



Appeal Decision

Site visit made on 30 May 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/Q1153/X/22/3306005

The Old Mill, Mill Road, Okehampton, EX20 1PR

- 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 Okehampton Skills and Sports Trust against the decision of West Devon Borough Council.
 - The application ref 2016/22/CLP, dated 9 June 2022, was refused by notice dated 8 July 2022.
 - 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 for the proposed demolition of industrial buildings that surround the listed chimney, site clearance make good/secure site.
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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 any use or operations are not relevant and 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. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

Main Issue

4. I consider the main issue to be whether the Council's decision to refuse to grant an LDC was well founded. This turns on whether the conservation area consent remains extant.

The appeal site and relevant planning history

5. The site of the Old Mill comprises a number of former industrial buildings next to the East Okement River. The Council was the landowner and applicant for three linked applications for the appeal site.
6. Application 1172/2001/OKE approved the demolition of old industrial buildings and construction of a new cycle route (pedestrian and cycle path) strictly in accordance with the drawings submitted on 2 January 2001 as amended by drawing no. 31 received on 23 February 2001.

7. Conservation Area Consent 1173/2001/OKE was for the demolition of/or part of Old Mill Site in accordance with the application received on 3 January 2001. Conditional approval 13 March 2001.
8. Listed building consent 1174/2001/OKE approved the removal of structural inserts into the chimney as part of surrounding demolition work and making good the stonework.

Reasons

9. The appellant claims that 1173/2001/OKE for 'demolition of industrial buildings' applies to all buildings on the site and was not limited to specific buildings. As certain buildings were demolished, the consent was implemented and remains extant such that the demolition of further buildings would be lawful.
10. The time when development has begun is set out in s56 and is when any material operation comprised in the development is carried out. This is not an area of dispute between the parties. The dispute appears to rest on reliance on particular documents and their relevance.
11. The Council advises that application 1173/2001/OKE indicates that the extent of the proposed demolition is 'as marked in green on DRG 635/30A'. This drawing was not scanned at the time but a drawing with the same reference and showing buildings to be demolished in green and retained forms part of application 1172/2001/OKE for the cycle route. Both applications were considered at the same Committee with the cycle route file being more comprehensive. The Council considers that the details and drawings in 1172/2001/OKE show that demolition was restricted to specific buildings. They state that the buildings marked in green on drawing 635/30A broadly correlates with those expected to be demolished as described in a supporting heritage assessment. The Council refers to case file correspondence and the officer report which refers to selective demolition and broadly related to the recommendation in the heritage assessment.
12. The heritage assessment included with 1173/2001/OKE indicates that buildings 1, 2, 6, 7 and 8 are to be demolished and buildings 3, 4, 5, 10, 11, and 12 to be retained and that the Grade II chimney stack would be retained, repointed and capped. However, buildings 3,4 and 5 have been demolished, and are shown to be demolished on drawing 635/30A albeit contrary to the heritage assessment.
13. The appellant asserts that the demolition of additional buildings not indicated as such in the heritage statement confirms that an unrestricted conservation area consent for demolition in full (or in part) was granted under 1173/2001/OKE. Additionally the appellant claims that as the 'red line' on the site location plan contains the whole of the site that the demolition of buildings within that area is allowed. However, this is a misunderstanding of the purpose of the 'red line' on a location plan.
14. The appellant considers that the Council has made a wrong assumption about drawing 635/30A in 1173/2001/OKE being the same as that in 1172/2001/OKE, which is a landscape plan and, in any event, the full identification number is not fully visible. The appellant points out that the same drawing was submitted for the three applications but were all coloured differently. Additionally, 1173/2001/OKE would not include further buildings as

a precaution to obtain demolition consent for all or some of the buildings on site. It is further argued that the buildings marked as retained are included within the approval by the overriding consent and that this would have been a pertinent approach and safeguard the scheme should the demolition of adjacent buildings cause issues.

15. The absence of drawing 635/30A from the records associated with the conservation consent casts considerable doubt over what may or may not have been approved. Case law relating to the interpretation of planning permissions is helpful in this appeal. The basic rule is that a permission should stand by itself and its meaning should be clear within the four corners of the document and that relevant plans should be incorporated explicitly.
16. In this appeal, consent is granted for 'the demolition of/or part of' the Old Mill Site, in accordance with the application received on 3 January 2001. The brief particulars of the application refer to the demolition of industrial buildings. The consent is subject to three reasons relating to commencement, the protection of bats and the approval of a landscaping scheme. No drawing is explicitly referred to.
17. In *Wood v SSCLG & the Broads Authority* [2015] EWHC 2369 (Admin) it was held that an inspector in seeking to identify the lawful use of the relevant planning unit, was entitled to consider all of the public documents and drawings comprised in the relevant planning applications, as well as the decision notices. He was also entitled to have regard to the development which had in fact been carried out. The approach was not inconsistent with relevant case law.
18. This 'pragmatic' approach was endorsed in *University of Leicester v SSCLG & Oadby & Wigston BC* [2016] EWHC 476 (Admin) where the High Court held that in order to resolve ambiguity on the face of the PP, it is permissible to look at extrinsic evidence including but not limited to the application form and other documents, depending on the circumstances of the individual case.
19. Taking account of the various connected applications that were submitted and determined at the same time and the documents and plans associated with them, it appears that the intention was to demolish some but not all buildings. The fact that the Council demolished more buildings than the heritage assessment identified is not of any particular significance as they were identified on drawing 635/30A. No explanation has been given for the additional demolition but this would have been within the scope of the consent.
20. The evidence leads me towards the Council's conclusions on the interpretation of the consent and that it should be interpreted in the context of all of the documentary evidence. Reference in the decision notice to include all buildings indicates what might have been a prudent approach on the part of the Council if the Council were uncertain as to the total extent of demolition required until demolition had begun, as this is a situation that sometimes arises when demolishing or carrying out works to old industrial buildings. However, this is speculation on my part.
21. What is unclear is whether, at the time demolition occurred, any further demolition was intended or whether the operations that took place were all that were intended or considered necessary either for making the site safe and/or enabling the construction of the cycle path. No evidence has been put forward by either party that helps my understanding on this matter which is

understandable due to the intervening years. It is an arguable case that when these works were undertaken, and were substantially completed, the consent had been spent and could not be resumed without further permission. This would be probable if the Council had made a choice to demolish only some and not all the buildings, particularly if demolition occurred as one contract or in one operation.

22. I conclude that the appellant has not shown on the balance of probabilities that conservation area consent 1173/2001/OKE provides for the further demolition of buildings within the site.
23. The Enterprise and Reform Act 2013 abolished the system of Conservation Area Consent. Instead proposals to demolish certain unlisted buildings in conservation areas will require planning permission for this to take place lawfully on the appeal site.

Conclusion

24. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed demolition of industrial buildings that surround the listed chimney, site clearance and making good/securing the site 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.

P N Jarratt

INSPECTOR