The Planning Inspectorate

Appeal Decision

Site visit made on 11 June 2018

by C. Jack, BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29th June 2018

Appeal Ref: APP/Y3805/W/17/3190445
6 Mill Hill, Shoreham-by-Sea, BN43 5TH

- 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 planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Gary Fowler against Adur District Council.
- The application Ref: AWDM/1384/17 is dated 7 September 2017.
- The application sought planning permission for a retrospective new entrance forecourt, retaining walls and landscaping, together with the erection of a double garage without complying with conditions attached to planning permission Ref: AWDM/0927/16 dated 30 November 2016.
- The conditions in dispute are Nos 1, 3, 4 and 7 which state that:

1. *The development hereby permitted shall be carried out in accordance with the following approved plans unless specified otherwise in a subsequent condition imposed on this decision notice.*

1567-131A Location and Block Plan	*17.11.2016*
1567-126O Existing Site Plan	*17.11.2016*
1567-136C Proposed Forecourt Plan	*17.11.2016*
1567-631A Proposed Site Sections	*17.11.2016*
1567-538A Proposed Courtyard Elevations	*17.11.2016*
1567-138B Proposed Forecourt Level	*17.11.2016*
1567-325O Existing Elevations	*17.11.2016*
1567-326O Existing Elevations	*17.11.2016*
1567-537C Proposed Forecourt Elevations	*17.11.2016*
Specification landscape work	*17.11.2016*
HY-TEX COIRMESH Technical Sheet	*17.11.2016*

3. *The materials and finishes of the external face wall of the garage building hereby permitted shall [be] completed in painted render and the flat roof constructed with a Sedum roof as shown on approved drawing 1567-136C unless otherwise approved in writing by the Local Planning Authority.*
4. *Notwithstanding the time limit for implementation set out in condition 2, within 6 months of the date of this permission Planting Beds 1 and 2 shall be constructed and completed in accordance with the positions, levels, sections and external finishes shown on the approved plans and shall be planted in accordance with the Specification for Landscape Works submitted on 17 November 2016. Planting Beds 1 and 2 shall thereafter be retained at all times and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.*

7. Details of a scheme for dealing with surface water run-off within the site based on the details shown on approved drawing no: 1567-138B and comprising:

- *A drainage plan showing all drain runs including the one to the property boundary;*

- *A section through the 'storage cells' showing surrounds and invert levels of all pipes; and*
- *Calculations based upon soakage test results, the size the storage based on the appropriate rainfall data, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved surface water drainage scheme shall be carried out and completed prior to first use of the double garage hereby permitted.*

- The reasons given for the conditions are:
  1. For the avoidance of doubt and in the interests of proper planning.
  3. In the interests of visual amenity and to comply with saved policy AH7 of the Adur District Local Plan.
  4. In the interests of visual amenity and to comply with saved policy AH7 of the Adur District Local Plan.
  7. To ensure adequate provision is made for draining surface water run-off within the site in accordance with saved policy AP4 of the Adur Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for a retrospective new entrance forecourt, retaining walls and landscaping, together with the erection of a double garage at 6 Mill Hill, Shoreham-by-Sea, BN43 5TH in accordance with the application Ref: AWDM/1384/17 dated 7 September 2017, without compliance with condition numbers 1, 3, 4 and 7 previously imposed on planning permission Ref: AWDM/0927/16 dated 30 November 2016 and subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement and I have treated those as the basis of the decision the Council would have made, had it been empowered to do so. The Council does not seek to contest the proposed variations to conditions 1, 3 and 4 and its putative reason for refusal relates to condition 7 and insufficient surface water drainage information to enable it to be satisfied that the site would be adequately drained and not lead to increased risk of surface water flooding off-site. I have drawn on the Council's concerns, together with other evidence before me, to inform the main issue in this appeal.

3. I saw during my site visit that works at the site are substantially complete, although some elements, apparently including drainage and surfacing of the forecourt area, have not been finished.

4. The new Adur Local Plan (ALP) was adopted in 2017. The Council's putative reason for refusal relies on Policy 15 of the ALP.

Main Issue

5. The main issue is the effect that varying Condition 7 would have on flood risk, with particular regard to surface water run-off and highway safety.

Reasons

6. In the application, the appellant sought to vary condition 7 which requires a drainage scheme relating to previously approved details of the layout and

levels of the forecourt and garage shown on plan 1567-138B that are not consistent with the proposed amended scheme. In addition, further drainage-related details have been submitted to the appeal, including the appellant's Storm Water Dispersal Assessment and plan 1567-631D, which shows site sections including drainage cells.

7. The Council's concerns chiefly relate to a lack of confirmed detail in the application before it in relation to the surface water drainage of the site, including a lack of proof of what drainage infrastructure had been installed at the site, and a lack of evidence relating to the carrying out of site percolation testing and calculations to support a storage system. I concur that while drainage plan 1567-142B indicates the as-built drainage scheme and plan 1567-631D shows sections through storage cells, there are limitations in the evidence before me, including that the testing source of the percolation figures used is not evidenced, and there is nothing to confirm that all drainage has been undertaken or completed as shown on these plans. This was not discernible from my site visit.

8. Nevertheless, there is no significant case put to me that the site would not be capable of being adequately drained with regard to the development in question. Furthermore, while I understand the Council's concerns, particularly that there is a need to ensure that run-off would not result in an adverse effect on highway safety on Mill Road, I saw during my visit that the forecourt area of the appeal site is not notably sloping, and is significantly flatter than many properties nearby, especially further up Mill Road.

9. Accordingly, while this is a legitimate concern here, I consider that, subject to implementation in full, the surface water drainage scheme provided with the appeal would satisfactorily address needs of the development. The appellants' calculations illustrate that the Aquacell Matrix would provide for a dispersal rate comfortably adequate for average site run-off and the 100 year 6 hour storm run-off. Implementation in accordance with the drainage plans could reasonably be secured by condition in this case. The Council took a similar view in imposing a drainage condition on planning permission AWDM/0927/16. I accept that a larger area of impermeable surfacing is proposed with the amended scheme, but for the reasons given, and in the absence of substantive evidence to demonstrate otherwise, I remain of the view that surface water drainage could be reasonably secured by condition in this case.

10. The Council has suggested a varied condition 7 be imposed, requiring surface water drainage details to be submitted for its approval within 2 months. I consider that the full requirements of the suggested condition are unduly burdensome in light of the details provided with the appeal. Nonetheless, it remains necessary to ensure that the development is carried out in accordance with these details. Accordingly, I will impose an amended version of the suggested condition to this end.

11. I conclude that the variation of condition 7 would not have a significant adverse effect on flood risk, with particular regard to surface water run-off and highway safety. It would therefore accord with adopted Policy 15 of the ALP, which seeks to ensure the quality of the built environment and public realm including by ensuring that development would not result in harm to highway safety.

Other Matters

12. I have carefully considered the effects of the proposed variation of conditions on the character and appearance of the area, particularly given the reduced planting areas proposed relative to the permitted scheme, and I note the various views of interested parties in this regard. I saw that this part of Mill Hill has an overriding residential in character, albeit this becomes more rural as the road progresses towards the downs. I also saw that the landscaping treatment of nearby dwellings various significantly in appearance from one to the next, and that the proposed scheme is commensurate in general style with the aesthetic of the development at 6 Mill Hill that has been carried out so far. Accordingly, while a greater planting area would have enhanced the scheme in terms of its contribution to the fairly verdant character of the locality, I am not persuaded that the scheme before me would be harmful to the character and appearance of the area.

13. I note that some works at the site were commenced without the benefit of planning permission. However, this cannot affect my consideration of the planning merits of the case currently before me.

14. My findings above are therefore not outweighed by these other matters.

Conditions

15. I have considered the various conditions suggested by the Council. In light of my findings above, I consider that the suggested condition 1 (effectively a revised condition 7) is unduly onerous and I have amended it accordingly. I also find that suggested condition 2 is unnecessary in light of the additional information provided to the appeal. I have added to suggested condition 3 to also reference the additional plans. Suggested condition 4 is necessary in the interests of the character and appearance of the area. Suggested condition 5 is necessary in the interests of the living conditions of nearby occupiers. I am satisfied that the conditions as varied meet the six tests set out in paragraph 206 of the National Planning Policy Framework and the related advice in the Planning Practice Guidance (PPG).

16. The PPG also makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have little information about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. As the development has been started, there is no need for me to impose the time limit for commencement of development condition. In the event that other conditions have in fact been discharged, that is a matter which can be addressed by the parties. Where necessary, I have adjusted conditions for clarity or conciseness and consistency with the PPG.

Conclusion

17. For the reasons set out above I conclude the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

1) The surface water drainage scheme hereby approved shall be completed prior to the first use of the double garage hereby permitted and shall thereafter be maintained.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Specification for Landscape Works V2 September 2016; 1567-143O; 1567–141A; 1567–142B; 1567–541O; 1567–542O; 1567-631D.

3) Within 6 months of the date of this permission, Planting Beds 1 and 2 shall be constructed and completed in accordance with the positions, levels, sections and external finishes shown on the approved plans and shall be planted in the first planting season in accordance with the approved Specification for Landscape Works V2. Planting Beds 1 and 2 shall thereafter be retained at all times and the trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

4) The double garage building hereby permitted shall only be used for purposes incidental to the enjoyment of the existing dwellinghouse and not for purposes of primary living accommodation.

5) Unless otherwise approved in writing by the local planning authority the vehicle manoeuvring and hardstanding area shown on the approved plans shall be completed using Marshalls light grey 'natural' pavers in a herringbone pattern, with dark grey 'Charcoal' margin blocks.