

**Recommendation Report for Lawful Development Certificate for a Proposed Use or Development**

**REF NO:** A/212/17/CLP

**LOCATION:** Land Between Badgers and Ashurst  
Ham Manor Way  
Angmering

**PROPOSAL:** Lawful development certificate for the proposed erection of 2 No. dwelling in accordance with planning permission A/2/57

**DESCRIPTION OF APPLICATION**

The application has been made to determine whether 2 no. dwellings which were the subject of planning permission A/2/57 can lawfully be built without any further in principle (outline) permission being granted.

**DESCRIPTION OF SITE AND SURROUNDINGS**

The application site is situated to the north of Ham Manor Way and forms part of the grassed area of the golf course. The character of the locality is semi-rural and features large detached properties of various designs and styles. The street scene is characterised by large dwellings set within spacious plots and the application site comprises a gap between existing residential dwellings.

**RELEVANT SITE HISTORY**

|         |                                                         |                                     |
|---------|---------------------------------------------------------|-------------------------------------|
| A/62/49 | Layout (part)                                           | Approve<br>05-12-1949               |
| A/2/57  | Outline application development of bungalows and houses | Approve Conditionally<br>05-02-1957 |
| A/71/59 | House and integral garage                               | Approve<br>13-10-1959               |
| A/76/60 | Dwelling and garage                                     | Approve<br>11-10-1960               |

**REPRESENTATIONS**

**Representations received:**

Objection -

- 1) The proposed development remains in breach of Angmering Neighbourhood Plan Policy CLW2, as with the previous application A/176/17/PL.
- 2) It cannot be ascertained with sufficient certainty whether the site on which the works are proposed is the same as that to which the outline consent relates.
- 3) There is concern that this application has been made in an attempt to circumvent the

## A/212/17/CLP

refusal of permission in the previous application A/176/17/PL and is therefore an abuse of process.

4) As application A/2/57 is expressed to be for outline permission, it follows that the present application ought to be for reserved matters rather than for a lawful development certificate.

### 13 Objections -

Understand that while A/212/17/CLP was not advertised it is still possible to pass comment. It should be considered in the same way as for A/176/17/PL (also for development on the area around the 9th tee of HMGC and between Ashurst and Badgers which was refused ) and refused on the same points with the same recommendation. On A/212/17/CLP the drawing to support A/2/57 is of such poor quality that the dimensions and location of the plots in question cannot be definitely determined. The confusion is heightened by A/176/17/PL referring to three plots in the location while A/212/17/CLP only refers to two. Only one poor quality document appears to exist in the application which refers to the area of land in question.

Then the plan showing the plots, should they exist, in A/212/17/CLP show the plots, outlined in red, much deeper than anything indicated by A/2/57, also that they are not parallel to Ham Manor Way as indicated by A/2/57 and appear to exist in their own island of land.

In considering A/212/17/CLP I understand it will have separate consideration in relation to the specific histories of the site. In this context the plots, if they actually exist as undeveloped plots within the total numbers of A/2/57, are on land now owned by Ham Manor Golf Club ( HMGC ) which is designated Local Green Space within the Angmering Neighbourhood Plan 2014 - 2029. No land should be removed from the protection of Local Green Space. In the context of protecting Local Green Space, HMGC are in the process of selling plots of land to a number of residents to enable them to extend their gardens. It is possible that any plots if existing in A/212/17/CLP will subsequently expect to purchase land to extend the gardens and further impact the Local Green Space.

It is not surprising that the developer claimed that there were three plots appertaining to A/2/57 and now only two are being sought. I visited the planning office and examined the whole A/2/57 file and couldn't find any plans with legible dimensions or reliable detail on them. I was assured that no other plans were available other than those in the file. All the evidence pointed to the fact that these open spaces on the seventh and ninth were always open spaces and not designated for development.

When the land was sold to the Golf Club PRIOR to 1957 the open spaces on seven and nine were also part of the sale and therefor were not part of the A/2/57 Planning consent.

Ham Manor Golf Club have themselves supported the inclusion of the Golf Club as protected green space ref GEN7 , HD5 and CLW2 as they have never lodged a comment or complaint against the plan.

There is an old picture / map hanging in the Club house of the golf course which clearly shows these spaces as being part of the course and not part of any development. I will send photo of this picture in separate mail.

I cannot understand why the council would reject the recent application A/176/17/PL and risk a potentially time consuming and expensive appeal, if it wasn't their intention to reject this application for a certificate of lawful development. The developer is claiming that Planning was included on a parcel of land sold to the Golf Club before the application of 57.

Originally when Mr Smith applied to build on A/176/17/PL he maintained that there were 3 plots appertaining to A/2/57 with existing outline planning consent on the land at the ninth.

He claimed that they were still active as a CLD was granted on Fallowdale, which was not protected by your green space policy. The development was within the existing property boundary of Fallowdale and not speculative development on open land on the golf course protected by the Arun Plan.

The plan posted on the 5.3.18 is the same plan we have previously seen in varying guises. It is not an official Land Registry Document as was claimed. It is only an Auctioneers and Estate Agents Plan.

There are no plans or documentation in the A/2/57 file, to support the claim that The open space at the ninth was ever included in the 57 outline consent.

I am very concerned about the legitimacy of a recent plan posted on the 13.2.2018 as Land Registry Plan. ( it is not headed and numbered as it should be) All the plots are neatly drawn and numbered which are suddenly legible. This is very surprising given the following:

On the 12.12.2017 the same plan ref 5 was posted and the numbers are definitely not legible. The plan does however seem to show a path way to the northern boundary of Ashurst.

On the 12.12.2017 the applicant posted a site location plan drawing no 1131.C01 23.11.2017 for client Mr Smith drawn by Inspired Design Studio Ltd. This plan clearly shows the pathway in question. It concludes that The advisers of the above client were clearly confused by old imprecise information. Why do we then have this new miraculous plan minus the pathway but now amazingly with legible numbers? File A/2/57 file does not contain this plan in any format. The assurance has been given by your front desk staff that no further files exist for A/2/57. These changes with plans, clearly demonstrates that the applicant feels they are so important to their case, that they are desperately trying to convince you of their validity.

It also demonstrates that after 60 years , it is extremely difficult, to prove conclusively with old and limited supporting paperwork, that this old consent is valid. In any event it certainly cannot be guaranteed, whether the site on which the dwellings are proposed, is the same that the 60 year old consent relates. The Certificate should be refused based on confusing information supplied by the applicant and the lack of available supporting information based on the age of the consent.

Clearly over 60 years have passed since A/2/57 was granted permission and certainly in recent memory no development has taken place. It is also certainly not an "active" development which I believe also contravenes the permission. Surely A/2/57 has exceeded it's conditions of approval and is no longer appropriate today and should be removed, especially as the land in question is now designated as Local Green Space.

No site plan for A/2/57 exists in the ADC file while the permission gives a condition that a site plan is called for. Quote " To the submission and subsequent approval of detailed plans and elevations, together with details of the siting and plot sizes" Without that being available there is no proof that any undeveloped plots actually exist that could be covered by A/2/57, nor at what location or sizes such plots may be.

The A/212/17/CLP application includes a drawing (supporting information Ref 5) but as it does not exist in the ADC file it's provenance is not clear, neither is the drawing itself clear, and as such cannot be relied upon. I also note today two new files have been uploaded ,one which states being a Land registry document which also is not on the A/2/57 file but is a variation of supporting information Ref 5. It is also missing sections of the top and bottom which could be useful to clarify the dates, approval and permission information.

The plans show plots 7/8/9 but seven is gone as Ashurst is plot 6 as evidenced by a Land Registry Plan previously supplied.

The land at the ninth was owned by the Golf Club from 1936 and it cannot be proved that it was ever included in the development of 49/57. All of the above is sufficiently imprecise, ambiguous and totally confuses the balance of probability. Any legal decision must be unambiguous and decided on with complete clarity and this cannot be achieved.

Request that due to the passing of 60 / 79 years and because there is insufficient evidence to support the Certificate of Lawful Development, it should be rejected.

The applicant claims that HMGC did not own the land in 1962. They did however own the land when it was sold to Ashurst in 1961. The land at Ashurst SX45961 was sold by Hesketh Estates in 1961 with a frontage of 115 feet. If indeed 3 plots on the ninth had consent why would Hesketh Estates deviate from that consent.

The golf Club themselves were obviously unaware of any Planning application or the supposed planning consent on the land. The land would certainly have been marketed and sold in the intervening years before it became protected green space.

The applicant has provided the details of the memorandum and articles of Association from 1962 and claims that this proves that the golf course did not own the land prior to this date. This document is not a bill of sale.

The applicant also claims that Hesketh Estates owned Ham Manor Golf Course in 1949 and 52.

I would request that the applicant shows proof of this ownership because in the light of evidence below, his remarks are extremely questionable

**Comments on Representations received:**

Whilst the application has not been advertised fully the Local Planning Authority cannot prevent representations from being made. However the decision on the application will be made on the basis of the evidence submitted and legal judgement, not the merits of the case. Determination of the application will be based on fact not merit, Whether the proposed development remains in breach of Angmering Neighbourhood Plan Policy CLW2 is not therefore relevant to determination of this application. The Green Space policy cannot be considered as part of this proposal.

Whilst it cannot be definitely ascertained with total certainty whether the site on which the works are proposed is the same as that to which the outline consent relates given the Council's incomplete records the decision is reached on the balance of probability and takes account of any contrary evidence. The applicant is not abusing the planning process as he is submitting an alternative form of application for consideration.

Application A/2/57 was an outline permission and therefore it only establishes the principle of development on the site. A further application relating to the details of the dwellings would need to be submitted for consideration if this certificate is granted.

Whilst the submitted plan is of poor quality it shows plots marked with a plot width dimension in the position of the application site and of an identical depth to the adjacent dwelling to the west. It appears that plot 7 has been deleted by a larger plot width being provided to plot 6

Ashurst. This would leave the 2 plots now applied for.

Hesketh Estates Limited owned the Ham Manor Golf Club in 1949 and 1952 when the applications were made. The Ham Manor Golf Club Limited was only incorporated in 1962 so could not have owned it.

The plan posted on 5 March 2018 is from the applicant's original document and is clearly stamped "Worthing Rural District Council Town & Country Planning Act 1947 PERMISSION Granted Subject to Conditions Attached". It is signed and dated (which ADC has blanked out) by WRDC. It is not just a "Auctioneers and Estate Agents Plan" it is not an official Land Registry Document. It is an Auctioneers and Estate Agents Plan. There are no plans or documentation in the A/2/57 file, to support the claim that the open space at the ninth was ever included in the 57 outline consent. The applicant submitted a copy of the Worthing Rural District Council plan to show the position and size of plots 8 & 9. Whilst the site may have been part of the golf course as evidenced by photographs it does not mean that it can't benefit from an extant planning permission.

The CLP application is decided on evidence and fact. 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. The Government web site on CLP applications states "if a local planning authority has no evidence itself, nor any 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". To date no one has provided any "EVIDENCE" that there is any good reason to refuse our application as there is none.

The applicant is entitled to add additional information to the application prior to determination, to support his case.

Whether the golf course were aware of the potential for these additional plots having an extant permission is not relevant to determination of this application.

#### **CONSULTATIONS**

##### **Consultations responses received:**

None

##### **Comments on Consultation responses:**

None

#### **LEGISLATIVE BACKGROUND**

Section 192(2) of the Town and Country Planning Act 1990 states:-

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

In this instance the applicant seeks to prove under the terms of S192 of the Town and Country

Planning Act 1990 that it is still lawful to build 2 dwellings on plots 8 and 9 under (a) outline planning permissions issued on 22 December 1949 under A/62/49 and (b) layout (part) Ham Manor Estate Angmering ref A/2/57 dated 5 February 1957. The applicant refers to 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 application then they are preserved.

In this case the Ham Manor Estate is built under these planning permissions except for plots 8 and 9. The Ham Manor Estate as a whole is built so lawfully, so can other parts of the Estate as approved by the planning permission.

Granting of a certificate should occur provided no contradictory evidence is found and on the balance of probability.

## **CONCLUSIONS**

The application seeks to demonstrate that on the balance of probability outline planning permission A/2/57 remains in respect of 2 dwellings on part of the golf course fronting Ham Manor Way. The plots were originally indicated on outline permissions A/62/49 and A/2/57 but the Council's records for these applications are incomplete and the plans and approvals are missing. However the applicant has provided a copy of the plan relating to A/71/59 which clearly numbers refers to plots 5-9 and it is evident that dwellings are provided and development has taken place on plots 5 and 6. The documents are an original set of documents for A/71/59 for plot 52 referencing A/2/57 as the outline application associated with the application and enclosing a full plan of the plots on the Ham Manor Estate for which outline permission was granted by A/2/57.

It is clear from visiting the site that Ashurst to the west has been developed and the dwelling has existed for a number of years (permission was granted under reference A/76/60 following outline and refers to Plot 6). Ham Manor Estate as a whole has been substantially built. There is nothing in the evidence submitted to suggest generability of the 1949 or 1957 permissions and the development was commenced within 5 years. The evidence meets the time limits under Section 171 and Section 191 of the Town and Country Planning Act 1990.

The applicant has submitted a copy of the Worthing Rural District Council plan blown up to show the position and size of plots 8 & 9. The site frontage widths of 70 feet and 80 feet are clearly discernible. The plots indicated on the submitted plan are the same width and are no deeper than Ashurst to the west as per the outline plan submitted. He has also provided a copy of the Fox & Sons marketing brochure clearly showing the plots to be developed.

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.

The evidence submitted which comprises a red edged location site plan with a house Ashurst on the eastern side and Badgers on the west. A copy of planning permission A/62/49, A/4/60, A/71/59, A/94/61, A/87/88 are copied in the application. A copy of A/2/57 cannot be provided (only

the plan).

The list of planning permission and reserved matters approvals under various planning permissions referred to in the letter from Hesketh Estates Limited submitted with the application conform with the rules on time limits.

Judged on the balance of probability the evidence is sufficient, precise and unambiguous and as such outline planning permission A/2/57 relating to 2no. dwellings is extant.

It is therefore recommended that planning permission is not required.

#### **RECOMMENDATION**

##### **PP NOT REQUIRED**

The Arun District Council hereby certify that on 30-11-2017 the development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 for the following reasons :

Ham Manor Estate is built under planning permissions A/62/49 and A/2/57 except for plots 8 and 9 which were clearly identified and included within the approved plans and permissions.

**A/62/49** Granted consent for layout (part) of Ham Manor Estate on 22/12/49.

**A/2/57** Granted outline permission for development of houses and bungalows on 05/02/57.

**A/87/88** Granted consent for details in pursuance of A/62/49 for erection of 38 no. dwellings together with garages and associated works (6 no. bungalows, 11 no. chalet style houses and 21 no. houses).

There is no evidence to suggest severability of these permissions which based on the information submitted and a visit to the site were substantially built or commenced within the necessary time period in accordance with the time limits within Schedule 24 of Town and Country Planning Act 1971 and Section 191 of Town and Country Planning Act 1990.

##### **FIRST SCHEDULE**

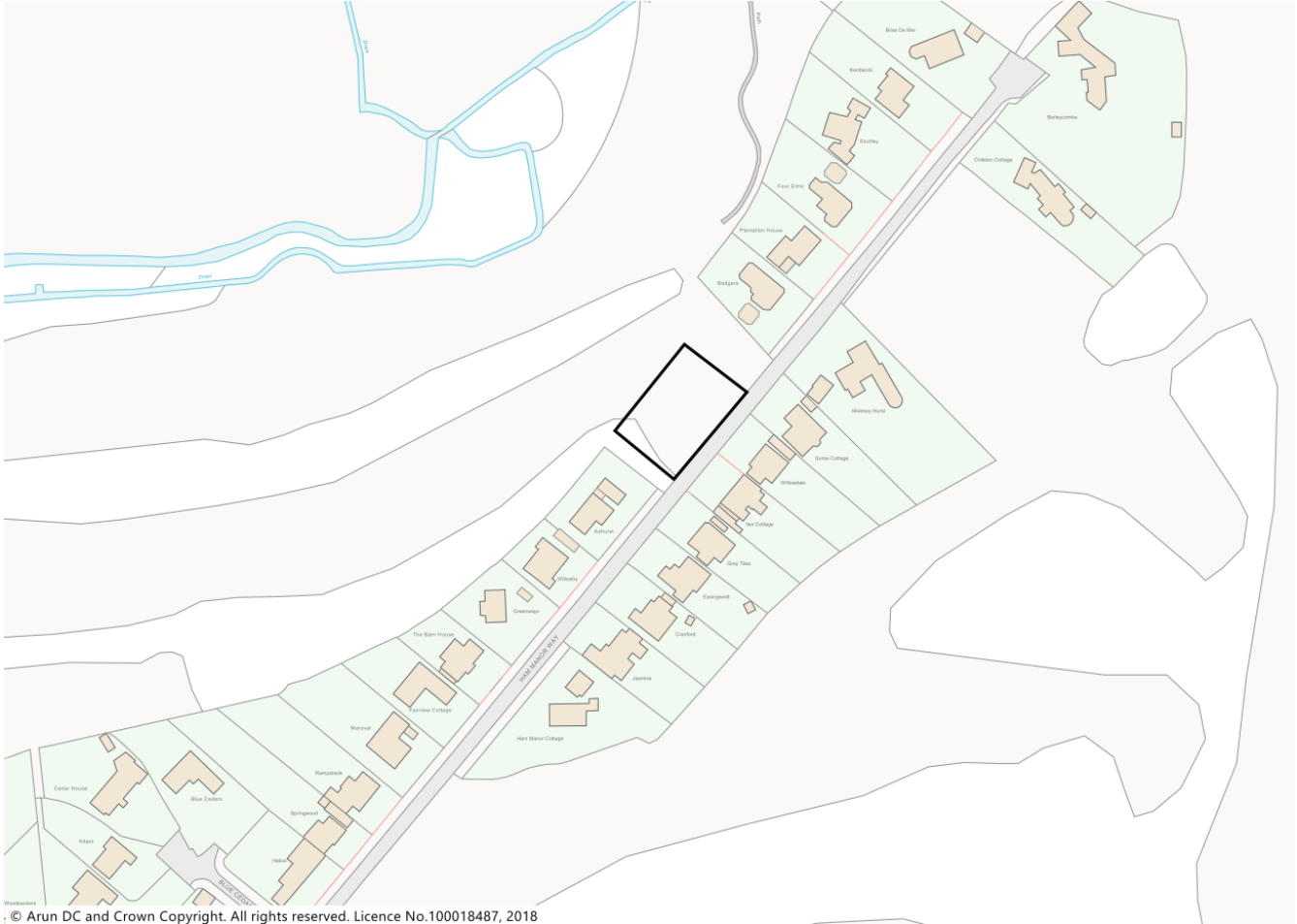
The principle of one unit of accommodation on each of the 2 identified plots.

##### **SECOND SCHEDULE**

Part of Ham Manor golf course on the North side of Ham Manor Way between Ashurst and Badgers , Ham Manor Way, Angmering

**EXTENT OF USE**

The development concerned relates to the provision of 2 dwellings within part of the golf course between Ashurst and Badgers on the North side of Ham Manor Way, Angmering on the basis that outline planning permission A/2/57 relating to 2no. dwellings is extant. Further detailed applications will be required to be submitted for the design and layout of each plot.



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