

From: Neil Crowther

Sent: 06 February 2019 10:25

To: [REDACTED]

Cc: Karl Roberts; David Easton

Subject: RE: BE/117/18/DOC Discharge of Condition application - New Barn Lane, North Bersted

Both,

I can confirm that the details submitted to us are again not adequate to discharge the conditions on surface water drainage.

I am also aware that Arun DC has provided you with 17 sets of comments on this matter but we are still unable to obtain adequate details from Linden. I can provide a list of the times we have engaged with you and the timescales that it has taken to respond to the details you have submitted if you wish.

It is in no way reasonable or accurate to accuse the Council of acting unreasonably as we have clearly gone way above and beyond what we would normally do in order to try and accommodate your issues. In doing so, the 'protracted' handling of the matter (as you describe) is entirely as a result of inadequate information being submitted and not because there have been unreasonable delays in providing advice. I would again remind you that it was your decision to take the risk to commence an unlawful development and the Council is under no obligation to correct this.

There are two options available to you at this point;

- i. We will provide you with comments for the 18th (and final) time on details on the condition that work ceases on site until such time as the condition is discharged.
- ii. If by 5pm today, you have not confirmed that work has ceased, and will continue to cease until the condition is discharged, the Council has no option but to refuse the discharge and serve an injunction.

I await your response.

Neil

Neil Crowther | Group Head of Planning, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

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Save the environment - think before you print.

From: [REDACTED]
Sent: 05 February 2019 18:06
To: Neil Crowther
Cc: Philip Chapman (Linden Homes); Karl Roberts; David Easton
Subject: RE: BE/117/18/DOC Discharge of Condition application - New Barn Lane, North Bersted

Dear Neil,

Pursuant to Phil Chapman's email dated 05.02.19 below, please find letter from Phil Chapman attached.

Kind Regards

Robin Pearmain Senior Planning
Manager BA(Hons) MATCP MRTPI

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From: Philip Chapman (Linden Homes)
Sent: 05 February 2019 10:53
To: Neil Crowther <Neil.Crowther@arun.gov.uk>
Cc: [REDACTED]
Subject: RE: BE/117/18/DOC Discharge of Condition application - New Barn Lane, North Bersted

Neil, further to our exchange of emails yesterday, as this information has now been provided and hopefully will be sufficient for Laura, can I suggest we all draw breath before either party takes any further action?

I will write to you again later today, but would suggest it is in all of our interests in the short term to take stock for the next 24 hours or so.

If you would like me to give you a call to discuss further, please let me know.

Yours sincerely

Phil Chapman

Philip Chapman Managing Director

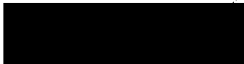
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5th February 2019

Dear Neil,

Discharge of Condition Application BE/117/18/DOC – New Barn Lane, North Bersted

I refer to the above matter and your email dated 4 February 2019 which states that you will be today refusing the current discharge of condition application (reference BE/117/18/DOC) and will also be serving an injunction application for the purpose of preventing any further works from being undertaken in accordance with the planning permission (reference BE/142/15/OUT) and the reserved matters consent (reference BE/113/17/RES).

The Discharge of Condition Application

First, in respect of the discharge of the condition application, I am surprised and disappointed that despite our very best efforts to discharge the conditions (comprising condition 5 (Surface Water Drainage), 6 (SuDS system) and 14 (Foul Drainage)) associated with the planning permission (reference BE/142/15/OUT) and having been more than reasonable in responding to the Council's queries and requests, it is now the intention to refuse the application.

We have been actively engaging with the Council for a period of 12 months for the purpose of trying to discharge the conditions. I am more than satisfied that within this period of time (especially within the last 4 months) we have been fully accommodating in respect of the Council's requests and consider that we have submitted sufficient information for the purpose of discharging the conditions.

The decision to refuse the discharge of condition application appears to have been solely driven by the fact that we have recommenced works on the site. I do not consider this decision to be either reasonable or proportionate and I am concerned that the Council is now acting in an arbitrary manner and no longer in good faith.

You will be aware that following the service of the Temporary Stop Notice on 9 November 2018 Linden Homes ceased all work on the site. Despite the Temporary Stop Notice expiring on 6 December 2018 no further work had been undertaken until yesterday (04 February 2019). This was despite there being no legal obligation in place preventing the recommencement of works. Despite the significant adverse financial and practical consequences which would be (and have been) incurred by Linden Homes in stopping work, in attempting to be reasonable we made the decision to wait until the conditions were discharged. However, despite using our best endeavours to assist your planning officers, we have found ourselves bogged down in unnecessarily protracted correspondence over largely immaterial issues. In short, we think officers have not handled the discharge of condition application in an appropriate or timely manner and we feel that the way it has been handled generally falls below what we would expect from a competent local authority. Owing to financial and practical constraints we were left with little opportunity but to recommence works.

In continuing to act reasonably, I can confirm that we would be willing to cease work on site once again if you were to confirm, by return, that the Council would be committed to determining application

BE/117/18/DOC in a prompt, reasonable and expeditious manner. I would suggest that this clearly represents the most sensible approach for all those concerned. Alternately, if the application is refused or continues to be left undetermined for a further duration of time then we will rigorously proceed to an appeal.

Injunction

We are stunned that given the circumstances of this matter (as outlined above) and having taken advice on the relevant case law (and also having read the Council's Planning Enforcement Policy), the Council has deemed it expedient to proceed with an injunction.

In determining whether or not to grant an injunction, the court will consider whether the grant of the injunction is proportionate (by weighing the public interest benefit in granting the application against the burden placed on Linden Homes by the injunction). I am advised that other sub-factors that come into play as well: the degree and flagrancy of the breach, the enforcement history, the general planning history of the site and degree of urgency in remedying the breach.

Given the protracted manner in which the Council has handled the matter, it undermines any suggestion that the breach is so serious/flagrant/urgent that it needs to be restrained by injunction, which represents the most draconian means of enforcement.

I understand the case of *Stratford On Avon District Council v Persimmon Homes Ltd [2015]* emphasised the importance of proportionality where an application for an injunction is sought by a local planning authority. In that case the court refused to grant the injunction on the reasoning that the application was "disproportionate" and "verging on the oppressive", and its circumstances were similar to this situation.

In particular the defendant in that case had taken a number of steps to try and ensure compliance/cooperate with the Council. In this instance we have also tried to engage with the Council and use our best endeavours over a period of many months to try to discharge the conditions, and had stopped work even once the Temporary Stop Notice had expired.

In short, it would be completely unreasonable and disproportionate for the Council to proceed by way of an injunction.

We will rigorously defend any injunction proceedings. We also reserve the right to challenge the Council's decision to start injunction proceedings on public law grounds, taking into account reasonableness, the Council's own planning Enforcement Policy and the Council's own conduct and delay in handling the matter.

If the Council proceeds with injunction proceedings and is unsuccessful we will proceed with a full claim for costs and damages, which is already a six figure sum and continues to accrue on a daily basis. We would therefore urge the Council to act reasonably and reconsider its decision and to work proactively with Linden Homes in a practical and common sense manner from this point on.

Notwithstanding the above, it is our intention to forward the matter to the Local Government Ombudsman as we consider maladministration has occurred.

Your Sincerely



Philip Chapman
Managing Director of Linden Homes South

