



Appeal Decision

Hearing held on 21 November 2023

Site visit made on 21 November 2023

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 08 January 2024

Appeal Ref: APP/N0410/X/22/3310567

Cliveden Stud House Cliveden Road, Taplow, MAIDENHEAD, SL6 0HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mahadevan Krishnamohan against Buckinghamshire Council - South Area (South Bucks).
 - The application ref PL/22/2826/EU is dated 8 August 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is that Cliveden Stud House as built is materially different to the dwelling permitted under planning permission references ER/1466/68 and ER/679/70
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Decision

1. The appeal is dismissed and the application for a LDC is refused.

Applications for costs

2. An application for costs was made by the appellant against the Council. That will be the subject of a separate decision.

Preliminary Matters

3. For Lawful Development Certificates the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make the appellant's version of events less than probable, there is no good reason to refuse it, provided the appellant's evidence is precise and unambiguous to justify the grant of a certificate on the balance of probability.
4. The courts have held that when looking at planning permission compliance, the development needs to be looked at in the round, not only the differences, but also to the degree of conformity with the approved plans.
5. It was acknowledged by all that if the outline application site was the building footprint identified by the word 'red', then the reserved matters application, with the building mainly outside that building footprint, would not be a valid application for reserved matters. It was also accepted that if the building is not that approved by the outline permission, the conditions attached to the permission would not apply to the building as built.

Reasons

Siting

6. The appellant argues that the original outline permission identifies the appeal site as the footprint of the building itself. The plan obtained from the microfiche is not coloured, but someone has added a later handwritten note directed towards the building plan as 'red'. It is argued that this is the application site, and as the reserved matters plan is mainly outside the application site it does not relate to that application. However, there is also a line drawn on the block plan at the perimeter, the colour is not identified, although it is not shown as a complete enclosure and is not marked up. There is nothing to indicate that the 'red' colour directed at the building identifies the application site.
7. The letter accompanying the outline application says there is a 'block plan indicating the position of the house'. It does not say indicating the position of the application site, which I consider would be likely if the house was the application site.
8. The appellant noted the aim to be close to the stud buildings and was aware of the Green Belt location. He says the intention was for it to be within the 'hedge line' and not stray into the adjacent field. While it was the case that the siting with the first part of the outline application was inside the hedge line, there is no evidence this was a requirement not an aim, and the fact that the Council approved the reserved matters siting outside of this hedge line would indicate it was not a requirement.
9. Condition 4 requires general compliance with the block plan, to ensure a satisfactory standard of siting, design and appearance. I consider that general compliance should be taken as its ordinary meaning; it is not specific and a building sited in that location, part of which overlaps the original outline application block plan building position, is in general compliance.
10. The outline application form asks if the development consists of the erection of any buildings, do you desire this to be an outline application subject to the subsequent approval of the County Council with respect to any matters relating to siting, design or external appearance of the buildings. (if you answer yes you need not give particulars of these matters in this application or submit with it the block and building plans referred to on the back of this form). The answer was 'outline application'.
11. The courts have found that it is not essential for drawings to be marked as illustrative if they clearly relate to reserved matters. To my mind the application form makes it clear that this is an outline application with reserved matters. I note the condition relating to details of siting. This is effectively redundant whether the siting was fixed and not a reserved matter, or whether it was a reserved matter. However, in either case there would have been no need for the condition. The fact that the Council included it indicates that it did not see siting as being fixed and the condition reinforces the view that siting was a reserved matter. Design also must be a reserved matter as no elevations were submitted, only a perspective to show the rear of the building.
12. The Council say that there may have been another plan, which was not put on microfiche. I do not place weight on this as drawings attached were identified

in the accompanying letter, but there is no explanation for the line around part of the perimeter. It seems that as this was to be tied to the land forming the stud, that the application site would not be just the building footprint. The situation is ambiguous and therefore I place little weight on the building footprint itself being the appeal site.

13. I acknowledge that the plan showing overall ownership was submitted in relation to a S12 application and not in relation to the outline planning permission. Although condition 6 tied the building to the 'not less than 60 acres of agricultural land' identified, I think little weight can be placed on these plans in relation to deciding the application site for the outline application.
14. I conclude that the outline planning permission itself does not set the location of the building, only an indication. The siting itself was a reserved matter and therefore it is the reserved matters siting that sets the position of the building and in this respect the block plan is most useful.
15. While there is a significant change from the original indicative drawing, the appellant's own assessment shows that the change between the actual siting and the required siting shown on the reserved matters ER 679 70 is very little different, particularly as this is in a relatively open area where there would inevitably be some interpretation in discerning exact reference points. I consider that the location of the building accords greatly with the reserved matters block plan.
16. The previous owner indicates that the constructed building was moved from the position indicated by the planning permission. I consider this is most likely to be referring to a change from the original indicative position of the outline planning permission, rather than the reserved matters block plan, as there is very little difference in the actual position and the block plan position.
17. I conclude, on the balance of probability, that the red line defining the site for the outline application would not have been the building plan itself, as identified 'red' on the plan. It would not be a usual situation, there generally being a site around a building. In this case, matters of design and siting were reserved matters, and even if not necessary or enforceable the fact that a 'siting' condition was added reinforces the likelihood that this had not been set by the outline permission, which it would have been if the plan form of the building was the application site.
18. The appellant argues what was approved at reserved matters stage was not in general compliance. A main difference is the addition of the lower ground floor. This is a semi basement level, the building being two storeys at the front, but with the ground level at the back reduced to reveal the rear elevation of this lower ground floor. I consider that this is in general compliance with the plans submitted and adds no bulk in the Green Belt. Importantly, this was not concealed when the reserved matters application was made, but part of the application, so the Council must have considered it to be in general compliance or it would not have been approved.
19. I therefore also conclude that the reserved matters application related directly to the initial outline application and the details/drawings/siting subsequently approved formed part of the planning application. I accept there are some differences between the outline application and reserved matters, but the floor plans etc. submitted with the outline application did not need to be submitted

and did not form part of the application. However, the block plan, floor plans and perspective were incorporated into the original outline consent to the extent that the reserved matters application was to be in general compliance with them.

20. The appellant says the reserved matters were not submitted in time. The initial outline approval was 31 December 1969 and the reserved matters application was made on 29 April 1970, well within the time limits.
21. Therefore, the fact that there was a small change to the siting further from the stud and a lower ground floor added and other relatively small changes does not make it invalid as the design and layout were for later approval in the reserved matters application, and were approved.

Detailed differences

22. The appellant say the current building, in addition to not being built in the location indicated in the planning permission, has a number of changes to the design, including at building regulation stage, that means what is built is not what was permitted.
23. The arrangement as submitted for the initial outline approval carries little weight as I have taken this to be a reserved matters application, with illustrative drawing, for reasons given above. Therefore, it is the reserved matters detailed drawings that set how the building should be built. I note divergence in that there appears to be a lower ground level between the outline application and the reserved matters application, but as I have noted I consider that the initial application was in outline only and it is clear that the approval of reserved matters was aware of the basement and it was approved. I accept the submitted plans were referred to in the outline permission, but I consider that would have been on the basis of them being illustrative.
24. Reserved matters drawings are drawn to scale, but there are no dimensions. Therefore, there will always be a small degree of differences in measurements and traditionally paper copied drawings could expand and contract a little. A difference in the plan area over such a large building of about 12m² would not be surprising, and certainly not a cause to consider the consent was not as approved and it appears the basement has been made a little larger, by extending it out to the rear. This may account for the difference or some of it.
25. There are some detailed differences, some of which occurred at the building regulation stage and before the building was built, so would not have occurred after construction. I have compared the reserved matters approved drawings with the building regulation drawings. Building regulation drawings would typically show what is intended to be built. Looking at these drawings it appears to me that the same base drawings have been used for each. The consequence of this is that the similarities between the two are substantial.
26. The main change appears to be that the front to back depth of the basement has been increased by a very little. A small number of windows on the elevation have been omitted and the rear outside terrace has been extended around the side of the building. These changes are not significant when considered against the building as a whole and the considerable extent these drawings coincide. The difference between the planning and building regulation

drawings do not suggest that the building did not accord with the planning approval.

27. The appellant notes a number of changes between the reserved matters approval and as built. However, the building has been in existence a long time and changes and alterations could occur that would not affect the fact that the building originally had planning permission. Many windows are identified to have clearly changed, in particular the windows on each wing at the rear, the central rear window, and infilling of the open area on the undercroft. The central window of the rear elevation shows clear evidence that it has been altered at some time in the past and is not original. I consider that it is also likely that other windows have been altered during the building's existence and the original 'undercroft' infilled.
28. The chimney that has appeared towards the end of the building similarly could be an addition; this is particularly likely as if this was part of the original as built building it would have needed building regulation approval. The other main difference is the front porch and windows above. The porch arrangement of the building regulation drawing appears to be very similar to the arrangement of the reserved matters, so the balance of probability is that was most likely to have been built. There is some change, but it is small, and the building is readily recognizable as that approved in the reserved matters.
29. The current front porch arrangement has significant changes from that approved in the reserved matters and the building regulation application and the adjacent window arrangement of the middle part of the front elevation has changed. I think the evidence that this is what was built is weak, but even if that had been the case, the change is not so great to outweigh the fact that most of the building is as approved and readily recognisable as such. The height of the flat roof projection on the side elevation over the garages has been raised in relation to that shown on the reserved matters drawing. Again the evidence for when this occurred is weak, but even if it was when constructed it would not be so significant as to mean that it would not have complied with the reserved matters approval.
30. The overall building, its plan form and its roof shapes show a high degree of conformity with the planning permission. Many of the windows are similar to those shown on the reserved matters drawing. The site location is in a very similar position to the reserved matters block plan. There is about 1m difference in the footprint position, but that is not significant, considering that this was constructed in fields with few absolute reference points. I accept there were changes, some likely to be at the time of construction, but others, on the balance of probability, could well have been made during the life of the building. I conclude overall, even with all the changes identified that the building would, on the balance of probability, have been in accordance with the reserved matters approval.
31. Reference is made to an officer report of 2006 relating to a proposed extension. This notes that the building has not been substantially altered from the original approval. There are differences noted, particularly to the porch and north elevation. It particularly states that the portico was erected in 1996. The appellant says there is a discrepancy in the floor area between that noted and as built. I do not accept that this report suggests the whole of the property is in breach of planning control, it just makes observations, that it 'appears' that the

north elevation was not built as approved, but there is no analysis or balance of the general compliance and inconsistencies made. I do not consider this adds weight to the appellant's argument.

Other Matters

32. I have taken into consideration the other cases that have been put forward by the appellant and take note of the interpretation of the law relating to this matter. However, these types of cases are particularly determinative on their own facts, and in this case I consider that the facts available do not lead to a conclusion that a LDC should be issued.

Conclusion

33. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of 'Cliveden Stud House as built is materially different to the dwelling permitted under planning permission references ER/1466/68 and ER/679/70' 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.

Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

INSPECTOR