

Sandra Edwards

From: Simon Davis
Sent: 12 April 2018 17:26
To: Planning Scanning
Subject: FW: Land at Kings Close, Yapton - Y/22/14 - Condition 17

Application Correspondence ref Y/22/14

Kind Regards

Simon J Davis MRTPI | Principal Planning Officer, Planning Department, Directorate of Place, Arun District Council |
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From: Simon Davis
Sent: 12 April 2018 17:25
To: 'Raymond Cole'
Cc: Michael Gadd; Stephen Fletcher; Ian Woodward-Court; Stephen Bennett
Subject: RE: Land at Kings Close, Yapton - Y/22/14 - Condition 17

Dear Ray,

The condition you refer to is our standard ENV6 condition. It is worded "*Prior to [commencement of development]/ [occupation of any part of the permitted development], a*" (continuing as per the condition imposed).

In hindsight, it might have been more helpful if in finalising the condition, we had deleted the reference to commencement rather than the reference to occupation. We are not concerned therefore if you proceed to carry out the remediation works and submit the verification report prior to occupation.

Kind Regards

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From: Raymond Cole [REDACTED]
Sent: 12 April 2018 15:22
To: Simon Davis
Cc: Michael Gadd; Stephen Fletcher; Ian Woodward-Court; Stephen Bennett
Subject: Land at Kings Close, Yapton - Y/22/14 - Condition 17

Dear Simon

I refer your letter dated 5 January 2018 (Y/76/17/DOC) confirming the decision of the Council to approve details reserved by Condition Number 15 of the planning permission Y/22/14.

The penultimate sentence of your letter draws attention to the verification reports required in respect of conditions 16 and 17.

Condition 17 begins:

"Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority."

The wording poses a conundrum because the full remediation works cannot be completed "prior to commencement of the development". The remediation works approved under Condition Number 15 include:

1. The removal of soil which contains asbestos;
2. The removal of any underground tanks and pipework during excavations; and
3. Importing soil and sub-soil where soft landscaping is to be carried out.

Items 1 and 2 are likely to be undertaken at the beginning of operations associated with the residential development of the site. Item 3 is unlikely to be carried out until late in the development.

A formal section 73 application could be made to amend the wording of Condition 17 to begin "Prior to occupation" rather than "Prior to commencement". However, the Decision Notice would be highly unusual with the description of the development including the word "Outline" but none of the conditions requiring the submission for approval of any reserved matters, because they have all been approved. It is likely that Condition 2 would need to be amended to reflect the date of approval of the reserved matters application and Condition 3 would need to be amended to reflect the full list of plans, drawings and documents approved at the outline stage, reserved matters stage and through the discharge of conditions up to that moment in time. To avoid such complications and further delay, can we agree the following:

1. Condition 17 does not go to the heart of the permission;
2. The development may commence without compliance with the condition; and
3. The verification report will be submitted and approved prior to occupation?

As you may be aware, from Development Control Practice (6.342 Commencement in breach of condition), case law has demonstrated that commencement of development in breach of a condition precedent will not render development unlawful where:

- the developer has done everything practicable to meet the condition;
- subsequent agreement has been reached on compliance with the condition;
- the condition has been complied with in substance but written notice of approval has not been obtained;
- the planning authority has agreed that development could commence without compliance with the condition; or
- it would be irrational to take enforcement action against the operations.

A commonsense view must be taken.

Please could you let me know the Council's recommended approach for dealing with this condition?

I look forward to hearing from you shortly.

Yours sincerely

Raymond Cole BA(Hons) BTP PGDip MRTPI - *Senior Planner*

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