

Appeal Decision

Site visit made on 17 May 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal Ref: APP/W0340/W/19/3222886

Silvertrees, Red Lane, Reading RG7 4PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Sean Conway against the decision of West Berkshire District Council.
 - The application, Ref. 18/02489/FULD, dated 20 October 2018, was refused by notice dated 30 November 2018.
 - The development proposed is the erection of a new 4 bedroom replacement dwelling.
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Application for Costs

1. An application for costs was made by Mr Sean Conway against West Berkshire District Council. This application is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for the erection of a new 4 bedroom replacement dwelling at Silvertrees, Red Lane, Reading RG7 4PA in accordance with the terms of the application, Ref. 18/02489/FULD, dated 20 October 2018, subject to the conditions in the attached Schedule.

Main Issues

3. The main issues are: (i) whether or not the residential use of the site has been abandoned; (ii) the effect of the proposal on the character and appearance of the area and whether it would be sustainable development, and (iii) whether the development is appropriate having regard to its location within the Detailed Emergency Planning Zone ('the DEPZ') that surrounds the Aldermaston Atomic Weapons Establishment ('the AWE Aldermaston').

Reasons

Whether Residential Use of the Site Abandoned

4. On this issue both the appellant and the Council have cited Case Law to support their respective positions, albeit the appellant far more extensively together with other sources including appeal decisions and legal commentary. However, it is common ground that a 1956 permission for a bungalow was implemented; the dwelling subsequently occupied, but then demolished in 1992. Thereafter no other building has been erected and no further use of the land made, including for agriculture.
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5. The thrust of the parties' submissions is as follows. Firstly, in the Council's view the principles of *Hartley v MHLG [1970]* apply to this case, namely that the concept of abandonment applies if a building or land '*remains unused for a considerable period of time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned*'. In this context the Council says that from visiting the appeal site in Red Lane it is clear that there has been no recent use of the land for residential purposes and no visible evidence of a dwelling ever being on the land. It is considered that a reasonable onlooker might well conclude that this land is an open rural paddock and that there had never been a dwelling on the site.
6. The appellant counters this assessment with reference to several decisions of the Courts and a different appraisal of the conditions on the site. As regards the former, the decision that abandonment had occurred in the *Hartley* case had regard to existing or established use rights, whereas in this current appeal there is an historic planning permission for a dwelling (reference 3372, granted in 1956 without a condition restricting its implementation to within a particular date). However, in *Pioneer Aggregates v SSE and Another [1983]* it was held that development granted by a planning permission cannot be abandoned, albeit other circumstances and events may result in the benefit of the particular permission being negated (one example being the implementation of a different permission on the same land).
7. The appellant refers to other decisions of the Courts and legal commentary that in his view both confirm the *Pioneer Aggregates* judgement and support his assertions that the appeal site is a further example of circumstances in which an original permission remains extant and the (in this case residential) use of the site has not been abandoned.
8. Leaving the legal argument temporarily aside and returning to the conditions on the site, the grounds of appeal say that the Planning Officer confirmed that as the entrance gate was locked they did not enter the site. However, at my visit I was able to enter the site and inspect it at close quarters. In this inspection the approximate extent of the former building's footprint was readily apparent from the discoloured and more patchy grass resultant from the thinner and poorer quality topsoil. In addition, there were exposed water and drainage pipes, part of a septic tank, areas of concrete, some rubble and even a line of brickwork that appears to be the base of one of the walls. The comment in the Planning Officer's report that the building's '*foundations were completely removed*' is therefore plainly wrong, whilst the culverted site access, the subject of the only condition on the consent, and an electricity supply pole also remain intact as evidence of the site's former residential use.
9. Taking my first hand observations of site conditions and consideration of the legal submissions together, my finding on this issue is that there is an ostensibly strong case that the residential use of the land has not been abandoned. This is because the permission for the original bungalow remains extant, giving the appellant the right to re-build it in accordance with the plans approved under reference 3372 and again made available as part of his appeal evidence.
10. In forming this opinion I give particular weight to the comment of Lord Scarman in the *Pioneer Aggregates* judgement that having regard to the wording of the

Town and Country Planning Act 1971, he considered *'there is no principle in planning law that a valid permission capable of being implemented according to its terms can be abandoned the grant of planning permission inures for the benefit of the land and of all persons for the time being interested in the land'*.

11. The above notwithstanding, to my mind there remains an element of doubt as to the land's status. This is because of the particularly unusual circumstances in this instance of the dwelling having been constructed pursuant to the permission but many years later demolished. In the event the permission remains valid, an entitlement to re-build the dwelling pursuant to the plans approved in the extant permission does not automatically confer a permission for the building now proposed.
12. Nonetheless a re-build is to my mind a valid 'fallback' for the appellant with, in addition, a subsequent right to exercise permitted development rights for extensions. And taking this into account, I accept the appellant's argument that a new dwelling with an appropriate scale and design using up-to date building technology would be far preferable in all respects. In concluding on this first issue, even if there is some uncertainty as to the existence of a valid extent permission, for the reasons explained in the paragraphs below I consider the legal position in this case to be supportive rather than determinative and thereby warranting the lesser status of a matter, albeit significant, to weigh in the planning balance.

Effect on the Character and Appearance of the Area and whether Sustainable Development

13. Policy C1 of the Council's Housing Site Allocations DPD 2017 states under the heading *'Location of New Housing in the Countryside'* a presumption against new residential development outside of settlement boundaries. There are however five exceptions listed, one of these being *'limited infill in settlements in the countryside with no defined settlement boundary'*.
14. The appeal site and its original bungalow permitted in 1956 was part of the development of the settlement of Old Warren, which does not have a settlement boundary. In order to satisfy the exception listed above, a dwelling must satisfy all of four criteria and these are summarised in the Council's appeal statement as being where the development: (5.1.7.1) is within a closely knit cluster of 10 or more existing dwellings adjacent to or fronting an existing highway; (5.1.7.2) the scale of development consists of infilling a small undeveloped plot commensurate with the scale and character of existing dwellings within an otherwise built up frontage; (5.1.7.3) the development does not extend the existing frontage, and (5.1.7.4) the plot size and spacing between dwellings is similar to adjacent properties and respects the rural character and street scene of the locality.
15. The Council's assessment of the appeal scheme against these criteria is that *'it is considered that the development fails to comply with point 3. The dwellings along this area clearly stop at Bracken House and the proposed dwelling will extend the existing frontage'*. In my view any reasonable interpretation of this statement is that, through omission, the Council considers the appeal scheme would satisfy the remaining criteria, numbered (5.1.7) 1, 2 & 4.

16. Certainly, compliance with these criteria is also my assessment. The settlement of Old Warren is a linear development of generous plots with individual frontages to Red Lane that form a visually cohesive ribbon of development backing on the Scheduled Monument of Grim's Bank. Silvertrees is a triangular shaped site forming the end plot in this ribbon and comprising its south westerly corner and its development as now envisaged would be consistent with the type and pattern of the existing line of properties.
17. The apex of the triangle is formed by the intersection of Grim's Bank with Red Lane at a junction where it bends north westwards towards the village of Aldermaston. In common with the first dozen or so of the adjoining dwellings, the section of Grim's Bank that forms the site's rear boundary divides this residential enclave in the countryside from the more open character of the playing fields of the Tadley Rugby Club.
18. As regards the Council's exclusion of the site's compliance with criterion (5.1.7) 3 on the grounds repeated in paragraph 15 above, I consider that despite the bungalow having been demolished, the site's frontage and location as the last plot before the playing fields of the Rugby Club are clearly read with the remainder of the linear development that forms the enclave rather than as open countryside. The persuasive and arguably compelling logic of this is illustrated in the 2018 version of the Ordnance Survey map reproduced in the appellant's statement. And although a recent publication, this map still shows the footprint of the former bungalow, which although a superficial point reinforces the perception that the plot remains part and parcel of the settlement of Old Warren rather than a separate 'green field'.
19. On this issue, I conclude that a dwelling of the siting, scale and design shown on the submitted plans would not have an adverse effect on the character and appearance of the area. And having regard to its location as a previously developed part of an existing residential enclave; the social benefit of an addition to the housing stock of West Berkshire, and not least the opportunity in the re-build to use modern technology with its energy saving attributes, I regard it as a sustainable form of development as defined in the National Planning Policy Framework 2019 when taken as a whole.

Appropriateness of Location within the DEPZ of the AWE Aldermaston

20. If my conclusion on the issue of abandonment is correct, the erection of a new dwelling would have a neutral effect on the degree of risk, as it maintains the status quo that existed for almost four decades before the demolition.
21. Even if the proposal were to be regarded as an additional dwelling within the DEPZ, the fact of the matter is that AWE Aldermaston pre-dates the 1992 demolition of the dwelling. In the light of this and on the limited evidence before me on this issue, I am not persuaded that the addition of one dwelling to the existing residential settlement of Old Warren could not be reasonably accommodated within the existing off-site emergency planning arrangements.

Weighing the balance of Planning Arguments

22. On the first issue of abandonment, I have concluded that there is a strong case that the permission for the original building is extant and thereby the residential use of the land remains. I have stopped short of a definite finding on this point

because whilst I consider there is a general consistency with relevant Case Law that land with planning permission cannot be abandoned, the particular circumstances of the sequence of a grant of planning permission; the dwelling being built and occupied, and after almost 40 years then demolished, is one that would need to be considered in the Courts for a definitive interpretation of the law in relation to abandonment.

23. However, even if I am wrong on my preliminary finding on the issue of abandonment, I consider as a matter of planning judgement that the development would not conflict with Policy C1 of the Site Allocations DPD as it would fall within one of the permitted exceptions for new housing in the countryside. Nor has the Council provided any detailed evidence as to the proposed dwelling being of an inappropriate size, design or siting within the plot to preclude it being in keeping with its neighbours.
24. Accordingly, I conclude that the development would not result in harm being caused to the character and appearance of the area and this, together with (in my view) compliance with Policy C1 would also avoid conflict with Policies CS14, CS17 & CS19 of the West Berkshire Local Plan Core Strategy (2006-2026) 2012. Nor do I conclude that location within the DEPZ of the AWE Aldermaston would carry sufficient weight as to harmfully conflict with Core Strategy Policy CS8 to the extent that it should preclude development.
25. In summary, in weighing the balance of planning arguments, it is my view that the merits of the appeal scheme outweigh any lack of certainty as regards whether or not the residential use of the site has been abandoned.

Conclusion and Conditions

26. I shall therefore allow the appeal subject to conditions on the lines suggested by the Council. A condition requiring the development to be carried out in accordance with the approved plans is needed for the avoidance of doubt and in the interests of proper planning. A condition requiring details of external and hard surfacing materials will ensure the development responds to local character and maintains the visual amenity of the site. I have amended the pre-commencement element of the suggested conditions because it has been Government policy to discourage this since October 2018.
27. A condition requiring the fencing off of Grim's Bank will safeguard the architectural heritage of the area, whilst access and parking conditions are needed for highway safety in Red Lane.
28. A number of Informatives have been suggested, but the Council will be aware that it is not the practice of the Planning Inspectorate to include them in Decisions.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this Decision;
- 2) The development shall be carried out in accordance with the following approved plans: Drawing Nos. SA/1126/1 Rev. 1 and SA/1126/2 Rev. 1, SA/1126/4 Rev. 1;
- 3) Within three months of the date of this Decision or such other date first agreed in writing with the Local Planning Authority, a schedule of the materials to be used in the construction of the external surfaces of the dwelling and hard surfaced areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. This condition shall apply irrespective of any indications as to these matters which have been detailed in the current application. Samples of the materials shall be made available for inspection on request. Thereafter the development shall be carried out in accordance with the approved materials;
- 4) Within three months of the date of this Decision or such other date first agreed in writing with the Local Planning Authority, details of fencing to be erected around the scheduled monument known as Grim's Bank shall be submitted to and agreed in writing by the Local Planning Authority. The fencing shall be erected in accordance with the approved details at a time to be agreed in writing with the Local Planning Authority and thereafter maintained for the duration of the construction works. No works shall take place within the area enclosed by the approved fencing without the consent of the Local Planning Authority;
- 5) The dwelling shall not be occupied until the visibility splays at the access have been provided in accordance with the visibility splay shown in blue on drawing number SA/1126/4 dated 22 October 2017. The land within these visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 0.6 metres above the carriageway level;
- 6) The dwelling shall not be occupied until the vehicle parking and/or turning space have been surfaced and provided in accordance with the approved plans. The parking and/or turning space shall thereafter be kept available for parking at all times;
- 7) As a first development operation, the vehicular access and associated engineering operations shall be constructed in accordance with the approved drawing.