



Appeal Decision

Site visit made on 26 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17th January 2020

Appeal Ref: APP/J3530/X/18/3216462

Unit 11, Haven Exchange, Walton Avenue, Felixstowe IP11 2QZ

- 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 Chris Roberts (Orwell Truck Stop Ltd) against the decision of Suffolk Coastal District Council.
 - The application ref. DC/18/2642/CLE dated 21 June 2018, was refused by notice dated 3 September 2018.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is use of the site as a distribution centre.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background matters

3. The appeal site is part of an allocated employment site close to Felixstowe Docks. It is at the end of an estate road off the Dock Gate 1 Roundabout that serves the employment area and provides access to a number of office buildings, a fast food restaurant and a retail store. The site is overgrown and surrounded by temporary security fencing.
4. I saw the capped off head of the drain run installed by the appellants, in a position consistent with the drawing submitted with the LDC application, and consistent with photographs showing the trench being excavated in the direction of the ditch along the northern side of the site.

Reasons

5. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether material operations sufficient to start development of the approved

distribution centre began within the time limit set out in the planning permission. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.

6. In 1994 outline planning permission was granted for use of a substantial area of land – including the appeal site – for use of the land for the erection of buildings for B1, B2 and B8 industrial and commercial uses; limited non-food retail uses and erection of buildings as a fast-food outlet together with estate road and all ancillary works¹. The parties agree this permission was extended to 2007
7. Approval of reserved matters (ARM) for the proposed Unit 11 was granted in 2008 for the use of the site as a distribution centre for the reception, storage and onward transmission of containerised goods, erection of a store/messroom/office and 3 metre security/noise attenuation fence². I note that under the original outline permission the time limit for the start of development was set at either the expiration of seven years from the date of that permission, or the expiration of two years from the final ARM, whichever was the later. In this case the development would need to have begun within two years from 10 September 2008.
8. The appellant argues that a material operation – as defined in s.56 of the Act – comprising the installation of drainage pipework was carried out within the two year period. In evidence an Initial Notice under s.47 of the Building Act 1984, and dated 8 September 2010, has been submitted. The Council confirmed their acceptance of this notice by letter dated 10 September 2010 – the date on which the Initial Notice will have come into force. The notice states that it relates to '*Office and retail development – Units 11, 12 and 13 Haven Exchange, Walton Avenue, Felixstowe, Suffolk IP11 2QZ*'.
9. The Council say the Initial Notice related to a different development than approved under ARM ref. C07/2087 – probably either planning permission ref. C/07/1829 or planning permission ref. C/07/1648, both of which were for erection of an office building and all ancillary works and comprised the submission of details pursuant to outline planning permission C94/0770.
10. An initial notice under s.47 of the Building Act 1984 is a notification given to a council by a person intending to carry out works and by an approved building inspector in relation to those works. It includes confirmation of various matters such as the existence of an insurance scheme and plans of the intended works. However, the notice does not provide the date on which the works were actually carried out – which I would expect to be confirmed by, for instance a record of inspection by the approved inspector, or a record provided by the works contractor.
11. The Initial Notice clearly relates to an office and retail development on Units 11, 12 and 13, whereas the ARM equally clearly relates to a Use Class B8 distribution centre. The drawing that the appellant has submitted at my request, which I understand was submitted with the Initial Notice³, shows the drain in question in considerable detail, and also shows two buildings in outline, labelled Unit 12 and Unit 13. This drawing appears to show a section of a larger

¹ Decision notice ref. C94/0770.

² Decision notice ref. C07/2087, dated 10 September 2008.

³ Drawing no. IP11_637_09/001, dated September 2010.

site, which can be seen on drawings no. 1402-11000P and 1402-11000M. The former shows a large retail unit (Unit 11) and two smaller office units (Units 12 and 13). This ties in with the description of development stated in the Initial Notice. The latter is an approved ARM drawing for Units 12 and 13⁴. An application for ARM for the retail Unit 11 was withdrawn⁵.

12. The appellant claims the plan submitted with the Initial Notice showing the offices scheme was used as an expedient, since it was the only one available in the short timeframe that gave relevant ground levels. I find this a dubious argument, since it is highly probable there would have been a suitable survey plan on which drainage information could be plotted, and in any case the submitted plan accords with the description of the development as office and retail.
13. On the other hand the drawing relating to the distribution centre ARM⁶ shows a small building close to the site entrance and extensive area of parking or storage marked out in bays, surrounded by a 3 metre high acoustic fence – all consistent with the terms of that ARM. This drawing shows no details of any drainage proposals.
14. The government's Planning Practice Guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability⁷.
15. The Council may not be entirely clear as to which other scheme the drainage works relate. However, the burden of proof is on the appellant to provide precise and unambiguous evidence on this matter. In this case the drainage plan, and the scheme referenced in the Initial Notice strongly suggest the scheme was other than the proposed distribution centre.
16. The Initial Notice does not to my mind link the intended drainage works unambiguously to the development approved under the ARM – notably in the reference to the office and retail development on Units 11, 12 and 13, rather than to the distribution centre approved for Unit 11. Furthermore, although the notice came into force on 10 September 2010, there is no precise evidence as to when the works were actually carried out.
17. Overall, I consider the appellant's evidence is far from precise, and there is considerable ambiguity as to which scheme the drainage works relate. On the balance of probabilities it more likely that the works related to some other scheme than that approved under ARM ref. C07/2087, dated 10 September 2008, and I do not consider there is adequate evidence to show that material operations sufficient to start development of the approved distribution centre began within the time limit set out in the planning permission.

⁴ ARM application ref. C07/1909, dated 3 July 2008.

⁵ ARM application ref. C07/1910.

⁶ Drawing no.1402-14000C.

⁷ Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.

Conclusions

For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the appeal site as a distribution centre was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Stephen Brown

INSPECTOR