



Appeal Decision

Site visit made on 19 September 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal Ref: APP/M2270/W/22/3303522

Church Farm and Land, Church Road, Paddock Wood, Kent TN12 6HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal on an application for approval of details required by conditions of a planning permission.
- The appeal is made by Countryside Partnerships against the decision of Tunbridge Wells Borough Council.
- The application Ref 21/04170/SUB, dated 15 December 2021, sought approval of details pursuant to condition Nos 8 and 9 of planning permission Ref 14/504140/HYBRID granted on 14 February 2018 and was refused by notice dated 14 June 2022.
- Planning permission 14/504140/HYBRID was for 'Hybrid Application: Outline (Access not reserved) - Residential development of up to 300 dwellings including 105 affordable dwellings (comprising 36 x 1-bed flats, 26 x 2-bed flats, 68 x 2-bed houses, 75 x 3-bed houses, 80 x 4-bed houses and 15 x 5-bed houses) and associated highways, landscaping, allotments, flood mitigation works including attenuation basins and open space; Full Application - Change of use of land to country open space.'
- The details for which approval are sought relate to a 'closure report' on contamination (Condition 8 Part 3) and a verification report on contamination (Condition 9).

Decision

1. The appeal is dismissed and the application to discharge conditions 8 (Part 3) and 9 is refused.

Background and Main Issue

2. The main parties have made representations in relation to the detail and substance of the appellant's applications to discharge conditions 8 and 9. However, during my site visit I noted that a significant number of approved dwellings were occupied. Upon my written request for confirmation of this, the appellant confirmed that the dwellings at plots 64 to 73¹ have been completed and occupied. These plots are all within an area identified by the appellant as 'affected by contaminated made ground'. Indeed, the evidence indicates that the details submitted pursuant to the discharge of conditions 8 and 9 relate to these plots.
3. 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') in respect of both Condition 8 and Condition 9.
4. For these reasons as a starting point, the main issue in this appeal is whether Conditions 8 and 9 can be discharged, with regard to the timing clause set out under each condition.

¹ As shown on the site layout plan approved under reserved matters

Reasons

5. Condition 8 requires the submission and approval of various components of a scheme to deal with the risks associated with contamination of the site, including a closure report on completion of any remediation works (part 3). It requires that this information is approved prior to commencement of any phase of the development. It therefore prohibits the commencement of development until these details have been submitted and approved.
6. I consider the wording of condition 8 to prohibit any commencement of development until all parts of the condition have been complied with. However, even if one were to consider that the wording allows for a phased approach to commencement of development, the appellant's evidence indicates that the plots 'affected by contaminated made ground' include plots 64 to 73, all of which have been completed and occupied. It is not possible to discharge condition 8 because this would require confirmation that the requirements of the condition have been met, which they have not because the development has commenced.
7. Condition 9 requires the submission and approval of a verification report for 'the identified part of the permitted development affected' prior to occupation of that part of the development. Again, the relevant part of the development includes plots 64 to 73 (albeit the Council contend that the relevant part is more extensive). Given that the dwellings on plots 64 to 73 have all been occupied prior to the discharge of condition 9, this condition can no longer be discharged.
8. From a procedural point of view, I cannot take a flexible approach and ignore the timing clauses set out under Condition 8 and 9. To do so would be to effectively agree to vary the condition and would diminish the role and importance of timing clauses in drafting planning conditions. There is separate legislation (and a separate application process) applicable where a planning condition requires variation². As an aside, in this case the timing clause takes on an even more important purpose given that both conditions relate to contamination.
9. The fact that Condition 8 is split into different parts does not negate the requirement for all parts of the condition to be discharged prior to commencement of development. As such, that the appellant has received confirmation of discharge of parts 1 and 2 does not obviate its responsibility to ensure that the condition is discharged in its entirety prior to the commencement of development.
10. Given my findings it is not necessary to consider whether the details submitted would have been acceptable in the event that the development had not been commenced and occupied.

Conclusion

11. For the reasons given the appeal is dismissed.

Luke Simpson BSc MSc MRTPI

INSPECTOR

² Section 73 of the Town and Country Planning Act 1990