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## Appeal Decision

Hearing held on 31 May 2017

Site visit made on 31 May 2017

**by Daniel Hartley BA Hons MTP MBA MRTPI**

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

**Decision date: 05 June 2017**

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### **Appeal Ref: APP/X4725/W/16/3164646**

### **Phase 3 Navigation Point, Cinder Lane, Castleford WF10 1LU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr J Gladwyn (Greenhaven Homes Ltd) against the decision of City of Wakefield Metropolitan District Council.
- The application Ref 14/02352/SUB02, dated 4 May 2016, sought approval of details pursuant to condition No 04 of a planning permission Ref 14/02352/REM, granted on 14 April 2015.
- The application was refused by notice dated 3 August 2016.
- The development proposed is reserved matters approval for 72 dwellings, the laying out of internal roads and associated infrastructure pursuant to outline approval 05/99/1897/AW (Phase 3).
- The condition which is sought to be discharged states that: *"Notwithstanding condition 9 of approval 05/99/18971/AW, no development on plots 47 and 50-80 inclusive within phase 3 of the development shall commence until a scheme detailing works to divert the watercourse within phase 3 have been submitted to and approved in writing by the Local Planning Authority. The scheme shall cater for the impact resulting from the minimum 100 year return period storm event including a 20% allowance for climate change effects for the lifetime of the development. Plots 47 and 50-80 inclusive within phase 3 shall not be brought into use until the works comprising the scheme(s) approved under this condition for phase 3 have been completed"*.
- The reason given for the condition is: *"To accommodate flows in storm events and allow for future maintenance, in accordance with guidance in the NPPF and to accord with the requirements of Policy D24 and D25 of the Local Development Plan"*.

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### **Decision**

1. I allow the appeal and approve the details submitted pursuant to condition No 04 attached to planning permission Ref 14/02352/REM granted on 14 April 2015 in accordance with the application dated 4 May 2016 and the details submitted with it.

### **Preliminary Matters**

2. Prior to the hearing, I requested that the Council provide me with a plan which annotated the location of the planning application site for outline planning permission No Ref 05/99/18971/AW and for reserved matters consent Ref 14/02352/REM; information relating to 1890 and 1951 OS maps; the position of various investigatory works undertaken by both the appellant and the Council, and the siting of the alleged position of the culvert as indicated on a
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plan appended to the Council's appeal statement (appendix D) referred to as "WMDC main drainage records". The requested plan was shared with the appellant.

3. The purpose of the requested plan was to aid discussion at the hearing and to bring together information provided by the main parties in one place. At the hearing, the main parties discussed the aforementioned plan. The appellant had prepared a similar plan (Drawing No LDS/420/3/SK102 Revision P1) and the Council agreed that this was more accurate for the purposes of determining the appeal. I have therefore taken this plan into account as part of the determination of this appeal.
4. In its appeal documentation, the appellant contends that the appeal condition does not meet all of the tests for conditions as listed in paragraph 206 of the National Planning Policy Framework. However, this is not a Section 73 appeal and so does not relate to an application to vary or delete condition No 04 of planning permission Ref 14/02352/REM. The appellant questions whether the condition is necessary or reasonable, but these are not matters that are before me in this appeal. Such matters would require a different type of planning application and associated appeal. I have not therefore considered the merits of the planning condition. I have simply considered whether or not the details submitted by the appellant are sufficient or otherwise in terms of considering whether or not to discharge condition No 04 of planning permission Ref 14/02352/REM.

#### **Application for costs**

5. An application for costs was made by Mr J Gladwyn (Greenhaven Homes Ltd) against the City of Wakefield Metropolitan District Council. This application is the subject of a separate Decision.

#### **Main Issue**

6. The main issue is whether or not adequate information has been submitted to enable condition No 04 of planning permission Ref No 14/02352/REM to be discharged.

#### **Reasons**

##### *Background*

7. In 2007 the Council granted outline planning permission (Ref 05/99/1897/AW) for land to the west of Castleford Town Centre to be developed for housing for up to 1337 dwellings. It was envisaged that development of the site would come forward in phases.
8. Of relevance to this appeal, planning condition No 09 of the aforementioned outline planning permission stated that "*development shall not commence on any phase approved under condition 1 of this permission until scheme(s) detailing works in the vicinity of any watercourse have been submitted to and approved in writing by the Local Planning Authority. Scheme(s) shall cater for the impact resulting from the minimum 100 year return period storm event. No phase of the development approved under condition 1 of this permission shall be brought into use until the work comprising the scheme(s) approved under this condition for that phase have been completed*". The reason given

for such a condition was *"to accommodate flows in storm events and allow for future maintenance"*.

9. Reserved matters consent (Ref 14/02352/REM) for the erection of 72 dwellings on phase 3 of the outline planning permission site was approved on 14 April 2015. Following discussions with the applicant, the Council approved reserved matters consent subject to condition No 4 which states *"notwithstanding condition 9 of approval 05/99/18971/AW, no development on plots 47 and 50-80 inclusive within phase 3 of the development shall commence until a scheme detailing works to divert the watercourse within phase 3 have been submitted to and approved in writing by the Local Planning Authority. The scheme shall cater for the impact resulting from the minimum 100 year return period storm event including a 20% allowance for climate change effects for the lifetime of the development. Plots 47 and 50-80 inclusive within phase 3 shall not be brought into use until the works comprising the scheme(s) approved under this condition for phase 3 have been completed"*. The reason given for the imposition of such a condition is *"to accommodate flows in storm events and allow for future maintenance, in accordance with guidance in the NPPF and to accord with the requirements of Policy D24 and D25 of the Local Development Plan"*.
10. This appeal relates to the appellant's submission of details in respect of condition No 04 of reserved matters consent Ref 14/02352/REM.

*The case for the appellant*

11. The appellant states that, whilst the 1890 OS map does show a feature, it cannot be certain that this was an open culvert. In addition, they state that the feature on the OS map does not extend as far as the River Aire. In respect of the 1951 OS map, the appellant states that the feature is only shown to the south of the Recycling Centre and to Cinder Lane. They suggest that this may indicate that most of the watercourse was removed between the 1890s and 1951.
12. In addition to the above, the appellant has indicated that remediation works which took place at the site in May/June 2004 did not reveal any evidence of a culvert. Furthermore, they say that targeted excavations in the form of three separate trenches (40 metres long and a depth of between 2.5 and 3.0 metres) and along the line of the feature shown on the 1890 OS map revealed no evidence of any watercourse on the appeal site.
13. The appellant also says that the Council's investigations to the south east corner of the waste recycling centre did not reveal any evidence of the existence of a culvert and that as the River Aire outlet is 11.12 m AOD, and the Yorkshire Water manhole at Cinder Lane is 11.10 m AOD, there would be no gravity between these points. They indicate that the location of the outfall into the River Aire is approximately 24 metres further north than shown on historic drawings and that the diameter of the pipe at the Yorkshire Water (Cinder Lane) manhole is 600 mm and the diameter of the pipe at the River Aire outfall is 450 mm.
14. In appendix D of the Council's appeal statement there is a plan which is referred to as "WMDC main drainage records". The appellant maintains that they had previously not seen this drawing, despite communications with the Council about the alleged culvert, since at least 2015. The Council indicates

that it considers that this is where the culvert is likely to be. The appellant has therefore recently carried out targeted investigations along the route of the alleged culvert as shown on the WMDC main drainage record plan. These investigations were carried out in May 2017 and included digging three trenches to a depth of 3 metres. These works were overseen by Council officers. The appellant states that the investigations did not reveal any evidence of a watercourse.

15. Finally, the appellant states that the Flood Risk Assessment submitted with the outline planning permission did not make material reference to any culvert.
16. For the collective reasons outlined above, the appellant contends that the evidence indicates that there is no watercourse to divert. Hence, they consider that the condition should be discharged.

*The case for the Council*

17. The Council state that section 2.6.2 of the applicant's flood risk assessment dated 10 January 2005 does refer to a connection of the sewer in Cinder Lane to the said watercourse and assumes that it flows to the River Aire. They provide emails from Yorkshire Water which says that their surface water sewers discharge into the culverted watercourse and so it requires its reinstatement.
18. Council officers indicate that their own investigations have revealed that the line of the culvert is on a diverted line from the original 1890s OS map as they have found an old chamber. They indicate that the position of the old chamber corresponds with the position of man hole 95 which is shown on the Council's main drainage records prior to the adoption of sewers by Yorkshire Water. The main drainage records show a culverted watercourse starting at the downstream end of the household waste recycling site towards the River Aire.
19. In addition, they say that an additional investigation has found a connection between the Yorkshire Water Manhole in Cinder Lane and a manhole at the upstream end of the culvert and that there is an outfall, although blocked, from the Yorkshire Water (Cinder Lane) manhole towards the River Aire.
20. Given the above, the Council did not consider that the appellant had provided sufficient information, at planning application stage, to demonstrate that there was no watercourse to divert. The Council considered that the line of the culvert is on a diverted line from the original 1890 OS map and that the original trial trenches completed by the appellant did not extend along this route. Furthermore, and in any event, the Council's Lead Local Flood Authority (LLFA) considers that details should have been submitted with the application relating to how surface water flows from the surrounding area would be dealt with and where the flows in the Yorkshire Water sewer would go.
21. The appellant has now undertaken further investigation works based on the WMDC main drainage records plan. At the hearing, the Council accepted that the appellant had done all that they could have done to establish whether or not there was a watercourse on the appeal site. They accepted that the evidence did indicate that there was no such watercourse on the site at this moment in time. However, the Council (including the LLFA) maintain that they consider that there was a watercourse on the site at some point in time and that the appellant should therefore provide a new watercourse. They also maintain that the appellant should provide details relating to the flow of water

from outside the site and the effect that the appeal development would have on the flow of such water.

*Assessment as to whether condition No 04 can be discharged*

22. I have carefully considered the evidence submitted by the main parties. I acknowledge that the appellant's investigations did not reveal the existence of any watercourse along the line of the feature depicted on the 1890 OS Map. The Council do not dispute these findings. It suggests that the culverted watercourse was historically positioned in a different location based on the route of a watercourse shown on the Council's main drainage records.
23. However, and in response to recently seeing the Council's main drainage records plan, the appellant has completed further investigations in the form of trenches along the route where the Council consider the watercourse is located. At the hearing, the Council's LLFA confirmed that this plan had been archived for some time, but that it was likely "*prepared between 1929 and 1980*". When asked how long they had known of the existence of the Council's main drainage record plan, the representative of the LLFA commented that he was "*aware of it from June/July 2016*". The Council confirmed at the hearing that there was no dispute in the way that the appellant had carried out the site investigations along the watercourse route shown on the main drainage record plan, or indeed in respect of the overall findings.
24. On the evidence that is before me, including all site investigations undertaken by the appellant, I consider that the appellant has now reasonably provided enough investigatory evidence to demonstrate that there is no culvert/watercourse on the site. In reaching this conclusion, I have also taken into account the different land levels between Cinder Lane and the River Aire and the differing diameters of pipes referred to by the parties. Furthermore, the LLFA has not been able to provide me with any further evidence (including possibly its own additional site investigations) which would suggest that there is still a reasonable likelihood of a culvert/watercourse existing on the site. The LLFA accept the appellant's conclusion that there is no culvert/watercourse on the appeal site to divert.
25. I have carefully considered the wording of the appeal condition and this was discussed at length at the hearing. As I have found that there is no culvert/watercourse to divert, it is not therefore necessary to submit a "*scheme detailing works to divert the watercourse*". Consequently, as the evidence indicates that there is no requirement for such a scheme, the second part of the condition has no relevance which states that "*the scheme shall cater for the impact resulting from the minimum 100 year return period storm event including a 20% allowance for climate change effects for the lifetime of the development*".
26. Given my findings above, I do not consider that the planning condition requires the appellant to submit information relating to how surface water flows from the surrounding area would be dealt with. In essence, the requirements of the second part of the planning condition are predicated upon the findings of the first part of the planning condition. At the hearing, the Council indicated that the intention of the planning condition was to deal with the diversion of a watercourse/culvert on the site as well as to provide information in terms of where the flows in the Yorkshire Water sewer would go. In their opinion, there was a requirement to provide a culvert/watercourse on the site even though

they accepted that the evidence indicated that there was no such culvert/watercourse to divert.

27. Notwithstanding the Council's view above, it has been necessary for me to consider the planning condition as it has been written and, given the findings of the appellant's site investigations, I do not consider that it is necessary for the appellant to provide any further information in respect of the subject condition. In effect, the appellant's investigation works amount to the submission of a scheme. I consider that such a scheme is acceptable and complete for the purposes of being able to discharge the condition.
28. I note that there are other planning conditions (for example conditions 7 and 8) which would still need to be complied with in respect of outline planning permission No Ref 05/99/1897/AW. Such conditions relate to on-site drainage matters. These are not matters for me to consider as part of this appeal and hence it has not been necessary for me to consider detailed on-site drainage information submitted by the appellant.
29. For all of the reasons outlined above, I conclude that condition No 04 should be discharged.

#### **Other Matters**

30. The appellant contends that the planning condition should be removed as it does not meet the tests for conditions as laid out in paragraph 206 of Framework. However, for the reasons outlined in the preliminary section of this decision, this is a matter that would need to be pursued by means of the submission of an application made under Section 73 of the Town and Country Planning Act. In any event, I have concluded that the condition should be discharged and so it would not be necessary for the appellant to make an application under Section 73 of the Town and Country Planning Act.
31. The Council has referred to riparian rights and the responsibilities of land owners. At the hearing, the appellant questioned whether associated powers could be exercised in such a way as to require the re-installment of a pipe which may or may not have been installed on the site in the past. This is not a matter which is of relevance to this appeal and my decision does not override any separate riparian rights relating to the appeal site.
32. The Council has referred to some localised flooding events occurring in Cinder Lane. On the site visit, the parties were able to show me where this had occurred. It was evident, as part of the site visit, that one of the highway drains had been blocked and it was alleged by the appellant that this was from mud/debris from the adjacent service yard. I do not know for certain if the localised flooding events were as a direct result of the blocked highway drain, but no doubt the Council will wish to investigate this matter further.
33. None of the other matters raised outweigh my overall conclusion on the main issue.

**Conclusion**

34. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

*Daniel Hartley*

INSPECTOR

Richborough Estates

**APPEARANCES**

FOR THE APPELLANT:

Mr John Gladwyn (BA (Hons) - Development Manager, Greenhaven Homes Ltd

Mr Charles Chamberlain BSc (Hons) MRICS - Director, Greenhaven Homes Ltd

Mr Simon Stanley – Director, BWB Consulting Limited

Mr Alec Cropper LLB (Hons) – Senior Associate, Walker Morris LLP

FOR THE COUNCIL:

Paul Maddison – Lead Local Flood Authority, Wakefield Metropolitan District Council

Ruth Blackhouse – Planning Officer, Wakefield Metropolitan District Council

INTERESTED PERSONS:

None

**DOCUMENTS SUBMITTED AT THE HEARING**

Document 1: Journal of Planning & Environmental Law 1998 – case of Polhill Garden Centre Ltd v Secretary of State for the Environment, Transport and the Regions (1998) J.P.L 1070 (QBD).

Document 2: Drawing No LDS/420/3/SK102 Revision P1

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