



Appeal Decision

Site visit made on 6 July 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2020

Appeal Ref: APP/U1105/X/20/3245342

Land at Rear of Chestnut House, Bunts Lane, Seaton EX12 2HU

- 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 Mrs L Sweetland against the decision of East Devon District Council.
 - The application Ref 19/0822/CPL, dated 10 April 2019, was refused by notice dated 23 July 2019.
 - 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 described as "construction of a dwelling on the land, in accordance with grant of planning permission 12/0966/OUT, but without complying with condition 3 on the reserved matters approval 15/1949/RES."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has not disputed that the planning permission for a new dwelling on the site remains capable of being lawfully completed. Given the matters in dispute in this case and given my overall conclusion that the appeal should be dismissed, I have not sought additional evidence about those matters and therefore make no judgement of them.
3. Prior to my site visit, the main parties were informed that I would be dealing with this case and that I had dealt with a previous appeal on the same site. My involvement with that previous appeal which related to the planning merits of that case have not affected this decision which turns on matters of law.

Reasons

4. Outline planning permission was given in 2012 for the construction of a dwelling on the appeal site (ref 12/0966/OUT) – the outline planning permission). Subsequent reserved matters were approved on 3 November 2015 (ref 15/1949/RES - the reserved matters). The main issue in dispute in this case is whether condition 3 of the reserved matters decision can be relied upon to achieve its intended purpose. Condition 3 states:

"The means of vehicular access to and from the site shall be from Marlpit Lane only and there shall be no means of vehicular access to serve the site from

Bunts Lane and the site shall not be occupied until the wall indicated on the southwest and northwest boundaries has been constructed in accordance with further details that have been submitted to and in writing with the Local Planning Authority to be agreed. The boundary wall shall be installed and maintained in perpetuity to prevent unauthorised access to Bunts Lane.”

5. The reason given for the condition is:

“In the interests of highway safety and in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the Adopted East Devon Local Plan and policy TC7 (Adequacy of Road Network and Site Access) of the Emerging East Devon Local Plan.”

Interpreting the planning permission

6. As confirmed within the Planning Practice Guidance (PPG) an outline planning permission allows for a decision on the general principles of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more ‘reserved matters’. The PPG goes on to explain what reserved matters are and ‘access’ to and within the site is confirmed as one of those matters. There is no dispute that at the time of the outline planning application ‘access’, was also a matter that could be reserved as set down in legislation applicable at that time¹.
7. It has been held that a planning permission is a public document which may be relied upon by parties unrelated to those originally involved. Furthermore, it should not generally be necessary to look to extrinsic evidence other than where there is some ambiguity. The public should be able to rely on a planning permission which is plain on its face without having to consider whether there is a discrepancy between the permission and the application. Furthermore, the planning permission is the outline permission with reserved matters being only details pursuant to the permission.
8. The Council did not include a condition explicitly setting out what the reserved matters were at outline stage. It would have been better practice to include such a condition, and the absence of it creates an ambiguity. Whilst a reasonable interpretation is that all matters were reserved rather than the details of any matters having been agreed, it is reasonable in my view to look to some relevant extrinsic information to clarify this. It is significant in my view that the description of the proposal on the outline application form stated that “all matters reserved for subsequent consideration”. Also, all of the boxes were ticked under the instruction at section 3 of that form, “please indicate all those reserved matters for which approval is being sought.” The intention of the applicants was clearly therefore to seek a decision on the general principles of developing the site without defining any detail at that time.
9. The various details shown on the outline drawing ‘TW09/90/1A’ as referenced on the outline planning permission decision notice and which is stamped as approved, illustrate one way that the site could be developed. This shows an illustration of a driveway leading to Seaton Down Hill/Marlpit Lane. The red-line indicating the application site also goes around the existing lane leading onto Bunts Lane. Full details of the potential accesses were not shown on the outline application, only the general positions of 2 potential routes. A

¹ Currently article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 is currently relevant

reasonable interpretation of these documents is therefore that either access would be considered at the stage of considering the reserved matters. When the reserved matters application was submitted by the same applicants, the form within section 5, defines that approval was being sought for all of the reserved matters, including "access".

10. The Council acknowledges that there was a debate by Councillors about the suitability of 2 potential routes to access the approved development and that they were advised by officers to consider attaching a condition to set their preference down at that stage. That was not done. The formal decision of the Council at the outline stage therefore did not rule out that either access could be considered at the reserved matters stage. When the access as a detailed, reserved matter was considered, the Council did formally determine that one of the potential accesses was not suitable.

Validity

11. The appellant has referred to the advice within now superseded guidance of Circular 11/95 "Use of Conditions in Planning Permission" which states that "if a local planning authority consider that whatever the precise form the development is to take, access to the buildings should be from a particular road (or, alternatively, that there should be no means of access from a particular road), then a condition to this effect must be imposed on the outline permission."
12. The Council's report leading to the approval of the reserved matters application acknowledges the debate that was had regarding the imposition of a condition at the outline proposal stage. However no formal determination was made about that and the Council were not at that time being asked to consider which access was acceptable. It has been held that at the reserved matters stage, further conditions may be imposed provided they arise directly from the reserved matters application and do not materially derogate from the outline planning permission.
13. The details of the access were not settled at the outline stage and so in my view the principles laid down in the *Elmbridge*² case referred to me, are not applicable. It is also interesting to note that in that case, although it was determined that the condition in question was invalid, it was too late to challenge its validity, which should have been done via judicial review within the normal time-scales. Furthermore, I do not consider that the condition was unlawfully imposed or that it is unenforceable. From the evidence provided there appears to have been a proper planning purpose to the imposition of the condition and therefore the principles of the *Basingstoke*³ case also do not apply here.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a dwelling on the land, in accordance with grant of planning permission 12/0966/OUT, but without complying with condition 3 on the reserved matters approval 15/1949/RES, was well-founded and that the appeal should fail. I will

² R v Elmbridge BC Ex p Health Care Corps Ltds [1992] JPL 39

³ Basingstoke and Deane BC v SSCLG & Stockdale [2009] EWHC 1012 (Admin); [2009] JPL 1585

exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Harwood

INSPECTOR