The Council has also confirmed that the development has been occupied. The fact that the development has been completed means that the 'roof of the last property' has been completed. On that basis, the starting point is to consider whether the planning condition is capable of being discharged. Given that this was not a matter of contention between the main parties, they have been provided with an opportunity to make representations. I have taken these into account.
8. As such, the main issue is whether condition 3 should be discharged.

Reasons

9. Condition 3 states in full:

'The roof of the last property shall not be completed until a verification report demonstrating that the surface water drainage has been installed in accordance with the approved scheme and is performing in accordance with the design standards has been first submitted to and approved in writing by the Local Planning Authority. The verification report shall identify any remedial work that may be necessary to ensure the long term functionality of the surface water drainage system and a timetable for when the work shall be carried out. Any agreed remediation work shall be carried out and retained thereafter.'
10. As is common in drafting planning conditions, the Council specified the point in time prior to which the details needed to be submitted and approved in writing (hereafter referred to as 'the timing clause'). Condition 3 requires the submission and approval of details prior to completion of 'the roof of the last property'. It therefore prohibits the completion of the development until details have been submitted and approved.
11. Both main parties have confirmed that the development has now been completed. As such, condition 3 cannot now be discharged. This is because a decision to discharge condition 3 would effectively confirm that the requirements of the condition had been met. Given that the timing clause has been breached it is not possible to meet the requirements of condition 3.
12. In determining an application to discharge a condition it is not necessary to consider whether the condition meets the tests set out within the Framework.

In the same vein, I cannot take a flexible approach and ignore the timing clause set out under Condition 3. To do so would be to effectively agree to vary the condition and would diminish the role and importance of timing clauses in drafting conditions. There is separate legislation (and a separate application process) applicable where a planning condition requires variation¹.

13. For these reasons it is not necessary to consider whether the submitted information satisfies the specific requirements of Condition 3 in relation to surface water drainage. Indeed, even if the details were acceptable, the condition cannot be discharged for the reasons given above.

Decision

14. The appeal is dismissed and the application to discharge condition 3 is refused.

Luke Simpson

INSPECTOR

¹ Section 73 of the Town and Country Planning Act 1990