



Appeal Decision

Site visit made on 19 April 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2024

Appeal Ref: APP/J4525/W/24/3337914

Pennywell Industrial Estate, Sunderland SR4 9EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Tim Witty of UK Land Estates against the decision of Sunderland City Council.
 - The application Ref 22/00531/FUL was approved on 1 August 2023 and planning permission was granted subject to conditions.
 - The development permitted is "Erection of two units selling food and drink (within Use Classes E(a) and Class E(b)), with associated access arrangements, landscaping and car parking. (amended site section plan, site plan, acoustic fence and landscaping plan received on 9.8.22)".
 - The condition in dispute is No 11, which states that:
Notwithstanding details submitted, the development hereby permitted shall not commence until full details of a foul and surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority (in conjunction with Northumbrian Water and/or the Council's Lead Local Flood Authority), and the development hereby permitted shall not be occupied until the approved scheme has been implemented / installed in accordance with the approved details.
 - The reason given for the condition is:
To ensure that an appropriate method of connection to the existing sewerage network is achieved, to prevent the increased risk of flooding from any sources, to ensure satisfactory surface water drainage for the site, and to comply with Policy WWE2, Policy WWE3 and Policy WWE5 of the adopted Core Strategy and Development Plan.
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Decision

1. The appeal is allowed and the planning permission Ref 22/00531/FUL, for Erection of two units selling food and drink (within Use Classes E(a) and Class E(b)), with associated access arrangements, landscaping and car parking. (amended site section plan, site plan, acoustic fence and landscaping plan received on 9.8.22), at Pennywell Industrial Estate, Sunderland SR4 9EN, granted on 1 August 2023 by Sunderland City Council, is varied by deleting condition No 11.

Applications for Costs

2. An application for costs has been made by Tim Witty of UK Land Estates against Sunderland City Council and is the subject of a separate decision.

Preliminary Matters

3. An update to the National Planning Policy Framework (the Framework) was published following the granting of planning permission. I have determined the appeal against the revised Framework, and I am satisfied this contains no material changes relevant to the substance of the appeal.

4. Condition No 2 of planning permission Ref 22/00531/FUL (the 'permission') requires the development to be carried out in full accordance with a list of approved plans, including: "*Proposed drainage layout received on 28.6.22 - Drainage maintenance plan received on 28.6.22*". However, condition No 2 does not reference any drawing numbers.
5. The evidence before me refers to various versions of these drawings. The Council has confirmed that the correct drawing numbers which were before them at the time of determination were:

Proposed Drainage Layout and Levels – P20-148-3E-ZZ-XX-DR-C-1000-P5
Date – May 2020

Maintenance Plan – P20-148-3E-ZZ-XX-DR-C-1101-P5
Date – June 2020

6. Both parties have had the opportunity to clarify and comment on the drawings to which condition No 2 refers. Based on this feedback, I have determined the appeal against the plans listed above.

Main Issue

7. The main issue is whether the disputed condition is reasonable and necessary in terms of ensuring the development is acceptable with regard to sewerage, flooding and surface water drainage.

Reasons

8. The Council's contention is that condition No 11 was imposed on the permission because the drainage details listed under condition No 2 did not comply with relevant development plan policy in relation to water treatment. Additionally, the Council consider insufficient reasoning was provided as to why a surface water drainage connection could not be made to a culverted watercourse to the south of the site.
9. The lead local flood authority (LLFA) response refers to conflict with Policy WWE3 of the Sunderland City Council Core Strategy and Development Plan 2015-2033 – January 2020 (the CSDP). This requires development to consider the effect on flood risk, on-site and off-site, commensurate with its scale and impact. The policy also sets 10 specific criteria that development must meet.
10. In relation to water treatment, criterion 9 states that development must demonstrate control of the quality of surface water run-off during construction and for the lifetime of the development. For all developments the management of water should be an intrinsic part of the overall development.
11. The plans secured under condition No 2 illustrate features including a detention basin, filter trenches and permeable paving to improve water quality as part of the surface water drainage strategy. They also provide a detailed maintenance schedule for the various elements of the drainage scheme, distinguishing between the construction and operational phases of the development.
12. Neither Policy WWE3 nor its supporting text provides additional specific criteria for water quality requirements beyond those already mentioned. Given the policy requirements, I find the detail provided in the plans secured through condition No 2 to be acceptable for ensuring compliance with the policy.

13. In terms of the surface water drainage connection, criterion 5 of Policy WWE3 states that development must separate, minimise and control surface water run-off by discharging in the following order: i. to an infiltration or soak away system; ii. to a watercourse (open or closed); iii. to a surface water sewer.
14. The supporting text to Policy WWE3 states that the policy seeks to minimise the risk that future development locations could be flooded from sewers or add to an existing risk by ensuring that surface water run-off entering the sewer system is kept to an absolute minimum. Other benefits of such an approach will include a much reduced risk to water quality.
15. There appears no dispute between the parties that an infiltration or soak away system would not be feasible. However, there appears to be a fundamental disagreement regarding the extent to which the appellant has explored options to discharge via a watercourse; specifically the culverted watercourse to the south of the site.
16. Policy WWE3 does not prohibit surface water discharging to a sewer but considers it less favourable than discharging to a watercourse. To my mind, although it is not explicitly stated, the policy implies that proposals must justify why it is not feasible to follow the preferred hierarchy.
17. I have reviewed the correspondence between the main parties prior to the granting of the permission. It is clear from this dialogue and the committee report that both parties made efforts to resolve the disagreement, but without success. Based on this evidence, I am satisfied that the proposal to discharge to a surface water sewer has been adequately justified, and the details approved under condition No 2 would accord with Policy WWE3 in respect of the surface water drainage connection.
18. Moreover, the Planning Practice Guidance (PPG) advises that conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.
19. Taking account all of the above, the details required under condition No 11 have already been secured under condition No 2. Moreover, these details are sufficient to ensure, in respect of the main issue, that the proposal would comply with Policy WWE3 of the CSDP, the aims of which have previously been set out. Therefore, I find condition No 11 to be unnecessary and unreasonable when assessed against the tests outlined in paragraph 56 of the Framework and the PPG.

Conclusion

20. For the reasons given above, the appeal should be allowed, and the permission varied to delete condition No 11, as set out in my formal decision.

P Storey

INSPECTOR