

Appeal Decision

Site visit made on 6 March 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/A0665/X/16/3159886

The Orchards, St Johns Way, Sandiway, Northwich, Cheshire CW8 2NQ

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Bevan against Cheshire West & Chester Council.
 - The application (Ref. 16/02790/LDC) is dated 27 June 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the installation of a vehicular access.
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Decision

1. The appeal is dismissed.

Reasons

2. The Orchards is an area of land between Ivy Cottage, where the Appellant lives, and a housing development to the north of St Johns Way, a cul-de-sac. The land has a boundary to the garden area around Ivy Cottage and a boundary to the turning head at the end of the cul-de-sac. Passing through the land is a tarmac footpath from the cul-de-sac to a vehicular access off School Lane, which provides access to Ivy Cottage and which extends to provide access to the rear of dwellings with frontages to School Lane.
 3. The housing development was built after the grant of planning permission 4/00/01875/D in 1976. The Appellant maintains that the planning permission included a vehicular link between St Johns Way and the vehicular access off School Lane, that the 1976 permission remains extant, that the terms of the permission were not revoked or altered by planning permissions granted in 1996, 1999 and 2003 for the phases of the housing development, and that, therefore, the vehicular access from St Johns Way into The Orchards would be lawful.
 4. The burden of proof in an LDC application is on the applicant though there shall be no good reason to refuse the application provided the applicant's evidence, which need not be corroborated by independent evidence, is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probability.
 5. The main issue is whether the 1976 planning permission includes the provision of the vehicular access claimed by the Appellant, and is extant.
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6. The Appellant submitted various enclosures with the application but these do not include any of the aforementioned planning permissions. It is not possible therefore to confirm the Appellant's assertion that the 1976 planning permission included a vehicular link between St Johns Way and the vehicular access off School Lane, to confirm that the terms of the permission were not revoked or altered by the planning permissions granted in 1996, 1999 and 2003, or to ascertain whether the 1976 permission remains extant.

7. The enclosures include internal local authority notes from 1997 and these suggest that vehicular egress onto St Johns Way from the rear of properties on School Lane was included in original plans. But there is no evidence to indicate that these plans were approved under the 1976 planning permission and that the possibility of such vehicular egress was anything other than a matter that was discussed prior to the permission being granted. Highway safety and other matters mentioned by the Appellant are not relevant to an LDC application.

8. There is no evidence, even imprecise and ambiguous evidence, to justify a conclusion that the 1976 planning permission includes the provision of the vehicular access claimed by the Appellant, and is extant.

9. For the reasons given above, and having taken all other matters into account, the Council's stance on the LDC application in respect of the installation of a vehicular access at The Orchards, St Johns Way, Sandiway, Northwich, Cheshire was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector