
Appeal Decision

Site visits made on 6 and 7 November 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/B1415/W/24/3339010

**Shornden Works, Clarence Road, St Leonards-on-Sea, East Sussex
TN37 6SH**

- The appeal is made under section 78 of the Town Country Planning Act 1990 (as amended) against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for outline planning permission following the service of a non-validation notice under Article 12(3)(ii) of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended)
 - The appeal is made by Mr Malcolm Hall of Vauxhall Tec against Hastings Borough Council.
 - The application Ref is HS/OA/22/00966/VT.
 - The development proposed was originally described as "The proposal is for placement on the site of 4 number 1 bedroomed/2 storey houses of sustainable construction together with associated car parking and attendant refuse/recycling and bicycle storage. There will also be some landscaping and, subject to approval, an on-site sewage treatment plant."
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Decision

1. The appeal is dismissed.

Procedural Matters and Reasons

2. In September 2022, the appellant submitted an outline planning application¹ with all matters reserved for subsequent approval. There was a misunderstanding between the parties as to whether the appellant wanted some matters to be determined as part of the application. Subsequently, in November 2022, the appellant submitted an outline planning application² with appearance and landscaping reserved for subsequent approval and all other matters to be determined. The application submitted in November 2022 is the subject of this appeal.
3. Following the submission of the November 2022 application there was correspondence between the parties, including the Council issuing several invalid notices requesting varying items of supporting evidence. On 27 October 2023, the appellant served a notice on the Council under Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO). This was on the basis that the requested evidence would result in the submission of an unreasonable level of detail at the outline stage and specifically identified 4 pieces of evidence that the appellant considered could be deferred to a later stage.

¹ Application Ref. HS/OA/22/00742/VT

² Application Ref. HS/OA/22/00966/VT

4. In response, the Council maintained that 2 of the disputed pieces of evidence would be necessary, a tree survey and a topographical survey, and that a sustainable drainage systems (SUDS) report would be required instead of a flood risk assessment. The Council identified that an ecology report was not required, therefore, it did not maintain the request for this report. The appellant has subsequently lodged an appeal on the basis that the Council has failed to give notice of its decision within the appropriate period.
5. I note when the appellant submitted the appeal, they indicated that the Council did not respond to their notice. However, the Council has provided evidence that a letter was sent to the appellant within 7 working days of the notice being issued. Also, the appellant has been able to review the Council's response as part of the appeal and has provided comments on the letter. Therefore, no party is prejudiced by me considering the Council's response.

The Article 12 dispute

6. Article 11(6)(b) of the DMPO states that an application is invalid if it is not a valid application within the meaning of Article 34(4) or it is not a non-validated application within the meaning of Article 34(5).
7. Article 34(4)(e) of the DMPO indicates that a valid application must include the particulars or evidence required by the authority under Section 62(3) of the Town and Country Planning Act 1990 (TCPA). Section 62(3) of the TCPA outlines that the local planning authority (LPA) may require that an application for planning permission must include such particulars and evidence they think is necessary.
8. Similarly, Article 34(5)(e) of the DMPO indicates a non-validated application must include the particulars and evidence required by the LPA under Section 62(3) of the TCPA, except those documents specified by the applicant in the notice sent to the LPA under Article 12(1) of the DMPO.
9. Article 34(6) of the DMPO outlines that Article 34(4)(e) and Article 34(5)(e) of the DMPO only apply if the requested evidence and particulars fall on a list published by the LPA on their website during the 2-year period immediately before the date on which the application was made. The Council has published a Validation Checklist³. Version 13 was published in October 2022 and Version 14 was published in November 2022. The requested evidence is outlined on this list. I am therefore satisfied that the provisions of Article 34(4)(e) and Article 34(5)(e) would apply in this instance.
10. Article 12 of the DMPO concerns the validation dispute procedure. Article 12(1)(b) states where the applicant considers any particulars or evidence required do not meet the requirements set out in Article 34(6)(c) the applicant may send a notice to the LPA. Article 34(6)(c) states the particulars or evidence the LPA require to be included in the application are reasonable, having regard, in particular, to the nature and scale of the proposed development; and are about a matter which it is reasonable to think will be a material consideration in the determination of the application.
11. The application could therefore be considered as a non-validated application under Article 34(5) of the DMPO. However, I must consider whether the

³ Validation Checklist, National and Local List of Planning Application and Prior Approval (Upwards Extension) Requirements

evidence and particulars that the LPA requires is reasonable, having regard to the nature and scale of the proposed development, and are matters which it would be reasonable to conclude would be material considerations in the determination of the application.

Flood risk

12. In response to the Article 12 Notice the Council has confirmed that the submitted SUDS Report⁴ was acceptable other than there are no details inputted on pages 2 and 3. Pages 2 and 3 of the SUDS Report concern details of appropriate drainage solutions.
13. Whilst the application is outline in nature, the form is clear that it provides an indicative volume of attenuation storage. Appearance and landscaping are matters reserved for subsequent approval, but this would not preclude the appellant from inputting indicative figures for the size of potential features, based on the layout submitted for approval. Furthermore, I note the 'warning' highlighted by the appellant that they would be committed to what was inputted in the form but there would be no legal basis for doing so unless agreed by the appellant.
14. Although this form may no longer be required by East Sussex County Council, Hastings Borough Council is the determining authority. It is reasonable for the Borough Council to seek assurance on what drainage measures might be possible and an indication of the amount of attenuation storage that could be achieved on site. Also, it would be reasonable to conclude that whether a proposal for residential development could include appropriate drainage solutions would be a material consideration in the determination of an outline planning application.

Topographical survey

15. The appellant has indicated that the Council has received a plan showing the existing site dimensions based on a survey that was carried out more than 12 months previous. The Existing Site Layout⁵ does not include site levels.
16. Although it is an outline application, it is reasonable for the Council to request a topographical survey to understand site levels and how future occupiers of the dwellings and existing occupiers of neighbouring land may be affected by the proposal. Given that layout is a matter submitted for approval and the undulating land in the surrounding area, it is reasonable to conclude that site levels would be a material consideration in the determination of an outline planning application.
17. Nonetheless, it is not a reasonable requirement for a topographical survey to be less than 12 months old. Instead, it should be reflective of existing site circumstances and if the appellant confirms the site has not changed in over 12 months, an older survey could still be appropriate. Conversely, if the site has been subject to works in the last 12 months, a year-old survey may not be relevant to the application. As such, the imposition of an arbitrary time limit on a topographical survey would not ensure it is a material consideration in the determination of the planning application.

⁴ SuDS Decision Support Tool for Small Scale Development, East Sussex County Council, Shornden Works, Clarence Road, Hastings

⁵ Existing Site Layout 1:200 @A4; Clarence Road, Vauxhall Tec; Drawing. Outline Details Sheet 1 April 2023

Tree survey

18. When considering outline applications of the scale proposed it is reasonable for the Council to request information to assess the potential effect of a proposal on trees.
19. The Existing Site Layout indicates that there are trees in proximity to the main workshop, office, and garage toward the rear of the site. Whilst new structures are not proposed in this area, the aforementioned structures are proposed to be demolished. There would also be a need to break up the surrounding hardstanding, which is proposed to be replaced by landscaping.
20. Given the distance between the appeal site and trees on nearby land and the extent of the works proposed, it may be possible to demonstrate that the proposal would not affect the trees. In that instance, it is reasonable to conclude that a tree survey would not be a material consideration in the determination of the planning application. A tree protection plan or equivalent could be conditioned to any planning permission, if granted, to ensure that the proposal would not harmfully affect nearby trees.

Other Matters

21. During correspondence on the application the Council has made an incorrect reference to the size of the site and referred to the proposal as a detailed application. This may initially have led to some confusion in relation to what information was originally requested. Nonetheless, the Council has clarified its position on these matters, and this does not alter my assessment on the extent of the evidence and particulars required to support this planning application. Moreover, the conduct of the Council during the application is not a matter for me to consider when assessing the reasonableness of the request for additional evidence.
22. I acknowledge that the requirement to submit additional evidence and particulars would lead to more upfront costs. However, as outlined above some of the requested evidence and particulars would be reasonable given the nature and scale of the development. I am also satisfied that the burden of evidence is less for outline planning applications than full planning applications in Hastings.
23. Comments have been received from the Local Highways Authority and the Council's Conservation Officer in response to the appeal. These comments are on the merit of the proposal. As I have not considered the merits of the proposal, it is not necessary to address these comments.

Conclusion

24. It would not be reasonable to conclude that a tree survey would be a material consideration in determining an outline planning application in this instance. Nevertheless, the requirement to submit a completed SUDS Report and a topographical survey is reasonable given the nature and scale of the proposal. It is also reasonable to conclude that they would be material considerations in the determination of the application.

25. I therefore conclude that the application is invalid, and I cannot proceed to determine the merits of the proposal. For the reasons given, the appeal should be dismissed.

J Hobbs

INSPECTOR