

Land at Broadlees, Dappers Lane, Angmering

OPINION

Introduction

1. The above land benefits from two planning permissions:
 - Planning permission reference A/27/16/PL, granted by Arun District Council (“the Council”) on 9th February 2017 (“the 2017 Permission”). The 2017 Permission authorises the “erection of 53 care apartments within Class C2, parking, access, footpath, landscaping & other associated works”. The approved layout is shown on drawing 1877-PL(01) 03 – REV H. The approved scheme comprises 4 main buildings together with an internal access road, parking and amenity space; and
 - Planning permission A/1114/18/PL, granted by the Council on 28th May 2019 (“the 2019 Permission”). The 2019 Permission authorises: “Demolition & erection of 70 bed care home within Use Class C2 (replacing building 4 approved by [the 2017 Permission]), access, parking, landscaping, and other associated uses”. The approved layout is shown on the Proposed Site Layout drawing 1877-HIA-ZZ-XX-DR-A-01002-P5.
2. The Council has issued a certificate of lawfulness confirming that the 2017 Permission has been lawfully implemented (ref A/151/18/CLE, issued 15th February 2019). Works have not yet started in relation to the 2019 Permission.
3. Frontier Estates (Mering) Ltd (“Frontier”) is proposing to apply to the Council for a certificate of lawfulness confirming that it would be lawful to build out buildings 1-3 under the 2017 Permission alongside the care home authorised under the 2019 Permission (“the Composite Scheme”). The layout of the Composite Scheme would be as shown on Proposed Site Layout drawing 1877-HIA-ZZ-XX-DR-A-01002-P5. This drawing effectively shows the Composite Scheme because, as set out further below, the application for the 2019 Permission was made on the basis that the care home would replace building 4 approved under the 2017

permission, so all the supporting documentation, including the site layout plan, was prepared on this basis.

4. I am asked to advise Frontier in relation to the issues set out below.
5. **Issue 1: Would it be lawful to build the Composite Scheme?** In short, I remain of the view that it would be lawful to build the Composite Scheme.
6. Taking this in stages, the Council has already confirmed that the 2017 Permission has been lawfully implemented. It would therefore plainly be lawful to build out the remainder of the scheme in its entirety.
7. Similarly, it would plainly be lawful to build out the care home as authorised by the 2019 Permission.
8. It would obviously not be possible to build out both schemes in their entirety.
9. However, as set out above, the 2019 Permission has been granted on the express basis that the care home will replace building 4 authorised by the 2017 Permission.
10. On that basis, in my view it would be lawful to build the care home as a replacement for building 4. That is, after all, what the 2019 Permission expressly authorises.
11. The Council's Legal Department takes a different view – see the Committee Report in relation to the 2019 Permission:

“Advice in relation to red edge of application site. The application can proceed to be determined. However if approved the applicant is not legally entitled to implement both permissions as implementation of this latest application (if approved) would prevent full implementation of the existing permission and this application does not incorporate the existing permission”.

12. With respect to the author of this advice, I do not agree. Critically, the advice does not deal with what I consider to be the central point here, i.e. that the 2019 Permission expressly authorises the construction of the care home as a replacement for building 4.
13. In conclusion on this issue, I remain of the view that it would be lawful to build the composite scheme.
14. **Issue 2: How should the certificate be worded?** In my view the simplest way forward here would be to draft the certificate application by reference to a proposed site layout plan showing the Composite Scheme. The description of the proposed development could be along the following lines:
- “Development of land at Broadlees, Dappers Lane, Angmering as shown on drawing reference number [X], comprising buildings 1 - 3 as authorised by permission A/27/16/PL (dated 7th February 2017) and the care home authorised by permission A/114/18/PL (dated 28th May 2019) as a replacement for building 4 authorised by permission A/27/16/PL”.
15. Please do not hesitate to contact me to discuss any aspect of this Opinion.

Robert Walton QC

Landmark Chambers

8th August 2019