

Re River Lawn Village Green Application at Tonbridge

ADVICE

1 INTRODUCTION & SUMMARY

- 1.1 I am instructed by Tonbridge and Malling Borough Council to write a further advice to assist Kent in their determination of the trigger event issue. In particular at paragraph 26 of the helpful third opinion of Annabel Graham Paul she invited further assistance on the meaning of the expression “an application for planning permission in relation to the land”
- 1.2 In summary my advice is that this expression must in the context of a planning application be taken to be the land contained by the red line plan because that is the only obligatory definition of the land to which a planning application relates. To go for any other definition would be to create uncertainty because there would be no definition on a plan as to which land the planning application related apart from that. The definition of a red line plan assists with this construction because it uses the same verb relates as in the Commons Act 2006

2 THE THIRD OPINION

- 2.1 In her third opinion Annabel Graham Paul advises that so far as the planning application is concerned there was no terminating event. The evidence about the trigger event is accepted and she sought further

representations on the precise interpretation of the provision in the trigger event and in particular what the provision “an application for planning permission in relation to the land” means as to the physical extent of the planning application.

2.2 The relevant trigger event is provided in schedule 1A of the Commons Act 2006.

1. An application for planning permission [, or permission in principle,] in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.

3 ANALYSIS

3.1 It is in my view clear that when the history of the requirements of the red line plan are looked at that this provision must mean that it is the red line area of the planning application is the relevant area to use.

3.2 At the time of the planning application in this case which was granted on 13 September 2004 the rules for planning applications were The Town and Country Planning (Applications) Regulations 1988. That provided at Regulation 3 the following.

3.—(1) Subject to the following provisions of this regulation, an application for planning permission shall—
(a) be made on a form provided by the local planning authority;
*(b) include the particulars specified in the form and be accompanied by a plan which identifies the **land to which it relates**¹ and any other plans and drawings and information necessary to describe the development which is the subject of the application; and*
(c) except where the authority indicate that a lesser number is required, be accompanied by 3 copies of the form and the plans and drawings submitted with it.

¹ My emphasis

3.3 That basic formulation has also been followed through in rules as they have continued. The 1995 GDPO 4E came into force on April 6 2008 and provided that an application must be accompanied by:

A plan which identifies the land to which the application relates².

3.4 The 2010 Town and Country Planning (Development Management Procedure) England Order had the same formulation at Article 6 (1) (i). As does the Town and Country Planning (Development Management Procedure) England Order 2015 at article 7 (1) (i)

3.5 Thus there is a mandatory requirement in publicising a planning application to show the land to which the application relates on what is traditionally known as the red line plan. It is that plan which the consultation will be on and people will be able to inspect that plan. Thus when using the very similar expression in this the Commons Act 2006 the only way of determining the land which the planning application relates is by looking at the red line plan.

3.6 Thus in a planning application the definition of the land to which the application relates must be that within the red line plan which the notice given to neighbours and the site notice under GDPO says can be inspected. The intention of Parliament must be that the trigger event excludes the red line area of the planning application which is the only obligatory definition of the land to which it relates. To go for any other definition would be to create uncertainty because there would be no definition on a plan as to what was covered by the planning application.

3.7 This is also entirely consistent with the Defra guidance on Sections 15A to 15C of December 2016 which at paragraph 96 envisages that there can be a portion of land that is caught by trigger events. In order for this to be done for a planning application there would need to be a

² My emphasis

definition of the land which the planning application relates and this can only sensibly be the red line area. There is not a mandatory requirement to define any other area in the consultation documents.

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2 May 2019

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