



Appeal Decision

Site visit made on 28 June 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2024

Appeal Ref: APP/R1038/W/24/3338077

Land approximately 200 metres east of Woodview, Hut Lane, Killamarsh, Sheffield S21 1BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jeremy White against the decision of North East Derbyshire District Council.
 - The application Ref is 23/0043/FL.
 - The application sought planning permission for construction of fishing pond with driveway and car parking (amended plans), without complying with a condition attached to planning permission Ref 16/00821/FL, dated 20 January 2017.
 - The condition in dispute is No. 2 which states that: The development hereby approved shall be carried out in accordance with the amended plans received on the 2nd November 2016, and referenced 16/05/04/004B, unless otherwise specifically agreed in writing by the Local Planning Authority or otherwise required by any other condition in this decision notice.
 - The reason given for the condition is: For clarity and the avoidance of doubt.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by North East Derbyshire District Council against Mr Jeremy White. This is the subject of a separate Decision.

Preliminary Matters

3. The first part of the address on the application form identifies the site as being 'Land south of Hut Lane.' For more clarity, I have used the decision notice address in the banner heading above.
4. Section 73 of the Town and Country Planning Act (1990) relates to the determination of applications to develop land without compliance with conditions previously attached. An approval of a s73 application effectively creates a new planning permission, with the extant approval remaining intact.
5. The site gained permission in 2017 for the construction of a fishing pond with a driveway and car parking¹, with its Condition 2 identifying the approved plans. The Council identifies that the access point itself was pre-existing and did not

¹ 16/00821/FL

form part of the permission. Conditions were discharged in 2017². The proposal before me seeks to amend the approved plans, to change the size and location of the pond.

6. The Council considers that the permission was not lawfully implemented, and thus lapsed on 20 January 2020. This is because there has been no commencement of works for the driveway and parking, the extensive earthworks were only undertaken in 2022, and those works including the size and location of the pond are in any case significantly different to those permitted. As such, it was not deemed procedurally possible to use a s73 application to amend the permission. The application was, however, refused, with the decision notice identifying that this was to avoid any doubt. A harmful impact on the Green Belt was also a reason for refusal.
7. The appellant considers that they have implemented the gated entrance, access road, and platforms on which the consented car park and pond were approved. They describe the works to the landforms and profiling as still being underway, with the approved layout capable of being achieved. However, they have presented no evidence in support that any of these works was prior to January 2020. The discharge of conditions does not indicate commencement.
8. The Council's Google Earth aerial photograph image dated August 2022 reinforces that the existing crushed aggregate driveway did not exist at that date, with only vehicle track marks in the grass being visible. Therefore, even were I to take the appellant's argument that the driveway is as permitted, and that the rest of the site is still under construction, I am not convinced that these works comprised a material operation being carried out before the permission had expired.
9. As such, I have no evidence before me to suggest that the original permission is still extant. It is therefore not possible to determine the proposed condition 2 amendment under s73 of the Act.

Conclusion

10. For the reasons given above, I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR

² 17/00519/DISCON