



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 30/08/22

**gan Richard E. Jenkins BA (Hons) MSc
MRTPI**

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 19/10/2022

Appeal Decision

Site visit made on 30/08/22

**by Richard E. Jenkins BA (Hons) MSc
MRTPI**

**an Inspector appointed by the Welsh
Ministers**

Date: 19/10/2022

Appeal Ref: CAS-01555-F0R9K6

Site address: Llanerchydol Hall, Welshpool, Powys, SY21 9PQ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M. J. Barrett against the decision of Powys County Council.
 - The application Ref: 21/1055/CLP, dated 7 June 2021, was refused by Notice dated 14 July 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990, as amended.
 - The use for which a certificate of lawful use or development is sought is described on the Notice of Decision as: "Application for Certificate of Lawfulness for a proposed use (Section 192) in order to establish that planning approvals M14760 (outline) and M20115 (reserved matters) have been lawfully commenced and remain extant and that the development of 4 dwellings on the plot known as Site A can proceed".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development outlined on the Application and Appeal Forms differs from that outlined on the Council's Notice of Decision. The parties have however confirmed that there is no prejudice in me dealing with the appeal on the basis of the description set out in the First Schedule of the Council's Notice of Decision. Given that the appeal relates to the Council's decision not to issue a Lawful Development Certificate (LDC), I have no reason to take an alternative view on this matter. I shall consider the appeal accordingly.

Main Issue

3. This is whether the Local Planning Authority's (LPA) decision not to issue an LDC was well-founded.

Reasons

4. The appeal proposal relates to Powys County Council's decision to refuse to issue an LDC under Section 192 of the Act to certify that the planning permissions with Ref: M14760 (outline) and Ref: M20115 (reserved matters) were lawfully commenced, and are thereby extant, and that the development of 4No. dwellings on the land referred as 'Site A' can be developed in accordance with the terms of those approvals.
5. In order to fully understand the proposal, it is necessary to assess the planning history at the site. Firstly, a planning application, with Ref: M14760, was submitted to the LPA in 1986 for, amongst other things, the residential development of 20No. dwellings and new vehicular access. That application was however subsequently amended so that the residential element comprised a scheme of some 16No. dwellings to be phased over three separate sites (Sites A, B and C). A separate outline planning application (Ref: M15946) was subsequently submitted for the 4No. dwellings removed from the original application (referred as 'Site D'). Two separate outline planning permissions were then granted on 4 July 1988, under Ref: M14760 and Ref: M15946, for the erection of 16No. dwellings and 4No. dwellings respectively. A reserved matters application in respect of the 4No. properties proposed at 'Site A' of application Ref: M14760 was subsequently submitted, under reserved matters Ref: M20115, on 14 August 1990, with a Notice of Decision issued on 21 September 1990.
6. It is common ground that the Notices of Decision relevant to the appeal are those relating to the outline application Ref: M14760 and the reserved matters application Ref: M20115. It is also common ground that the works undertaken, that include the creation of passing bays and a spur at the sewer, as well as the provision of BT cabling, comprise '*material works*' for the purposes of Section 56(2) of the Act. I have no reason to dispute this agreed position. However, in order to ascertain whether the construction of the 4No. dwellings at 'Site A' would be lawful under the aforementioned permissions, it is necessary to consider whether or not the '*material works*' were lawfully commenced, having particular regard to the planning conditions attached to outline planning permission Ref: M14760. Of particular relevance in this case is Condition No.2 which states:

"2). The sixteen new dwelling houses are hereby approved under the provisions of Article 5(2) of the Town and Country Planning General Development Order 1977, on an outline application and the further approval of the District Planning Authority shall be required with respect to the following matters hereby reserved before any development is commenced:

- a) The siting, design and external appearance of the proposed buildings or other structures to be erected on the site's, including fences, walls and other means of enclosure;*
- b) details of the access arrangements including car parking and vehicle turning areas;*
- c) details of the landscaping of the site, including the size and species of all proposed planting and any existing species to be retained. The scheme shall include tree and hedge planting along the South and east boundaries of Site A and the North and South boundaries of Site C referred to on plan 14760/A attached to this consent, as well as the new site entrance off the A490 road.*

In the case of the reserved matters specified above, application for approval, accompanied by all detailed drawings and particulars, must be made to the district planning authority not later than the expiration of three years beginning with the date of this permission.

The development to which this condition relates must be begun not later than the expiration of five years from the date of this permission or within the expiration of two years from the final approval of all reserved matters whichever is later.”

7. As set out above, reserved matters application Ref: 20115 was submitted to the LPA following the grant of outline planning permission. Part 6 of the reserved matters Application Form indicates that reserved matters were sought in respect of siting, design, external appearance, landscaping and access. Of particular relevance to this appeal is the fact that, despite lacking detail in respect of species and size (which was a requirement of Condition 2(c) of the outline planning permission), the application was accompanied by a drawing that outlined a broad scheme of landscaping for ‘Site A’ (Plan Ref: L25). The details of that drawing are said to be consistent with the associated ‘Section 52 Agreement’.
8. Nevertheless, I am not persuaded that such evidence is sufficient to discharge the burden of proof upon the appellant to demonstrate that the reserved matter of landscaping was ever discharged by the Council. Indeed, whilst the associated Notice of Decision (M20115) confirms the discharge of Condition Nos. 2a (siting, design and external appearance) and 2b (access), as well as Condition Nos. 5 and 6, it expressly omits the landscaping matters required by Condition No.2c of the outline planning permission (Ref: M14760). Specifically, the Notice of Decision relating to the reserved matters application Ref: M20115 states the following:
- “...RESERVED MATTERS ARE APPROVED for the following development, namely:*
- Erection of four dwellings Llanerchydol Hall Park, Welshpool*
- In accordance with the application and plans submitted to the Council on 14 August 1990 in compliance with conditions 2a, 2b, 5 and 6 of the Notice of Decision dated the 4th day of July 1988 Ref: M14760 subject to the outstanding conditions of the above mentioned decision and to the following conditions...”*
9. The appellant contends that the lack of a reference to Condition 2(c) in the reserved matters Notice of Decision is likely to be erroneous. However, whilst this could potentially be the case, such an assertion is unsupported by any persuasive evidence. In contrast, whilst recognising that it is not enforceable in its own right, it is clearly material to the determination of this appeal to note that the reserved matters Notice of Decision incorporated the following informative note which suggests that the omission of Condition 2(c) from the discharged matters was intentional:
- “There are still outstanding matters to be agreed before this permission can be implemented –*
- A. Landscaping scheme for this area;*
- B. Access onto A490 in accordance with Condition No.10.”*
10. I note the conflict between the fact that access had been discharged under Condition 2b and informative Note B, which required subsequent agreement on “Access onto A490 in accordance with Condition No.10”. I also note the fact that the informative set out on the reserved matters application only referred to Condition No.10 as the other matter that

needed to be agreed before the permission could be implemented, despite a number of other conditions not referred on the Notice of Decision comprising pre-commencement conditions. However, whilst assumptions have been made regarding the reasons for this, nothing has been submitted to lead me to conclude with any confidence that the landscaping matters were discharged by the aforementioned Notice of Decision or any other written correspondence.

11. I have fully considered the assertions that the other sites that formed part of the original proposals ('Site B', 'Site C' and 'Site D') were subject to similar pre-commencement conditions to those for 'Site A' and yet were developed without any evidence of landscaping matters being formally agreed. However, I am not persuaded that such factors assist the appellant in respect of 'Site A', not least because those sites were subject to separate reserved matters permissions. Indeed, any irregularities in respect of those permissions/ developments are stand-alone matters for the LPA. Similarly, whilst I acknowledge the appellant's frustration regarding the ability for the developer to fully discharge the landscaping details for 'Site A' under Ref: M20115, as Condition 2(c) also related to the wider development of 'Site B' and 'Site C', this falls well short of rendering the permission in respect of 'Site A' extant.
12. Therefore, on the basis of the foregoing, I concur with the Council's position that the appellant has failed to demonstrate that, on the balance of probability, the requirements of Condition 2(c) of planning permission Ref: M14760 were properly discharged. Much has been made of whether a not Condition No.2 represents a condition precedent. Nevertheless, it is clear that, amongst other things, Condition No.2 required details of the landscaping of the site, including the size and species of all proposed planting, to be approved by the LPA before any development commenced. The condition was therefore prohibitive in substance and effect and, as a reserved matter, there is little doubt in my mind that, as a matter of fact and degree, the condition goes to the heart of the permission. In coming to this conclusion, I have been mindful of the wide range of legal authorities in respect of such matters, including those referred within the appellant's evidence, and I am satisfied that my findings are consistent with the principles established therein.
13. I therefore find that the development subject of application Ref: M14760 and Ref: M20115 did not lawfully commence within the prescribed timescales. The planning permission is not therefore extant, meaning that the site cannot be lawfully developed under the terms of those applications. For this reason, and having considered all matters raised, I conclude that the Council's decision not to issue an LDC was well-founded. The appeal should therefore be dismissed.

Richard E. Jenkins

INSPECTOR