
Appeal Decision

Site visit made on 14 July 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 24th November 2020.

Appeal Ref: APP/Z3825/W/19/3241574

Next door to Furzedown Field, Kithurst Lane, Storrington, West Sussex RH20 4LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision required under Article 3(1) and Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Philip Orpwood (Norbertine Order) against the decision of Horsham District Council.
 - The application Ref DC/19/1113, is dated 23 May 2019.
 - The development proposed is to resurface access road.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and means of construction of resurfacing of access road at land next door to Furzedown Field, Kithurst Lane, Storrington, West Sussex RH20 4LP in accordance with the terms of the application Ref DC/19/1113, dated 23 May 2019, and the plan and written information submitted with it.

Procedural Matters

2. Another appeal was made by the appellant for another development on nearby land¹. For the avoidance of doubt, I have determined these two appeals on their individual merits. Although both propose development to serve the same land, the proposals are considered under different legislation and I have therefore made separate decisions on each.
3. The provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), grant planning permission for development described in Schedule 2 of that Order. Article 3(2) provides that any permission granted by Article 3(1) is subject to any relevant exception, limitation or condition specified in Schedule 2.
4. The requirement for prior approval is akin to a pre-commencement condition attached to the grant of planning permission by Article 3(1), and development which is constructed not in accordance with the terms or conditions of the permission would be at risk of enforcement action. However, the prior approval procedure set out under Class E makes no provision for any determination to be made as to whether the development would be permitted development, i.e.

¹ APP/Z3825/W/19/3241971

- whether it would comply with the conditions, limitations or restrictions applicable to that Class. Therefore, that matter is outside of my remit in this appeal.
5. The prior approval procedure under paragraph E.2. of Class E requires the local planning authority to assess the proposed development solely on the basis of whether prior approval is required for the siting and means of construction of the private way. Therefore, my determination of this appeal has been made on the same basis.
 6. The Council gave notice on 20 June 2019, within 28 days following the date of receiving the application, that prior approval of the siting and means of construction of the resurfacing of the access was required. That notice triggered the second stage of the prior approval process, requiring the appellant to submit those details.
 7. Following that notice, there was a discussion between the Council and the appellant regarding the surfacing materials and other matters. The appellant had originally proposed that the access be resurfaced in pervious concrete blocks, however the Council suggested an alternative finish. Specific details of the siting and means of construction of the proposed new surface were subsequently provided by email on 11 October 2019, when the appellant stated that they would construct a hardcore base with crushed stone finish.
 8. The appellant has requested that I also consider the use of blocks, however while images of three different blocks have been submitted, there are no details before me of the means of construction of the surface using those materials, such as a cross-section or detailed written description of the method of laying the blocks. Therefore, I cannot consider that option as part of this appeal. Furthermore, the prior approval process under Class E does not allow me to impose any conditions on any grant of prior approval other than those set out in the GPDO. Consequently, I am unable to impose a condition requiring details of the means of construction using concrete blocks to be submitted at a later date. Therefore, I have considered the appeal on the basis that a hardcore base with crushed stone finish is proposed.
 9. After this appeal was submitted, the Council issued a decision on 25 November 2019 stating that, had it been in a position to determine the proposal, it would have determined to grant prior approval for a crushed stone finish in accordance with the details in the appellant's email of 11 October 2019. It is unclear from the legislation what the timescales are for submission of prior approval details or for the Council to issue a subsequent decision. Consequently, there is some doubt about whether the Council's decision was actually issued in time. Nonetheless, the appeal has been submitted against non-determination, which the Council does not dispute, and I have therefore determined the appeal on the same basis.

Main Issue

10. The main issue is therefore the effect of the proposed development on the surrounding area having regard to its siting and means of construction.

Reasons

11. I saw at my site visit that some works have taken place on the wider land, however these appeared to be outside of the red line on the submitted site plan showing the siting of the proposed resurfacing. As such, there is no compelling evidence before me that resurfacing of the access commenced in advance of a grant of prior approval.

12. The appellant's submissions indicate that use of the existing access causes issues with mud and debris being carried onto the road. The submitted details of means of construction propose a consolidated, permeable surface, and as such the proposal would be likely to reduce material being dragged or washed onto the road. The details submitted do not include any change to the gradient of the access, or removal of any part of the adjacent hedge, therefore these do not form part of the development for which prior approval is sought. Consequently, the proposal is unlikely to increase debris or surface water run-off onto Kithurst Lane compared to the existing situation, and as such would not adversely affect highway safety.
13. My attention has been drawn to previous appeal decisions² which identified potential for Great Crested Newts (GCN) to be present on the appellant's land. I have not been provided with precise details of the extent of those appeal sites or the area surveyed for GCN, and from the descriptions given in the appeal decisions I cannot be certain that either scheme included the land subject of this appeal. Furthermore, the proposal is for a new surface only, and the details of siting show that this would not extend beyond the existing access. Consequently, there is no substantive evidence before me that the siting or means of construction proposed would impact on any GCN that may be present on other land in the appellant's ownership.
14. Accordingly, I conclude that, having regard to its siting and means of construction, the proposed development would not adversely affect the surrounding area.
15. The proposal is to resurface an access which already exists and can be used, and the prior approval matters are limited to those set out above. Both the Council and interested parties have made representations in respect of the appearance of the proposed access after resurfacing, however the prior approval matters under Class E do not include appearance, and as such this is not a matter before me.
16. Furthermore, while I recognise the concerns of interested parties regarding the need for the access, the impacts of its use and the potential for noise, disturbance and disruption during construction, those issues are also outside of the scope of this appeal.
17. Other issues raised include concern that the proposal seeks to overcome part of a previous Inspector's objection to housing development on the appellant's land, the presence of overhead cables and maintenance of Kithurst Lane. These are not however matters that I can consider in this type of appeal. Any future application for development would be considered on its own merits, and any requirements for consent from other parties are civil matters for the appellant to resolve.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted. The GPDO requires that the development must be carried out within the time period specified in Class E and in accordance with the details approved. For the avoidance of doubt, the approved details are the site plan, and the appellant's email of 11 October 2019.

L McKay

INSPECTOR

² APP/Z3825/W/18/3208461, APP/Z3825/W/18/3208463