
Appeal Decision

Site visit made on 19 October 2016

by Mr K L Williams BA, MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2016

Appeal Ref: APP/J3530/X/16/3145659

13 Garden Square, Rendlesham, Suffolk,

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr I Harper against the decision of Suffolk Coastal District Council.
- The application, ref: DC/15/4080/CLP and dated 6 October 2015, was refused by notice dated 19 February 2016.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the erection of a dwelling.

Summary of Decision: The appeal fails and a Lawful Development Certificate is not issued.

Background

1. The appellant seeks a Lawful Development Certificate (LDC) for the erection of a single dwelling house on the appeal site. The site is a small plot of land within a residential estate. It forms an area of open space containing ornamental planting, with houses around it. The appeal site is within the wider area of the former RAF Bentwaters site. That wider area was divided for planning purposes into sub-areas, with the appeal site in Area 5. A revised master plan and accompanying report were prepared for the area by Babbie Consultants. It was approved by the Council in April 2003. The master plan assessed Area 5 as having a capacity for 61 dwellings.
 2. In February 1997 outline planning permission (C96/1422) was granted for the wider area for the "*Comprehensive development of a new community, including housing (1220 dwellings), ancillary facilities, employment, gun club, large scale clearance, restoration and afforestation.*" Condition no.1 of that permission required that "*Application for approval of reserved matters shall be made not later than the expiration of seven years beginning with the date of this permission.*" Condition no.3 required that *.. "before work on the development is begun, approval of the details of siting, design, external appearance, the access to the site and landscaping (herein called the "reserved matters") shall be obtained from the local planning authority.*" Condition no.2 required the commencement of development within 9 years of the date of permission or 2 years from the final approval of the reserved
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matters or, in the case of approval on different dates, the final approval of such reserved matter to be approved.

3. Notwithstanding the description of development in the 1997 permission many of the dwellings it referred to already existed. Condition no.5 therefore stated that *"The consent hereby granted is for a maximum of 313 new dwellings to be laid out broadly in accordance with the Redevelopment Strategy Report and any subsequent design brief(s)."*
4. In October 2004 a further planning permission (C03/2362), was granted for Area 5. It was for the erection of 50 houses and apartments subject to the development being carried out in accordance with the plans and information in the application. Drawing 0011077/015 provided a site layout. Condition no.1 required development to begin not later than 5 years from the date of permission. Condition no.2 required that *"No development shall commence elsewhere on site until details of the estate roads and footpaths, including layout, gradients, surfacing and means of surface water drainage have been submitted to and approved in writing by the local planning authority."* Development has been carried out and the Council explains that the 50 dwellings and apartments permitted have been erected.

Main Issue and Approach to the Decision

5. The main issue is whether the Council's decision not to issue an LDC was well-founded. Planning merits are not matters for me to consider in the context of an appeal under section 195 of the Act, concerning the refusal of an application for an LDC. I have therefore not addressed any of the planning merits matters raised by the appellant, including the site's suitability for the erection of a house. My decision is based on the facts of the case, relevant planning law and judicial authority. The burden of proof in this appeal rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

The Effect of the 1997 and 2004 Planning Permissions

6. The appellant's case rests on development of the site being authorised by either the 1997 outline permission or the 2004 permission. As I set out above, development of some sub-areas of the 1997 permission has taken place pursuant to reserved matters which were approved for those areas. There has therefore been implementation of the 1997 permission. However, the period for the submission of reserved matters specified in condition no.1 of that permission has expired. Nothing which was expressed as being the submission of reserved matters for Area 5 was submitted within the specified 7 years. Planning Practice Guidance (14-008-20140306) explains that once the time limit for approval of reserved matters has expired no applications for such approval may be submitted. At the date of the LDC application which led to this appeal it was too late for development of the appeal site to proceed on the basis of submission of further reserved matters.
7. I have also considered whether the 2004 permission amounted to the submission and approval of reserved matters for Area 5 pursuant to the 1997 outline permission. In doing so I have had regard to the judgement in *Etheridge v Secretary of State for the Environment and Another (1984) 48 P. & C.R. 35*. In that case outline planning permission had been granted in 1965 for residential development of a site with plots for 30 houses, with

detailed plans to be submitted before development commenced. In 1965 planning applications were made and permissions granted on two of the plots, nos.A14 and A17. By 1968 development had been carried out on those plots. In about 1979 application was made for reserved matters approval for development on two of the other plots, nos.A29 and A30. The Council took the view that the relevant outline planning permission no longer existed. On appeal, the Secretary of State decided that 1979 applications were for full rather than outline permission and that the outline permission had ceased to exist. However, it was held in the judgement that, although the 1965 applications had on their face been full planning applications, their effect was to approve exactly those matters that would have been the subject of reserved matters approval. On the facts of that case they had amounted to approval of details, so that the outline planning permission remained extant.

8. While there are some similarities, the circumstances in this appeal are distinguishable from those in *Etheridge*. In this case, the 2004 permission was for 50 houses and apartments rather than the 61 houses envisaged for Area 5 in the master plan associated with the 1997 permission. Moreover, in *Etheridge* plots nos.A29 and A30 appear to have been identified at the outline stage as plots for houses. In this case the appeal site was not identified as a plot for a dwelling on the layout plan to which the 2004 planning permission refers. No substantive evidence is provided which supports the appellant's contention that the 2004 permission should be seen as being for 51 units rather than the 50 referred to in the permission. While there was no condition limiting the number of houses and apartments to 50, the relevant layout plan shows the siting of houses and apartments and does not show a dwelling on the appeal site. Nor do I consider, as the appellant suggests, that submission of a full planning application following an outline approval would have been particularly unusual or confusing. It is a course ordinarily available to an applicant for planning permission.
9. There is nothing on the face of the 2004 permission to indicate that it amounts to an application for reserved matters. Indeed the nature of the related plans and conditions are consistent with it being a full planning permission. Taking that into account, together with the above matters, I find that the 2004 permission was a freestanding full planning permission. It did not amount to the submission of reserved matters pursuant to the 1997 outline permission.

Other Matters

10. As the Council observes, the judgement in *Pioneer Aggregates (UK) Ltd v SSE [1984] 2 All ER 358* establishes that a planning permission which is capable of implementation cannot be abandoned. However, that principle does not assist the appellant in this case having regard to my conclusion that development of the site cannot proceed on the basis of approval of further reserved matters pursuant to the 1997 permission or within the scope of the 2004 permission.
11. The appellant has also referred to *F Lucas and Sons Ltd v Dorking and Horley Rural District Council, [1964], QBD*. In that case permission was granted in 1952 for a cul-de-sac of 28 houses divided evenly between the north and south sides of the road. In 1957 permission was granted for 6 dwellings on the same site and two were built. It was held that it would still

be lawful to erect the 14 dwellings on the south side of the cul-de-sac. There was room on the site to erect the houses and to provide the curtilages indicated on the 1952 plan, with only minor incursion on the curtilage of one of the houses already built. The extent of that incursion was regarded as "de-minimis". While I take this judgement into account, it does not overcome the absence of approved reserved matters for development of the appeal plot, via either the 1997 or 2004 permissions. Moreover, development on the appeal site would be materially inconsistent with the layout required by the 2004 permission, where the plot is shown as undeveloped land with houses around it. The spaces between houses are an integral part of an approved layout.

12. Reference is also made to whether the appeal site has an existing C3 use under the 2004 permission. This is a reference to Class C3 Dwellinghouses in the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010. The 2004 permission was for operational development in the form of the erection of houses. It does not refer to a C3 use and does not impart planning permission to erect a house other than in accordance with the terms of the permission. The appellant also alludes to a Council letter dated 10 April 2003 entitled "*New Rendlesham Master Plan for Domestic Site*". It says that "*..the revised Master Plan is a formal variation to the terms of the Redevelopment Strategy report dated November 1996. Reserved matters covering discreet areas on the former Domestic Base should, in general terms, accord with the terms of the revised master plan and the phasing contained therein.*" This correspondence does not, as the appellant suggests, have the effect of extending the period within which submission of reserved matters is required in condition no.1 of the 1997 permission. Nor does it show that any application for reserved matters related to the appeal site was made or approved.

Conclusion

13. Having regard to the above and to all other matters raised I conclude that the erection of a house on the appeal site cannot take place lawfully with reliance on either the 1997 permission or that granted in 2004. The Council's decision not to issue a certificate was therefore well-founded. The appeal should not succeed.

Formal Decision

14. The appeal is dismissed.

K Williams

INSPECTOR