

From: David Easton
Sent: 06 November 2018 09:31
To: 'Jen Samuelson'; Claire Potts; Daniel Vick
Cc: 'Robin Pearmain (Linden Homes)'; 'Stephen Clark (Linden Homes)'; 'Yuved Bheenick (Linden Homes)'; 'Robin Shepherd'
Subject: RE: New Barn Lane: BE/78/18/RES minor amendments

Dear Jen,

In response to the points raised below I can provide the following comments;

Point 1

The LPA are of the view that your interpretation of Condition 1 of BE/18/17/PL would by virtue of its conflict with Section 73 (5) of the TCPA make the condition ultra vires.

The LPA would rely on the case of R (Reid) v Secretary of State [2002] EWHC 2174 (Admin) in which the Court concluded that if it was permissible to look at the application for planning permission because it was incorporated by reference, then it must be permissible to look at the terms of the earlier planning permission if the application defined the proposed development in the terms of that earlier permission. In this case the application defined the proposed development in the terms of the earlier permission. Therefore, the repeated condition, that cannot in law be amended by an application under Section 73 needs to be interpreted in accordance with the original planning permission and not as a means of extending the time limit for the submission of the RMA(s).

Point 2

Condition 2 is to be read in conjunction with Condition 1 and, therefore, "the period of 1 year from the date of approval of the reserved matters to be approved, whichever is the later", applies from the date on which the RMA(s) submitted to comply with Condition 1 have been approved and not the date of approval of any RMA(s) submitted in addition to or in substitution for the RMA(s) submitted in compliance with Condition 1. It is not reasonable to interpret Condition 2 as you suggest as that would lead to a situation in which there could be repeated applications for approval of RMA(s) which could keep the Planning Permission alive for ever.

Point 3

The LPA raised their concerns with this as soon as the issue became known. The conflict with Condition 1 was identified on the morning of the 30th October by the LPA and was raised with you via email on that date.

Point 4

Enforcement is dealt with by a separate team and I am not involved with the preparation, drafting or service of the proposed TSN. However, I am aware that enforcement action as yet has not been taken and as such I am unsure how a notice which has not been served can contain errors. However, should you have specific concerns in relation to this I would advise that you contact my colleagues in enforcement to discuss.

I am aware that we have arranged to meet on the 7th November. I would be grateful if you could please provide me with a proposed agenda for this meeting so as I can consider the value of meeting to discuss this site. I do not believe that prolonged discussions or debates concerning our positions in relation to this case will be of assistance going forward and similarly I would not wish to partake in any discussion concerning the proposed enforcement action by the Council. Therefore, I would be grateful if you could provide a proposed agenda as soon as possible for consideration by the LPA.

Kind regards,
David Easton

From: Jen Samuelson [REDACTED]
Sent: 01 November 2018 15:35
To: David Easton; Claire Potts; Daniel Vick
Cc: Robin Pearmain (Linden Homes); Stephen Clark (Linden Homes); Yuved Bheenick (Linden Homes); Robin Shepherd
Subject: RE: New Barn Lane: BE/78/18/RES minor amendments

Dear David,

I write in response to your email dated 30th October. At this juncture, I wish to request an urgent meeting with the Council to discuss the planning status on this site and move matters forward positively, and efficiently. Linden are committed to building out the site and providing much needed private and affordable homes to meet the requirements of the District. It is our intention to work with the Council, and we want to agree a suitable way forward which is both robust and does not cause unnecessary burdens to either party. To this end, please can you advise whether you are available on the following dates/times:

- Wednesday 7th am (9.30am if possible)
- Thursday 8th pm
- Friday 9th am (9.30am if possible)

In response to the points you made within your email, please see our response below.

Point 1

As stated in your email, Paragraph 015 (Reference ID: 17a-015-20140306) advises that *"Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended."* A s73 is a new consent and not an amendment to the previous one, therefore all conditions must be replicated on the new permission, other than those applied to be varied or removed (plus any others the LPA may choose to add in).

We agree that the default position with a s73, as set out in the TCPA, is that it should not extend the period that you can apply for RM. However, to ensure this is the case, the Council must apply a bespoke condition to restrict the time limit for submission to the original date of the previous outline. In this instance, Arun District Council have not done this and instead elected to apply the standard time limit condition stating:

"...an application for the approval of the LPA to the following matters must be made not later than the expiration of 2 years beginning with the date of this permission."

Therefore, the variation of condition under reference BE/18/17/PL does provide an extended time period for the submission of reserved matters on the original outline approval under reference BE/142/15/OUT. It allows 2 years from the date of the consent to apply for Reserved Matters, i.e. May 2019.

It is relevant that the Section 73 permission (BE/18/17/PL), and the conditions which form part of that permission, have already been considered a valid consent by the Council, as evidenced by the acceptance of the original RM BE/113/17/RES application (Approval of reserved matters following outline consent BE/18/17/PL for appearance, landscaping, layout & scale for a mix of up to 90No. residential units, associated open space, landscaping, access & car parking), which was approved pursuant to this consent. Furthermore, the Section 73 permission has passed any period for challenge, and was not challenged, and therefore remains a valid consent on the planning register in the form that it was approved, including all conditions.

We set out clearly in our submitted information for the RM application that it is pursuant to the Section 73 permission (BE/18/17/PL), and therefore it is submitted in accordance with the time limit condition on that permission.

Therefore, if the Council had intended to limit the timescales for submitting an RM on the s73, Condition 1 should have been drafted in a bespoke manner, which it was not. Therefore, the Council must determine the revised RM on the basis of the wording on the decision notice of the S73 application, which provides until May 2019 to submit an RM.

Point 2

In addition to the above, we also consider that the requirements of condition 1 on the s73 have already satisfied by virtue of the original reserved matters consent ref. BE/113/17/RES.

Condition 2 requires "...an application for the approval of the LPA.....". This has been satisfied by virtue of ref. BE/113/17/RES.

It does not state any application for the approval of the LPA, which is more commonplace on a RM consent. Nor does it state the final reserved matters must be submitted not later than the expiration of 2 years....." which again is wording commonly used by LPAs in this regard.

On this basis, we consider that Linden Homes have already satisfied the requirements of s73 condition 1, and are therefore free to submit repeat reserved matters applications to the s73. I must reiterate that we do not agree with ADC's interpretation of the status of the S.73 consent.

Point 3

Linden Homes have sought to work with the Council in an open and transparent manner since acquiring the site in March 2017. Following the grant of the original reserved matters in December 2017, and then the submission of the revised reserved matters application submitted in July 2018, we have been upfront with the Council in respect of our planning strategy, giving the Council every opportunity to comment, or if necessary challenge, our approach.

In pre-application correspondence dated 11 June 2018 and subsequent meeting on 12 June 2018 we advised of our intention to submit a revised reserved matters consent pursuant to the Section 73 application. At this point, ADC could have raised concern with the proposed strategy.

We then corresponded with the Council's planning validation team prior to the submission of the application to confirm the requisite fee for a revised reserved matters application, again giving the Council the opportunity to challenge our approach.

Following submission, the Council registered the revised reserved matters consent, accepting the lower £462.00 fee in acknowledgment of the previous Reserved Matters under the same consent, which indicates and confirms its legality. This was followed by a statutory consultation, which raised no objection or challenge to the legality of the reserved matters submission.

Point 4

In parallel to our transparency on the revised reserved matters consent, I note that Linden Homes have also been upfront and in regular communication with the Council regarding the discharge of pre-commencement conditions. Some of these have been met with delay due to input from third party consultees (i.e. Southern Water). Linden have endeavoured to advise the LPA on discussions with consultees and timescales for submission. However, disapprovingly, enforcement colleagues have now proposed to issue a temporary stop notice on the site, which in itself contains errors in the consents it refers to.

At the earliest opportunity, we would be pleased to receive your availability for a meeting next week to discuss a route forward.

Kind Regards,

Jen Samuelson
Senior Planner



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From: David Easton <David.Easton@arun.gov.uk>

Sent: 30 October 2018 14:36

To: Jen Samuelson

Cc: Robin Pearmain (Linden Homes); Claire Potts <Claire.Potts@arun.gov.uk>

Subject: RE: New Barn Lane: BE/78/18/RES minor amendments

Dear Jen,

I have identified a significant issue with the reserved matters application submitted under reference BE/78/18/RES.

Condition 1 of outline planning approval under reference BE/142/15/OUT stated;

"The permission hereby granted is an outline permission under s92 of the Town and Country Planning Act 1990 (as amended) and an application for the approval of the Local Planning Authority to the following matters must be made not later than the expiration of 2 years beginning with the date of this permission:-

- (a) Layout;*
- (b) Scale;*
- (c) Appearance;*
- (d) Landscaping.*

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended)."

The decision in relation to the original outline permission was granted on the 24th February 2016 and as such the time period for the submission of Reserved Matters ran until the 24th February 2018. The current reserved matters application under reference BE/78/18/RES was received by the Council on the 13th July 2018 and as such the amended reserved matters application cannot be determined by the Local Planning Authority, as the period for the submission of reserved matters applications on the outline approval has ended.

I am aware that a s73 application relating to conditions 3 and 23 was determined by the Local Planning Authority under reference BE/18/17/PL. However, a s73 application cannot *"...extend the time limit within which a development must be started or an application for approval of reserved matters must be made."* (Paragraph: 014 Reference ID:17a-014-20140306). It is further stated under Paragraph 015 (Reference ID: 17a-015-20140306) that *"Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended."*

Therefore, the variation of condition under reference BE/18/17/PL does not provide an extended time period for the submission of reserved matters on the original outline approval under reference BE/142/15/OUT. The only means by which the proposed amended layout for 90 dwellings could be determined by the authority would be through the submission of a full planning application. However, given that development has already commenced on site it would not be possible to incorporate any pre-commencement conditions and as such the application would need to incorporate relevant details to address all matters.

Matters are further complicated in relation to the full application (for 10 dwellings) under reference BE/77/18/PL. It is possible that were permission to be granted for this development, prior to the discharge of the outstanding conditions in relation to BE/142/15/OUT, then due to the proposed access having already been commenced it could be considered that the full permission for 10 dwellings had been implemented. This could potentially supersede the original approval for 90 dwellings as it would prevent implementation of BE/113/17/RES. Therefore, you may wish to consider in addition the withdrawal of BE/77/18/PL.

Please do not hesitate to contact me should you wish to discuss any of the above further.

Kind regards,
David

David Easton | Principal Planning Officer, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road,
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From: Jen Samuelson [REDACTED]
Sent: 30 October 2018 10:54
To: David Easton
Cc: Robin Pearmain (Linden Homes)
Subject: RE: New Barn Lane: BE/78/18/RES minor amendments

Hi David,

Thanks for your email.

We will be getting the amended plans/additional information across to you next week for your consideration. The additional ecology information to support the AA for the full application will be submitted ahead of the plans, to ensure you have sufficient time to undertake the AA ahead of the December Committee.

As we discussed in the meeting, please can you confirm that both of these applications will be taken to the December committee?

Kind Regards,

Jen Samuelson
Senior Planner



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From: David Easton <David.Easton@arun.gov.uk>
Sent: 29 October 2018 13:22
To: Jen Samuelson [REDACTED]
Cc: Robin Pearmain (Linden Homes) [REDACTED]
Subject: RE: New Barn Lane: BE/78/18/RES minor amendments

Dear Jen,

Please find below my response in relation to each of the matters raised;

1. HRA on BE/78/18/RES

I have spoken with Natural England and our Legal Team in relation to this one. The view of the LPA following these discussions is that a HRA/AA is not required given that the principle of development was agreed by the outline approval. However, this HRA/AA work will be required in relation to the full application for 10 units.

2. Scheme of delegation.

The application if recommended for approval will need to be determined by the Council's Development Control Committee. The scheme of delegation states under 3.1.2(iii) that;

Any Major or Minor application for planning permission which prior to its determination is subject to a written representation from a Parish Council, Town Council or formal Parish Meeting, which has been received within the consultation period and which is in conflict with the recommendation of Officers.

Therefore, as the objection was received during the consultation period the application cannot be determined under delegated authority. This matter has been considered previously by the Council and until such time as the wording of the Constitution is amended this will remain the case.

3. Amendments

- *Minor re-siting of Plots 9 and 10 to the west, with parking provided in neighbouring garage. Resultant increase in open space adjacent to Plot 9.*

I do question the assumption that the proposed relocation of the dwellings results in any significant increase in the provision of open space on the site. The amended location sees a footpath incorporated forward of the primary elevation of Plot 9 which appears to segregate the dwelling and a portion of open space from the existing provision. Therefore, this space appears more 'private' rather than public being situated immediately forward of the primary elevation. However, I do not see any issue with the amended siting of the dwelling and relocation of the parking provision associated with these plots.

- *Allocation of parking spaces for plots 43-47 & 49 within the parking court (2 spaces per unit)*

I do have concerns with this approach and the loss of any visitor parking associated with the flats. There, is no visitor parking spaces situated in the immediate vicinity of these flats (although I see that additional visitor parking is proposed along the western boundary of the site) I do not believe that visitors to the flats will make use of this parking by virtue of its proximity to the flats. I would still like to see confirmation that the proposed parking provision on site complies with the WSCC parking demand calculator.

- *Provision of 6 additional visitor spaces along western green strip*

As identified above I would like to see confirmation that the parking provision complies with the WSCC parking demand calculator. Similarly, I would wish for confirmation of the open space provision on site to confirm that this meets the minimum requirements for the 100 dwellings now proposed. I would request that a plan is demonstrating the open space provision on site and setting out the total provision of the revised layout. There are a number of areas which result in the loss of open space provision and it would be interesting to see what impact this has had upon the total provision.

I hope the above is of assistance.

Kind regards,
David

David Easton | Principal Planning Officer, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

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From: Jen Samuelson [REDACTED]
Sent: 18 October 2018 10:42
To: David Easton
Cc: Robin Pearmain (Linden Homes)
Subject: RE: New Barn Lane: BE/78/18/RES minor amendments

Hi David,

Following our phone call, I understand your work pressures for Pagham this week, so I will give you a call next week to see if you have been able to resolve any of the remaining queries discussed. In the meantime, given the minor nature of the amendments to the layout, it would be appreciated if either yourself or Claire could look at the amendments at your earliest opportunity, so as to avoid delay to getting these finalised and submitted.

Kind Regards,

Jen Samuelson
Senior Planner



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From: Jen Samuelson
Sent: 18 October 2018 09:40
To: David Easton <David.Easton@arun.gov.uk>
Cc: 'Robin Pearmain (Linden Homes)' [REDACTED]
Subject: New Barn Lane: BE/78/18/RES minor amendments

Dear David,

As discussed within our meeting on Tuesday, please find attached a draft revised plan showing the following minor amendments:

- Minor re-siting of Plots 9 and 10 to the west, with parking provided in neighbouring garage. Resultant increase in open space adjacent to Plot 9.
- Allocation of parking spaces for plots 43-47 & 49 within the parking court (2 spaces per unit)
- Provision of 6 additional visitor spaces along western green strip

We can confirm that there are sufficient spaces to meet the parking demands as per the WSCC parking calculator.

Before we work up the final plans, please can you confirm that you are happy with these amendments? We are keen to submit them as soon as possible if acceptable.

Kind Regards,

Jen

Jen Samuelson
Senior Planner



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