Appeal Decision

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Appeal Reference:	2019/A0169
Appeal by:	EDB Construction Ltd
Appeal against:	The non-determination of an application for full planning permission
Development:	20 Dwellings (18 semi-detached and 2 detached) including change of house type in respect of planning approval P/2006/1117/F
Location:	Lands opposite Nos. 20-24 Watson's Way, Newry
Planning Authority:	Newry Mourne and Down District Council
Application Reference:	LA07/2019/0866/F
Procedure:	Written Representations with Commissioner's site visit on 30th September 2020
Decision by:	Commissioner A Speirs, dated 13th October 2020

Decision

1. The appeal is allowed and full planning permission is granted subject to the conditions set out below.

Reasons

2. The Council considered that the application should be approved, subject to 4 conditions as follows :-

   (i) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

   (ii) The permission hereby granted relates solely to the change of house types on sites outlined in red on the site location plan drawing No. 01 REV1 and the site layout drawing No. 04 REV 2 date stamped 21st August 2019 and shall also adhere to the conditions as previously approved under planning reference P/2006/1117/F.

   (iii) Street layout shall be in accordance with approval issued under P/2006/1117/F.

(iv) The development hereby permitted shall not be occupied until a Drainage Assessment is submitted to the Planning Authority, to include information on:

a) evidence of any attenuation calculations to show that the system will not flood any part of the site in a 1 in 30 year designed event whilst retaining a 300mm free-board within the manholes network and

b) carry out checks and show that during exceedance of the 1 in 30 year pipe design for up to a 1 in 100 year return period, that the properties will not flood and the flow path and location of surplus storage on site and this shall be agreed in writing to the satisfaction of Rivers Agency.

3. The appellant had no objection to the conditions except in respect of that relating to the Drainage Assessment. The Council did not provide an explanation in its evidence as to why that condition is required. However, there is an email on file in which the Council states "… the Council considers that the purpose of the condition is necessary to provide the degree of assurance that FLD1 will be complied with. Because of the restrictions now imposed by the current pandemic we are unable to consult with Rivers Agency to determine if they would be content to relax the condition. In the circumstances the Council would not object to the Commission amending the condition in the light of the new drainage assessment or omitting if it considers either course of action necessary".

4. The appellant pointed to a number of factors in respect of the suggested condition. It was submitted that there is a valid Article 17 agreement with NI Water for connection to the mains sewer, an Article 161 preliminary adoption certificate for the sewers implemented on site, and a valid Schedule 6 consent for the discharge of storm water from the site.

5. A copy of an email from NI Water was included in evidence and this states that "In reference to your query concerning a change of house type within the development at 20-24 Watsons Road and the impact of same upon the current Article 17 agreement, we would confirm that pipe work within Watsons Road has previously been adopted … pipework which serves the initial 22 units as presently constructed are under a Certificate of Preliminary Adoption, and are currently being processed to Final Adoption. On the basis that the Sewers serving the remainder of your development adhere to and are constructed in accord with the Drainage Layout as approved under the current Article 17 Agreement dated 2nd March 2007 [for which the storm drainage design and layout relied upon Rivers Agency consent to discharge surface water directly into the Drumalane stream to serve a maximum of one hundred and fifty dwellings] then we can confirm that the Article 17 Agreement will remain valid for the installation and subsequent adoption of the foul and storm sewers within the remainder of your development site, provided same does not seek to accommodate more than the one hundred and fifty units being the number accommodated within the Rivers Agency consent to discharge into Drumalane Stream and in reliance upon which the Article 17 agreement has been issued".

6. The appeal proposal involves a reduction of dwelling units within that part of the overall housing scheme, from 24 units (P/2006/1117/F) to 20 units. The aforementioned consent remains live and could be implemented by the appellant. A Drainage Assessment carried out in March 2020 in respect of the development concluded that the proposal creates a lesser discharge rate than the previously approved development on the appeal site. It refers to finished floor levels being set to prevent flooding of dwellings on the site. The site is not located in the 1:100 year flood plain. Rivers Agency has already given consent for storm water discharge from the wider housing scheme. I agree with the appellant that there would not appear to be a need for further drainage assessment to be prepared for the site. I do not consider that the condition suggested by the Council is reasonable or necessary.

7. With regard to the other conditions, the standard time limit is needed. The second suggested condition refers to adherence "… to the conditions as previously approved under planning reference P/2006/1117/F". This is inappropriate, given that the appeal proposal is a separate full consent in its own right and conditions from the earlier consent require to be adapted and updated, where necessary, and applied to the consent granted under this appeal. I note that there was no objection from the appellant regarding the Council's reference to the conditions of the earlier consent. The proposed streets layout appears to mirror that approved previously; reference to the earlier drawings can address the matter.

Conditions

1. As required by Section 61 of the Planning Act (NI) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

2. All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practise.

3. There shall be no construction works, vegetation clearance, disturbance by machinery, dumping or storage of materials within the badger sett exclusion zones, wildlife corridors or wetland area as shown on Drawing No. 02 (Rev 9), date stamped 27th February 2013 by the Planning Authority in respect of planning approval reference P/2006/1117/F.

4. Existing trees and hedgerows, as shown on Drawing No. 02 (Rev 9), date stamped 27th February 2013 by the Planning Authority, shall be retained and protected in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery, including ivy removal, take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Council.

5. The lighting scheme for the development shall accord with that approved in respect of planning permission reference P/2006/1117/F, or any other

lighting scheme as may be agreed in writing with the Planning Authority.

6. The width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No FB1016-202 REV F bearing the date stamp 14th March 2013 in respect of planning approval reference P/2006/1117/F.

7. Notwithstanding the provisions of the Planning (General Permitted Development) Order (NI) 2015, no garages shall be sited closer than 5.6 metres from the back of the footway or service strip.

8. No dwelling hereby approved shall be occupied until the works necessary for the improvement of a public road have been completed in accordance with details outlined blue on Drawing No.FB 1016-202 REV F bearing the date stamp 14th March 2013 in respect of planning approval reference P/2006/1117/F. Such works shall be carried out in accordance with an agreement under Article 3(4C) of the Roads Order.

9. No dwelling shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of each phase.

10. Notwithstanding the provisions of the Planning (General Permitted Development) (Northern Ireland) Order 2015, no buildings, walls or fences shall be erected, nor shall boundaries be defined by the formal planting of hedges or rows of trees, between the shared surface road (as defined in the document 'Creating Places') and any building having a frontage to it.

11. Notwithstanding the provisions of the Planning (General Permitted Development) (Northern Ireland) Order 2015, no buildings, walls or fences shall be erected, nor hedges nor formal rows of trees grown, (in verges / service strips) determined for adoption.

12. No dwelling shall be occupied until provision has been made and permanently retained within the curtilage of the site for the parking of private cars at the rate of 2 spaces per dwelling.

13. No part of the development hereby permitted shall be occupied until the works necessary for the provision of the footway adjacent, to Watsons Road/Liska Road has been completed in accordance with the approved layout on drawing No FB1016-202 REV F bearing the date stamp 14th March 2013 in respect of planning approval P/2006/1117/F.

14. The gradients of the private accesses shall not exceed 8% for the first 5m outside the public road boundary and a maximum gradient of 10% thereafter.

15. Upon the occupation of any 26 of the dwellings within the housing development as a whole, the developer shall provide the proposed public open space and all peripheral planting as indicated on the approved plan, drawing no.02 (REV 9) date stamped 27th February 2013 in respect of planning approval reference P/2006/1117/F.

This decision relates to the following drawings as numbered by the Council:-

01 (REV 1) date stamped 6th June 2019
04 (REV 2) date stamped 21st August 2019
06, 07, 08, 09, 10, 11 and 12 date stamped 28th May 2019

COMMISSIONER A SPEIRS

Documents

Doc A – Council's Statement of Case

Doc B – Appellant's Statement of Case with appendices
Doc B1 – Appellant's Rebuttal comments