



Appeal Decision

Site visit made on 9 January 2018

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2018

Appeal Ref: APP/K1128/W/17/3187008

Land at Venn Farm, Brixton, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Patrick Colledge of Grevan Ashmont Retirement against South Hams District Council.
 - The application Ref 1812/17/OPA, is dated 25 May 2017.
 - The development proposed is erection of circa 25 age restricted (55+) bungalow/chalet bungalow dwellings, allotments, public open space and visitor car park (all matters reserved).
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Decision

1. The appeal is invalid and I am unable to proceed to consider the planning merits of the case.

Applications for costs

2. Applications for costs were made by both parties against one another. These applications are the subject of separate decisions.

Reasons

3. The planning application was made in outline with all matters reserved. The submission included a site location plan identifying a parcel of land edged in red and an adjoining area outlined in blue. The application was also accompanied by an illustrative sketch proposal showing housing and estate roads within the red lined area. The blue land was annotated as "allotments / open space / community gardens / community orchard" and was shown to include two accesses (one of them emergency) and a car park.
4. According to the Council, the parcels of land measure approximately 4.2 ha combined. However, the application form identifies the site area as 2.24 ha. This is suggestive of the application site being the area edged in red.
5. Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015, which was the Order in force at the time the scheme was submitted, sets out the particulars that must accompany an application. This includes a requirement for a plan which identifies the land to which the application relates. It is contended that this procedural requirement has been met. However, there is no explanation as to why two separate areas of land have been outlined in different colours on the plan.

6. The Government provides advice on validity requirements in the Planning Practice Guidance (PPG). It explains that the submission of a valid application for planning permission requires, amongst other things, compliance with national information requirements. The PPG¹ stipulates that:

“The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.”
7. Although illustrative, the submitted layout plan provides a clear indication of the manner in which the appellant is intending to develop the land. Specifically, it shows that certain elements within the description of development (notably the change of use of agricultural land to public open space and engineering works to create the visitor car park and accesses thereto) would lie outside of the red lined application site, despite being development requiring planning permission. To accord with the PPG, the entire area should be included within the red line.
8. Furthermore, the plan fails to identify all land necessary for access to the site from a public highway. The PPG stipulates that this is essential in order to meet national information requirements. That the Council did not require the red line to extend to the highway for other sites in the locality is not relevant. S79 of the Town and Country Planning Act 1990 empowers the Secretary of State to deal with the application as if it had been made to him in the first instance. It follows that I am entitled to make a fresh judgement on validity.
9. There is no requirement under the Order for the appellant to provide details of any reserved matters. I note that the Council did not exercise its powers under Article 5(2) to require further details. However, this does not alter the fact that the scheme does not accord with the PPG. I am mindful that the scheme would need a section of access road in order for the proposed development to function. Reliance upon a Grampian condition to secure access, particularly when ownership of the intervening land has not been proven, is not adequate.
10. The Council raises additional concerns relating to landownership. It is apparent from Land Registry searches and the Unilateral Undertaking submitted by the appellant that the blue land is owned by the third parties named in Certificate B. There is no firm evidence to suggest that the appellant has ownership or control over this land. Therefore the correct approach would have been to include the land within the red line and serve notice on the landowners, or to omit it entirely (in which case a different illustrative plan would have been necessary).
11. I understand that Grevan Ashmont Retirement was not registered as a private limited company until several weeks after the application was submitted. The fact that the trading name had not been formalised at Companies House has not prejudiced any party and does not prevent an assessment of the planning merits of the proposal. Thus this particular matter does not in itself make the application invalid.

¹ Reference ID: 14-024-20140306

12. Notwithstanding this, the discrepancy in terms of the blue land ownership and the failure to comply with the PPG mean that the application is invalid. Consequently, the appeal should not continue and I am unable to consider the planning merits of the scheme.

Robert Parker

INSPECTOR