

FROM:

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TO:

A Gardner Planning Officer

REF:A/65/11CLE CONSULTATION

ADDRESS : FALLOWDALE NORTH DRIVE ANGMERING

NATURE OF OPERATION : IS OUTLINE PP REF A/2/57 FOR 3 DWELLINGS AT FALLOWDALE NORTH DRIVE ANGMERING STILL EXTANT /IMPLEMENTABLE ?

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

THE APPLICATION

The application seeks to prove under the terms of S191 TCPA 1990 that it is still lawful to build 3 dwellings on plots 40-44 and 45 under :-

[a] an outline planning permission issued on 22 December 1949 for “ layout [part] Ham Manor Estate Angmering “ ref A/62/49 and [refs 2 and 8 in application]

[b] an outline planning permission ref A/2/57 dated 5 February 1957 [ref 9 in application]

They are relying on the rules which say that provided that planning permissions approved pre 1 April 1969 are part implemented within 5 years of approval or 2 years of approval of reserved matters for outline applications ,then they are “preserved “.

[See EPL Vol 2 para 56.19 and Salisbury DC v SoSE 1982 JPL 702 and TCPA 1971 Schedule 24 paras 18- 21]

In this case the Ham Manor Estate is built under these PPs except for plots 40 44 and 45 . For completeness I recall my e mail dated 25 May 2011 referring to a CLP –but I think in practical terms a CLE has as much effect as a CLP here ie the Ham Manor Estate as a whole is built so lawfully , so can other parts of the Estate as approved by the PP.

2.GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

3.DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is operations so the time limit is 4 years under the above .

The time period is 20 April 2007 – 20 April 2011 ie 4 years to date of the application. Further this relates to development approved pre 1 April 1969 so the rules in Schedule 24 TCPA 1971 require development to be commenced within 5 years of an approval or within 2 years of approval of reserved matters and under Salisbury DC case that part implementation preserves the rest of the development. There is nothing to suggest severability of these planning permissions.

It is clear from the application and your site visit that the Ham Manor Estate has been substantially built or commenced within these time limits.

The evidence does satisfy this test.

I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: para 8.12-8.22

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity. S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

I summarise the items of evidence thus

Evidence	Comments
Red edged Site Plan	This is easy to relate to items 5 and 6 in the application with houses on the eastern edge and Fallowfield on the part hatched black
A/62/49	This PP is copied in the application
A/2/57	This PP isn't copied and a copy should be sought for certainty
Items 8 and 9	These list PP and reserved matters approvals under these planning permissions which conform with the rules on time limits

I suggest you will want to check things on your site visit but on a balance of probability the case is made .

4.FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

5.TERMS

1. grant

2. identify precise land boundaries on plan for extent of use.
3. describe A/62/49 A/2/57 and how these PPs were granted for Ham Manor Estate and
4. then describe how the PP was implemented and reserved matters approved
5. This all happened within the time limits within Schedule 24 TCPA 1971 and S191 TCPA 1990

ref/lgdr/lprec/pl/cleudetcmodelmem

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