



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/X3540/X/21/3277801

Glebe Farm Church Road, Ellough, BECCLES, NR34 7TR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Park Venture LTD against the decision of East Suffolk Council.
 - The application ref DC/20/4426/CLP, dated 3 November 2020, was refused by notice dated 17 May 2021.
 - 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 confirmation that following the completion of development under planning permission DC/14/1917/FUL as amended by planning permission DC/18/4872/VOC condition 1 of planning permission reference DC/18/4872/VOC no longer applies to the site and additional units can be placed on the site without being constrained by the approved layout subject to the site remaining in a mixed use of caravan and equestrian uses.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is whether the decision to refuse to grant the certificate of lawful development was well-founded.

Planning history most relevant to appeal

3. The original permission reference DC/14/1917/FUL was granted on 23 October 2014.
4. The parties accept that this development was begun by the construction of the access.
5. A new permission was granted following the application for variation of conditions reference DC/18/4872/VOC ('the 2019 Permission'). The description of the development on the 2019 Permission refers to 'Change of use of land to allow for siting of 10 timber holiday lodges and 1 timber reception lodge, together with new access from the highway, parking for cars (alongside each lodge), new trackways, landscaping and horse paddock areas with new timber post and rail fencing.'
6. The parties accept that the 2019 Permission is for a mixed use of holiday accommodation and equestrian use.
7. It is for the appellant to prove all the elements of their case on a balance of probabilities. They must prove that:
 - a) The 2019 Permission is extant;

- b) That if Condition 1 on the 2019 Permission had been fully complied with it would not have a continuing effect to restrict the layout; and
- c) That additional units could therefore be placed on the site without being constrained by the layout plan subject to the site remaining in a mixed caravan and equestrian use.

Condition 1

8. Firstly, the parties accept that the 2019 Permission is extant and Condition 1 provides:

"The development hereby permitted shall not be brought into use until it has been completed in all respects strictly in accordance with drawing numbers NC10.068/201 and 201210/A received 28 July 2014 and the following Lodge details:

Pathfinder Evolution

Pathfinder Stockholm

Prestige Foresters

Prestige Dovecote;

New Forest Brewery

Ormington Pine House and

Willerby Mulberry

received 26 November 2018 for which permission is hereby granted or which are subsequently submitted to and approved in writing by the Local Planning Authority and in compliance with any conditions imposed by the Local Planning Authority.

Reason: To secure a properly planned development."

9. Condition 1 prevents use of the development until it has been completed in accordance with the approved plans. Caselaw holds that a condition must be construed objectively and by what a reasonable reader construing the condition in the context of the permission as a whole would understand. Condition 1 does not include a requirement to retain the layout in accordance with the approved plans once this has been completed, and it is not necessary to imply any additional words in order for the condition to work.
10. The use of the word 'subsequently' in the condition must apply to drawings and details agreed before the development is brought into use initially, as that is the whole premise of the condition which is worded to ensure specific works are completed prior to any use. It does not make sense to suggest that the details could be submitted to and approved by the Council after the development had already been brought into use.
11. Condition 1 would therefore not continue to subsist once it had been complied with in full, but it does remain relevant to the interpretation of the planning permission as a whole, and can still be relevant in construing what the permission actually allows.

Description of proposed development

12. The appellant states that an LDC application for proposed development is determined solely by reference to what is applied for - in this case confirmation that *'additional units can be placed on the site without being constrained by the approved layout subject to the site remaining in a mixed use of caravan and equestrian uses'*.
13. The appellant has provided a suggested layout plan but this plan is not referred to in the description of the proposed development as part of the application or appeal, or as a modification of the terms of the application by the appellant. Indeed, the appellant confirms that the number of units shown on the suggested layout plan is not necessarily the number that would be placed on the site. The layout plan is therefore not part of the LDC application. At no point during the application or appeal has the appellant provided a specific number of additional units to be considered, and this leads to imprecision in the description of the proposed development.
14. It is not possible from the appellant's description of proposed development to know whether the stationing of additional units would lead to a material change of use, irrespective of whether it would remain in the same mixed use. The description is simply too vague and as it is not possible to ascertain whether there would be a material change of use, it is therefore also not possible to say whether the proposed development would be lawful.
15. The facts of the case mean that it is not possible to ascertain whether an increase in an unspecified number of units would lead to an intensification of use which may be of such a scale as to change the character of the use (as discussed in the Thanet case¹). When issuing an LDC it is necessary to avoid doing so in imprecise terms that are too wide so as to preclude future enforcement action if intensification does lead to a material change of use.
16. The appellant states that their case is based on the premise that an increase in the scale of a use alone is insufficient to lead to a material change of use if the impacts do not lead to a definable change in the character of the use. I agree with this premise. However, the description of the proposed development is not precise enough to capture the distinction between an increase in the number of units and a change in the character of the use. Intensification or a change in the nature or extent of a use can result in a material change of use, irrespective of whether the description of the mixed use remains the same.
17. While there may be no conditions limiting the number of units that can be stationed on the site, an increase in the number of units could lead to a material change of use which would require express permission as set out above.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of confirmation that following the completion of development under planning reference DC/14/1917/FUL as amended by planning permission DC/18/4872/VOC condition 1 of planning permission reference DC/18/4872/VOC no longer applies to the site and additional units can be placed on the site without being

¹ R v Thanet DC ex parte Tapp & Another [2001] EWCA Civ 559

constrained by the approved layout subject to the site remaining in a mixed use of caravan and equestrian uses 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.

Zoë Frank

INSPECTOR