Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/1343
Red Gables, Charlwood Road, Ifield, West Sussex, RH11 0JZ

DESCRIPTION:

Application to confirm that a material commencement has been carried out by virtue of the widening of the access in accordance with approved details plan and to confirm that the permission remains extant and has begun before the expiration of three years from the date of the DC/21/0255 permission (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

DC/21/0255	Proposed improvement in grazing land for livestock and horses (incorporating the importation of material)	Application Permitted on 24.11.2021
DISC/22/0043	Approval of details reserved by conditions 3,4 and 11 to approved application DC/21/0255	Application Permitted on 15.06.2022
DISC/22/0087	Approval of details reserved by conditions 6 and 7 on application DC/21/0255.	Application Permitted on 14.07.2022
DISC/22/0110	Approval of details reserved by condition 5 to approved application DC/21/0255	Withdrawn Application on 18.11.2022
DISC/23/0116	Approval of details reserved by condition 5 to approved application DC/21/0255	Withdrawn Application on 16.11.2023

PLANNING ASSESSMENT

The application relates to a Lawful Development Certificate Existing to confirm that works have commenced under previously approved planning permission reference DC/19/1870.

Article (2) of Section 191 of the Town and Country Planning Act 1990 states:

"For the purposes of this Act uses and operations are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Applicant's Evidence

- *Location Plan*
- *Planning Statement*
- Site photographs

Council's Evidence

- *Planning permission reference DC/21/0255*
- *Discharge of Conditions application reference DISC/22/0043*
- *Discharge of Conditions application reference DISC/22/0087*
- *Discharge of Conditions application reference DISC/22/0110*
- *Discharge of Conditions application reference DISC/23/0116*
- *Google Earth dated 12/2001, 12/2005, 05/2007, 08/2007, 03/2012, 09/2012, 06/2013, 04/2015, 09/2018, 04/2020, 05/2020, 06/2021, and 03/2022*
- *Google Street View dated June 2019, March 2021, July 2021, and May 2024*
- *Consultation response from the Council's Environmental Health Team*
  No comments

Section 191(4) of the Town and Country Planning Act 1990 states that:

"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application…they shall issue a certificate to that effect; and in any other case they shall refuse the application."

F W Gabbitas v SSE and Newham LBC [1985] JPL 630 held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application; provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the "balance of probability".

Relevant Legislation

Section 56(1) of the Town and Country Planning Act 1990 states that *"…for the purposes of this Act, development of land shall be taken to be initiated*

(a) if the development consists of the carrying out of operations, at the time when those operations are begun;

(b) if the development consists of a change in use, at the time when the new use is instituted;

(c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

Section 56(2) continues that *"for the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out."*

Section 56(4) outlines that "material operation" means-

(a) any work of construction in the course of the erection of a building;

(aa) any work of demolition of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, or a building or to any such trench as is mentioned in paragraph (b);

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development."

Discussion

Section 56(4) of the Town and Country Planning Act 1990 outlines that a "material operation" includes "any operation in the course of laying out or constructing a road or part of a road". The wording suggests that the laying of part of a road could be deemed a material operation.

Case law has established a number of tests concerning commencement of development. This includes quantum of works carried out and whether or not this is de minimis. In Malvern Hills DC v SSE (1983) it was concluded that it is not the 'quantum' of the work that is undertaken, but whether the work relates to the planning permission involved. In this particular case, the marking out of a line and width of road with pegs amounted to a "material operation". Laying out was considered by the Court to include marking out the road on the ground. In Connaught Quarries Ltd v SSETR & East Hants DC (2001) it was concluded that the beginning of a material operation under section 56(2) and 56(4) of the Town and Country Planning Act 1990 for the purposes of keeping a permission alive needed to be more than de minimis.

The Planning Statement accompanying the Certificate of Lawful Development application outlines that a material commencement has been carried out by virtue of the widening of the access. Photographs have been submitted to illustrate that the access measures 5m in width, where it is argued that the installation of an unstained fence panel to the right of the main gate demonstrates works have been carried out. The Planning Statement refers to plan reference 10223/103/P3 dated 27.10.2021 which annotates the proposed access road as being 5m wide, where this plan also includes modification to the curb radii as referenced in the Planning Statement.

Planning permission reference DC/21/0255

Planning application reference DC/21/0255 was supported by a Planning Statement reference FINAL Rev A dated January 2021 and a Transport Statement reference 10223 Issue 2 by gta Civils & Transport and dated May 2021.

Paragraph 4.10 of the Planning Statement outlines that the *"the application envisages utilisation of the access with modification via increasing its width and curb radii, and then modestly extending the access from its point at the end of the rear of the domestic curtilage, turning southeast, to run some 45m to the boundary of the application field parcels."* Paragraph 4.11 continues that *"the are of extended access would be created using porous, granular material, which would then be removed upon the completion of the construction phase of the development. The access, as widened, would be retained in perpetuity and continue to serve the adjoining land."* Paragraph 18.5 states that the Transport States *"notes the access will be some 6m in width with a curb radii bell mouth to suit large vehicles turning into and out of the site. The report includes a Swept Path Analysis to demonstrate that this will be suitable to serve vehicles required to deliver material to enable the construction phase of the development."*

The Transport Statement outlines at paragraph 3.6 that the access to The Grove (the application site) measures approximately 5m in width, and this is confirmed by the annotation on plan reference 10223/102 as contained in Appendix A of the document. It is also confirmed at paragraph 5.5 of the Transport Statement that the access will measure approximately 5m in width. This seems to contradict the measurements provided within the Planning Statement, however it is noted that approved plan reference 10223/103 P3 shows the access road measuring to 5m, with the access entrance widening to serve the bell mouth and curb radii.

The documents and approved plans associated with planning permission reference DC/21/0255, indicate that the width of the access serving the development is 5m as existing, with this width not altered by the planning permission. Rather, alterations were approved to the bell mouth and curb radii, with an extension to the access track to the south-east.

Assessment

The information provided in support of the current application, including the photographs submitted, confirm that the access measures to a width of 5m. This is evidenced by the tape measurements contained within the photographs. This measurement corresponds with that annotated and referenced in the approved and supporting documents relating to planning permission reference DC/21/0255. In considering the evidence provided and the approved documents of the planning permission, it would appear that no alterations have been made to the access, which when originally surveyed measured to a width of 5m. This evidence would therefore suggest that no material alterations to the width of the access have taken place.

Google Street View images of the site access date June 2019, March 2021, July 2021, and May 2024. The image dated June 2019 shows the access gate with a stained sloping fence extending from the gate to the adjacent access gate. A post and rail fence extends from the side of the access gate toward the road. The March 2021 and July 2021 images reflect that of the earlier photograph. The March 2024 image shows the post and rail fence having been replaced with a stepped closeboarded fence, with the stained sloping fence extending from the access gate replaced with an unstained closeboarded fence and matching the height of the gate. It appears from these images that the width of the access has stayed the same, with only alterations to the fencing undertaken in the same position. There is no evidence from these images to suggest that the access has been widened. The replacement of the fencing panels in the same location would not be considered to form part of the approved development and would not therefore represent a material operation to implement the relevant planning permission.

Having reviewed Google Street View between July 2021 and May 2024, it appears that alterations were made to the closeboarded fence, however there is no evidence to suggest that the curb radii has been modified or that it required modification given the open frontage as established. Furthermore, there is no evidence available to suggest that the extension to the access track as approved has been carried out. This evidence does not therefore support the claim that alterations to widen the access have been undertaken.

Based upon the evidence submitted to and available to the Council, it has not been demonstrated on the balance of probability that a material operation to widen the access has taken place. There is no evidence to suggest that alterations have been made to the curb radii and bell mouth and it has not therefore been demonstrated that a material operation to commence the development approved under planning reference DC/21/0255 has been carried out.

Other Matters

It is recognised that planning approval reference DC/21/0255 was subject to pre-commencement conditions 3, 4, 5, and 6. Condition 11 also required the submission of details prior to development commencing.

Conditions 3, 4 and 11 were discharged under planning reference DISC/22/0043, with conditions 6 and 7 discharged under planning reference DISC/22/0087. Condition 5 was subject of consideration under references DISC/22/0110 and DISC/23/0116, where both were withdrawn on the basis of insufficient information being received. To date, condition 5 has not been formally discharged.

Condition 5 of the relevant planning permission requires that details of the chemical testing and assessment of the soils which demonstrate the suitability of the soils for the proposed use be submitted and approved in writing by the local planning authority. Subsequently, the condition requires that a verification report be submitted to demonstrate that only soils suitable for the proposed use have been placed on the land is required. The reason for the condition is in the interests of amenity, to enable the local planning authority to regulate and control the development.

This condition specifies that no soils or other material can be imported and re-used within the development site until such time as the details have been submitted to and approved in writing. The approved development related to the importation of material to improve the grazing land for livestock and horses. The approved plans indicate the change in ground levels, which itself is facilitated by the importation of material. Therefore, soil or other material is considered to be fundamental to the development as approved, and to this effect, condition 5 is considered to go to the heart of the permission and represent a condition precedent. It is therefore advised that the development as approved under planning reference DC/21/0255 cannot be lawfully commenced until such time as condition 5 has been formally discharged.

Conclusion

It has not been demonstrated on the balance of probability that a material operation has been carried out to commence development under planning permission reference DC/21/0255.

Recommendation:

1 It has not been demonstrated on the balance of probability that a material operation has been carried out to commence development under planning permission reference DC/21/0255. It has not therefore been demonstrated that planning permission reference DC/21/0255 has been lawfully implemented and remains extant.

Plans list for: DC/24/1343
Schedule of plans/documents **not approved**:

Plan Type	Description	Drawing Number	Received Date
Location plan		NONE	03.09.2024

DELEGATED

Case Officer sign/initial Tamara Dale Date: 11.10.2024

Authorising Officer sign/initial RHERMITAGE Date: 29.10.2024