



Appeal Decision

Site visit made on 13 January 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/Y1138/X/19/3221440

Orway Porch, Broad Road, Kentisbeare EX15 2EY

- 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 David Snell against the decision of Mid Devon District Council.
 - The application Ref 18/00640/CLU, dated 17 April 2018, was refused by notice dated 13 August 2018.
 - The application was made under section 191(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 described as: The Lawful implementation of Planning Permission 15/01357/FULL for the erection of an agricultural workers dwelling.
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Summary of Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse a certificate of lawfulness concerning the implementation of planning permission ref 15/01357/FULL (the planning permission) is well founded.

Reasons

3. The planning permission for an agricultural workers dwelling was granted on 8 February 2016 subject to 7 planning conditions. Condition 1 states that the '*development hereby permitted shall be begun before the expiration of one year from the date of this permission.*' To have lawfully implemented the planning permission the appellant will need to demonstrate, on the balance of probabilities, that before 8 February 2017 a material operation comprised in the development had commenced without breaching any other relevant planning conditions.
4. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities. However, to assist in this the Council does not dispute that the works described by the appellant were commenced before 8 February 2017.
5. Those works can be broadly summarised as the widening of the existing gateway, grading back the land to create banks and erecting fencing and gates, as well as planting, in order to create what the appellant felt was a suitable

access to the dwelling. It is said that these works were undertaken in accordance with a plan submitted to the Council pursuant to the approval of condition 3 of the planning permission. This is a matter to which I shall return later in my decision.

6. The planning permission related solely to the erection of an agricultural workers dwelling. The approved site plan¹ provides an existing site plan, detailing the existing track and access onto the road, as well as the proposed site plan, showing the same track and access as well as the position of the dwelling, parking and planting. There has been no compelling evidence brought to my attention to demonstrate that the approved plans or planning permission itself related to alterations to the existing access or track.
7. Rather, the appellant contends that it would have been clear to any Council Officer visiting the site that the proposed site plan involved significant changes to the access way as the existing site plan that had been submitted was not accurate. However, based on the various plans and photographs that have been submitted by the parties I am not convinced this would have been the case. Moreover, whilst the area where the works have taken place are within the application site, as denoted by the red-line, the submission of an inaccurate plan is entirely down to the appellant and it would appear the planning application, and planning permission that followed, was silent about any such changes.
8. Condition 3 of the planning permission required the submission of a landscaping scheme, including details of any changes proposed in existing ground levels and details of any boundary treatments to be erected on site. It is contended that the plan submitted to the Council pursuant to condition 3 also sought to address the inaccurate plan. However, neither this plan nor the supporting written statement annotates or describes any changes to levels or apparent access widening or fencing in this location. Moreover, the scope of condition 3 is necessarily restricted to landscaping matters and I am advised that an approved plan² only details that there are to be level changes in the location of the dwelling. Even if I am wrong and the details submitted pursuant to condition 3 did highlight the inaccuracies and annotate or describe the works undertaken by the appellant, it was not in my view the correct planning mechanism to facilitate approval of the aforementioned significant changes described by the appellant, and he could not unilaterally decide that this was to be the case. The Council also maintains that it has not approved the submitted details.
9. The works undertaken, as a matter of fact and degree, are therefore not comprised in the development as they are not distinctly referable to the planning permission. In addition, I am not satisfied that the works undertaken could be regarded as simply to facilitate the approved development as the access and track also serves agricultural buildings and the fencing, gates and planting secures this larger overall site. Even if it was the intention of the appellant to implement the planning permission, for the above reasons, I conclude this was not the case.
10. In light of my findings I do not need to consider whether the works undertaken in themselves were a material operation as opposed de minimis; although I

¹ Drawing No: 1431/04C

² Drawing No: 1431/06C

recognise that very little is needed to initiate development under s56(1) of the Act. Furthermore, the effect of condition 3, in respect of matters pertaining to conditions precedent and its deemed discharge, do not need to be considered.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

12. The appeal is dismissed.

Paul T Hocking

INSPECTOR