

Report to: PLANNING COMMITTEE

Date: 13 August 2014

Report from: Development Manager

Application Address: **Site of, 2 Tilekiln Lane, Hastings, TN35 5EN**
Proposal: **Variation of condition 10 (drainage) of**

planning permission HS/FA/03/00750 (13 x

flats in purpose built block)

Application No: **HS/FA/14/00454**

Recommendation: **Grant Full Planning Permission**

Ward: ORE

File No: TI60002

Applicant: Cotes Developments per Gravity Design Old
Bank Court Morocco Street SE1 3HB

Interest: Owner

Existing Use: Brownfield land which was partially developed
with new flatted block before being partially
demolished

Policies

Hastings Local Plan 2004: DG1, DG26 and DG27

Conservation Area: No

National Planning Policy Framework: Section 10

Hastings Planning Strategy: SC1 and SC7

Hastings Local Plan, Development
Management Plan, Revised

Proposed Submission Version: No Conflict

Public Consultation

Adj. Properties: Yes

Advertisement: Yes - General Interest

Letters of Objection: 6

Petitions Received: 0

Application Status: Not delegated - More than 2 letters of objection
received

Summary

This is an application to vary a condition attached to a planning permission. The condition required details of drainage work to be agreed and the works completed before works commenced. This wording is unusual and quite onerous, and the applicants wish to vary the requirement so that the details are agreed before works commence, but the work can be carried out during the normal development process, and completed before the properties are occupied. This is reasonable and it is recommended that the condition be varied to reflect our normal wording.

The Site and its Location

The application site relates to 2 Tilekiln Lane, Hastings. Formally the site of a care home, this building was demolished in favour of a consented scheme for 13 flats. The approved scheme was partially built but it is understood the developer experienced difficulties and the project was abandoned. The partially built building stood derelict for a number of years before recently being partially demolished. The site therefore remains partially developed.

Details of the Proposal and Other Background Information

The applicant wishes to vary condition 10 of planning permission HS/FA/03/00750. This was a permission for the erection of a block of 13 flats and condition 10 stated:

"Development shall not begin until both foul and surface water drainage works have been carried out in accordance with details to be first submitted to and approved by the Local Planning Authority."

This condition is unusual in that it requires drainage works to be both approved and carried out prior to any other development. The applicant considers this too onerous and has asked for the condition to be varied to:

"Development shall not begin until details of both foul and surface water drainage have been submitted to and approved by the Local Planning Authority"

By varying the condition the applicant is hoping that drainage details can be approved prior to further works but rather than being completed now they are asking whether the drainage can be completed at a later time - usually completion of the drainage infrastructure is required prior to occupation.

The planning permission that is being varied was approved in 2005 with a 5 year time limit. The permission could be considered expired but the applicant considers that it was implemented and therefore extant. Looking through the planning history I am satisfied that the permission was implemented and can therefore be considered extant. The conditions from this permission can therefore be varied.

Previous Site History

HS/FA/03/00750 13 X FLATS IN PURPOSE BUILT BLOCK. (REVISED SCHEME)
Granted subject to conditions 12 October 2005

Details of Consultations

The **Environment Agency** has raised no objections.

Southern Water has raised no objections.

The **Hastings & Rother Building Control Partnership** has raised no objections.

There have been 6 objections against the application. Concerns include:

- the relevance of the 2005 planning permission;
- flooding from surface water;
- the justification for the variation;
- the cumulative impact of development in terms of flooding;
- changes in regulations and legislation which may alter the development;
- the impact of the development on the AONB; and
- matters related to the process and referencing of the amendment application.

Planning Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The main policy that applies in this instance is policy SC7 of the Hastings Local Plan: The Hastings Planning Strategy (HPS). Others apply and are listed above. The main issue to consider is whether the proposed alteration to the wording of condition 10 is acceptable.

Variation of condition

As explained above the applicant considers that the current wording of condition 10 is too onerous. The current condition requires the applicant to submit drainage details for approval and requires that the approved drainage is completed prior to any other works. This is unusual as the standard drainage condition used by the Council for new developments requires details to be approved prior to development but only requires its full completion prior to occupation of a new development. The applicant would like the condition varied so that the wording reflects this more common approach.

The applicant enquired with the Council in May 2014 whether the proposed variation to the condition was going to be acceptable. At the time the applicant was advised that such a change would be acceptable as looking at the comments for the 2003 application, by expert drainage bodies like the Environment Agency and Southern Water, there appeared to be no reason why such an onerous condition was required.

Those drainage experts have been consulted on this variation application too and all have come back saying that they have no objection to the proposed variation of the condition.

A number of objections to the variation are concerned about the change and what this means in terms of surface water and flooding. Despite the objections received there is no evidence to suggest that the drainage infrastructure needs to be addressed in the way condition 10 currently requires. It is also not considered that this development specifically will cause any surface water drainage problems that require special measures or that it needs to address any cumulative impacts. With this in mind it would appear that varying the condition using the standard drainage condition is acceptable.

It is important to note that in varying this condition the applicant is not forgoing the requirement to install appropriate drainage infrastructure at the site. The Council would still have control as to whether appropriate drainage will be provided as the applicant would be required to have a drainage scheme approved and they will have to provide that drainage as approved.

Other

The objections to the application also raise a number of other issues. Although not directly related to the proposed change to the condition they still need to be addressed.

Firstly, some of the objections disagree that the planning permission granted in 2005 is extant. The decision notice for planning permission HS/FA/03/00750 granted the permission for 5 years. If the development was not implemented this would mean that the permission expired in 2010, however, the applicant considers the development implemented and therefore the permission is extant. Whilst some objectors consider that the passage of time means the permission is extant, others specifically address the issue of conditions and contest that the permission was not implemented as not all of the pre-commencement conditions were addressed.

The applicant received correspondence from the Council in April 2014 letting them know that there is no record of some of the pre-commencement conditions being complied with, however, the planning history also shows a string of correspondence relating to the commencement and progression of the development and, although not all pre-commencement conditions seem to have been dealt with, no enforcement action was taken in this respect. There is no indication that any other action was taken against the developer for any other reasons that would suggest the planning permission wasn't implemented either.

The case law around the implementation of planning permissions is not black and white and whilst in some cases not complying with pre-commencement conditions can be considered as not implementing a permission, equally, there are instances in which this is not the overriding matter. It is matter of fact and degree.

This is not an application for a lawful development certificate (to establish whether the permission is extant) so the facts of the case are not being tested but I am satisfied, based on the planning history, that although the development appears to be started in breach of some conditions, these conditions were not fundamental to the continuation of the development. The development can therefore be considered implemented and the permission extant.

Secondly, some of the objections mention that the development is out of character with the area and will harm the AONB. To be clear this is an application to vary the wording of condition 10 and only the changes to this condition are being considered. The impact of the development on its surroundings was assessed as part of the original application and are not open for discussion again as part of this application.

Lastly, some of the objections are concerned with whether the development can actually be built out due to changes in other legislation - i.e. building regulations. It is not for the planning process to determine whether the development can be completed because of other non-planning rules and regulations. If other legislation means that the development needs to be altered in some way then the applicant can consider whether such a change requires a non-material amendment, a minor material amendment or a fresh planning application. If any of these things are required the local residents will be consulted on these changes.

Conclusion

Considering the above discussion, and in particular the lack of any special issues that require drainage to be treated differently at this site than elsewhere in the Borough, I consider the proposed variation of condition 10 is acceptable. The suggested wording by the applicant is not quite enough to ensure the drainage works will be carried out as approved so I recommend the condition is worded as follows:

- (i) Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal/management have been submitted to and approved in writing by the Local Planning Authority.*
- (ii) Development shall be carried out in accordance with the details approved under (i) and no occupation of any of the dwellings or flats hereby approved shall occur until those works have been completed.*
- (iii) No occupation of any of the dwellings or flats hereby approved shall occur until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is now available to adequately service the development.*

These proposals comply with the development plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

The Human Rights considerations have been taken into account fully in balancing the planning issues.

Recommendation

Grant Full Planning Permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of five years from the date of planning permission H/FA/03/00750.
2. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of soft landscaping, which shall include indications of all existing trees and hedgerows on the land including details of those to be retained, together with measures for their protection in the course of development. New soft landscaping details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate together with an implementation programme.
4. All planting seeding or turfing comprised in the approved soft landscaping scheme shall be carried out prior to the occupation of any part of the development, or with the written agreement of the Local Planning Authority, in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner. 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.
5. No development shall take place until full details of all boundary walls and fences have been submitted to and approved in writing by the Local Planning Authority. All such boundary walls and fences shall be erected before the building to which it relates is occupied.
6. No development shall take place until full details of the hard landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas and hard surfacing materials.
7. All hard landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
8. There shall be no obstruction to visibility (over 0.8 metres above the level of the adjoining footway) in either direction onto Tilekiln Lane within splays of 2.4m x 25m.
9. The private access drive shall have a minimum width of 4.5 metres for a distance of 10 metres from the carriageway to allow for two way traffic.
10.
 - (i) Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal/management have been submitted to and approved in writing by the Local Planning Authority.
 - (ii) Development shall be carried out in accordance with the details approved under (i) and no occupation of any of the dwellings or flats hereby approved shall occur until those works have been completed.

(iii) No occupation of any of the dwellings or flats hereby approved shall occur until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is now available to adequately service the development.

11. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme for the improvement of pedestrian access between Fairlight Road and across the frontage of the site to Tilekiln Lane. Such scheme shall provide for the timing of the improvement works in relation to the implementing of the development, and shall be implemented in accordance with such timing before any of the flats are occupied.
12. There must be no new buildings, structures (including gates, walls and fences), raised ground levels or other like obstructions within the channel of the existing watercourse within the boundary of the site.

Reasons:

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. In the interests of the visual amenity of the area. (Hastings Local Plan 2004 - Policy DG1.)
3. To ensure a satisfactory standard of development.
4. To ensure a satisfactory standard of development.
5. To safeguard the amenity of adjoining and future residents. (Hastings Local Plan 2004 - Policy DG1.)
6. To ensure a satisfactory standard of development.
7. To ensure a satisfactory standard of development.
8. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety.
9. In the interests of traffic safety.
10. To ensure that no property is occupied until adequate access and drainage facilities have been provided.
11. To ensure a satisfactory form of development in the interests of vehicular and pedestrian safety.
12. To maintain a channel for overland flood flows.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.
3. This planning permission has been issued as a variation to planning permission HS/FA/03/00750. The pre-commencement conditions listed above are copied from the previous permission and may have already been discharged. If the conditions have been dealt with previously you will not be required to deal with those conditions again, unless matters associated with those conditions have changed. Any outstanding matters required by condition should be submitted to the Local Planning Authority as soon as possible. There may also be informatives from the previous permissions which still apply.

Officer to Contact

Mr S Batchelor, Telephone 01424 783254

Background Papers

Application No: HS/FA/14/00454 including all letters and documents