



Appeal Decision

Site visit made on 3 January 2017

by **Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 January 2017

Appeal Ref: APP/V3310/X/16/3157003 - The Bungalow at The Ham, Hamfield, Silver Street, Cheddar, Somerset BS27 3JU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [LDC].
- The appeal is made by Mr Christopher Gould against the decision of Sedgemoor District Council.
- The application [Ref 17/15/00093/LE], dated 1 December 2015, was refused by notice dated 21 January 2016.
- The application was made under section 191(1)(b) of the Act.
- The development for which an LDC was sought was: "Conversion of store to bungalow at "The Ham", off Silver Street, Cheddar".

Decision

1. The appeal is dismissed.

Procedural matters

2. Section 7 of the application form indicates that the LDC is being sought on the basis of: (i) an existing use; and (ii) existing building works. The box in that section, whilst asking whether the development relates to a particular use class, says: "*Continuation of building works. Duration of planning permissions*". The only box that has been completed in section 9 of the application form says: "*The use began more than 10 years before the date of this application*".
3. Perhaps on the basis of the confusion inherent to the above, the description on the Council's notice of decision is materially different from the description of development on the application form [the answer to question 8 is quoted in the final bullet-point above]. It says: "*Application for Certificate of Lawfulness for the existing use of store as a bungalow*" [*my emphasis*]. However this description appears to be wrong. I say that because my reading of what is being sought is an LDC to confirm that the "*Discontinued building works*", as per section E of the appeal form, can be continued because the planning permission [as defined below] is extant. My view in this matter is confirmed by the answer, also in section E of the appeal form, that indicates that the actual use of the site at the time of the application was "nil". If what was being sought is confirmation that the use of the building is lawful that answer, in itself, might suggest otherwise. In the circumstances I propose to deal with this appeal on the basis of the original description in the final bullet-point and on the basis that those works lawfully implemented the planning permission.
4. The Planning Practice Guidance ['the Guidance'] advises that the applicant is responsible for providing sufficient information to support an application for a LDC. It says: "...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"¹ [my emphasis]. The Guidance also says: "Without sufficient or precise information, a local planning authority may be justified in refusing a certificate"². Those sentiments apply equally to an Inspector at appeal stage.

Background

5. Planning permission was granted for: "*Conversion of store to cottage at "The Ham", off Silver Street, Cheddar*" by Axbridge Rural District Council, "*acting as Agents for and on behalf of*" Somerset County Council, under the County Council's reference 37937 on 28th February 1958 [hereinafter "the planning permission"]. The face of the decision records that the planning application was dated 2nd December 1957 and was "*amended on the 7th February 1958*". The "*particulars*" as referred to on the face of the decision include "*as described in the AMENDED plans ~~and drawings~~ submitted*"³.
6. No conditions were imposed, but the Appellant has provided what appears to be commentary on the Town and Country Planning Act 1971. It says that any planning permission granted before 1 April 1969 that is not subject to an express condition is deemed to have been granted subject to a condition that the development must be begun within 5 years, namely before 1 April 1974. However this would only apply if the development to which it relates had not been begun before the beginning of 1968.

Main issue

7. The onus of proof falls on the Appellant to show on the balance of probability that the planning permission was lawfully implemented before 1 April 1974.

Reasons

8. In my view this appeal cannot succeed on the very limited information provided. As I noted at the site inspection the first problem that I identify is that the face of the decision records that the planning permission was granted in accordance with amended plans. Given that the application was dated 2nd December 1957 one might expect the approved plans to post-date that date or to show some indication as to how they had been amended⁴. However the plans with which I am provided are dated "NOVEMBER 1957" in the bottom right hand corner and there is no obvious sign of any amendment.
9. I note from a letter dated 27th August 1985 that a surveyor, Mr TJ Loveless, says that he prepared drawings "*for the late Mr Jack Gould to convert the store at The Ham*". This tallies with the names evident on the face of the decision and whilst the address given for Mr Loveless on the face of the decision is different from that on his letterhead in 1985 both addresses are in Lynton, Devon. Adopting the balance of probability I am therefore satisfied that this is one and the same person and that this Mr Loveless both prepared the plans and acted as the Agent for the planning application dated 2nd December 1957.

¹ Source of quote: paragraph ID: 17c-006-20140306.

² Source of quote: paragraph ID: 17c-005-20140306.

³ Original *EMPHASIS* and ~~strikethrough~~, noting that the strikethrough used on the face of the decision appears to take the form of a row of crosses [in the form of XXXX].

⁴ Conventionally this might be with the notation "Revision A" or simply "Amended Plan".

10. In his letter dated 27th August 1985 Mr Loveless says that Mr Gould retained both the planning permission and the building byelaws; he does not mention the plans in that context. What Mr Loveless says is that he still has: "*...the original tracings and send you a copy which you may find useful*", and that he gives a Mr Tuxford: "*...my written consent for Mr Gould to photocopy the drawings*". A second letter of the same date sent to the Appellant says broadly the same thing. It might suggest that the plans with which I have been provided have originated from the original tracings rather than the Council's file or from the original documents. Whilst I am of course speculating it is possible that the original plans have been provided distinct from the amended plans. Noting the onus of proof that falls on the Appellant it has not been shown that the plans with which I am provided are the amended and therefore the approved plans. This conclusion alone gives me reason to dismiss this appeal.
11. Notwithstanding the above I have reviewed the correspondence that has been provided. It would appear that this correspondence is what was before the Council in November 1985 when, it would appear from the contemporary exchange of memorandum between the Clerk of the Council and the District Planning Officer, a joint site visit was convened. The Clerk's Memo dated 17th November 1985 is both short and to the point in saying: "*I think that, arising out of the most useful site visit on 15th December 1985 we are both in agreement that this is a clear case where the permission has not been implemented at all and has clearly lapsed*". The date of the Memo suggests that the date of the site visit was November, not December, which appears to be corroborated by the District Planning Officer's Memo of 7 November 1985.
12. Otherwise of note from the latter is the prospect that any such works that had been done to the building were: "*...merely permitted development works not materially affecting the character of the building*". In contemporary language it might be that the Officer was saying that such works were within the statutory exemption in section 55(2)(a) of the Act. Either they affected only the interior of the building or they did not materially affect its external appearance. In the alternative if the Officer was saying that the works might be permitted development it is unclear what class that might be under. Regardless, this Memo predates the Clerk's frankly devastating conclusion.
13. In short I am being asked to overturn a clear conclusion reached by Officers of the Council, presumably a planning officer and a solicitor, well over 30 years ago, which they reached based on a review of the papers and a site visit. There does not appear to be anything new that has been placed before me. In that context it would be quite extraordinary for me to reach a contrary view all these years later.
14. I appreciate firstly that Mr Loveless gives reasons in his letter why he considers that the building works "*...were well and truly started*". These include that the removal of the wood cladding proved difficult and it seemed that the rebuilding of the inner block walls would be required which would increase the cost. What Mr Loveless does not say is that he visited The Ham to establish what work was taking place. Moreover his recollection was set down in an unsworn letter that was written many years after the works took place: as I have noted the planning permission had to be implemented before 1 April 1974. For these reasons I attach this aspect of Mr Loveless's letter very limited weight.

15. Moreover point (a) in the letter offers an explanation as to why any works that might have taken place were discontinued. It says: "*Mr Jack Gould purchased a bungalow quite near to the Ham and his parents which came on to the market quite suddenly*". The strong inference is that Mr Gould [senior] did not need to implement the planning permission because he bought another property nearby instead. That explanation is entirely logical and convincing.
16. The other key correspondence is a letter dated 21st October 1985 from WC Maunders Limited, being a local firm of builders. It says: "*I can confirm that various building operations both internally and externally were commenced on the conversion of the store into living accommodation in the early part of 1960*". It continues: "*Apart from the various building works carried out on the instructions of Mr Gould, a water supply pipe was brought to the building from the adjoining dwelling, to serve the proposed cottage*".
17. On the assumption that the works were undertaken in 1960 this means that Mr Maunders' recollection was of events from 25 years earlier. No documentary or other evidence is provided in support of that letter, which is unsworn. Whilst I turn to identify what works might have taken place below, during my site inspection my attention was not drawn to any evidence of a water supply within the building. With particular reference to comparison between the existing and proposed layout plans, no water supply to serve the proposed bathroom and kitchen was evident. It was agreed at the site inspection that that part of the layout reflected the existing plans and not the proposed plans.
18. In the circumstances I am only able to attach very limited weight to the letter from Mr Maunders. This conclusion is reinforced by reference back to the letter from Mr Loveless who says: "*...the builder would have given due notice of his intention to commence the works*", under the building byelaw consent that is said to have been obtained. Whilst there is no reason to doubt that building byelaw consent was obtained, the Appellant has not provided evidence to show that the builder gave notice of commencement under the equivalent of what would now be the building regulations. Again the onus of proof is not met.
19. I also attach very limited weight to the fact that the planning permission was revealed on the Local Authority search undertaken in 1973. At that stage the planning permission would still have been capable of implementation having regard to the provisions of the Town and Country Planning Act 1971. In any event when a search is conducted the whole purpose is to identify relevant planning permissions that have been granted. This is not an indication that they have been implemented but provides a record of the planning history. It is therefore entirely unremarkable that the planning permission was revealed.
20. I hope it is fair to say that despite the dearth of evidence put forward with this appeal that I undertook a thorough inspection of the building against the plans with which I have been provided. With very few exceptions the attributes of the building in 2017 bear direct comparison to the existing plans dated 1957. Amongst other things the vent in the western gable, shown on the existing plan but not the proposed plan, still exists. The same is true of the flues along the ridge of the roof. The windows generally accord with the existing plan and where there are variations those changes do not reflect the proposed plan. By way of example the window to the left of the chimney stack on the rear elevation appears to be deeper than shown on the existing plan, but is still of

vertical form, not horizontal, as is shown on the proposed plan. The internal layout accords, without exception, with the existing plan. Amongst other things there appears to be a door in the western elevation, partly hidden by the conifers, but there is no internal opening and in any event the existence of this door is not shown on either the existing or the proposed plans.

21. The cross section, or typical section, on both the existing and proposed plans shows typical measurements of the internal height. On the existing plan this is shown as 8' 3" and 7' 3½" and on the proposed plan this is shown as 7' 6". My measurements, agreed during my inspection, recorded 8' 6" to the highest part of the roof and 7' 1" to the whitewashed line evident in many of the rooms. This does not reflect either the existing or proposed plans. It might suggest that some internal works have been done of the nature of the removal of a suspended ceiling and/or plastering of some walls. To this extent I agree with the addendum to the appeal statement [1012/205]. However it does not show that any works have been implemented pursuant to the planning permission.
22. On the main issue I conclude that the Appellant has failed to show on the balance of probability that the planning permission was lawfully implemented before 1 April 1974 and I share the Council's view that it has now lapsed. On the balance of probability I do accept that some works have been undertaken to the building since 1957, but these largely appear to have been internal works or, in the case of the enlargement of windows, do not materially affect the external appearance of the building. They did not therefore involve development of the land under what is now section 55(2)(a) of the Act.

Other matters

23. In reaching this view I have taken account of all other documentation placed before me, including the photographs. I have been slightly troubled by paragraph 3.02 of the Council's statement that says the evidence submitted appears to support the claim that the planning permission was implemented. Perhaps the word 'not' is missing or perhaps this is a proposition to reflect the Appellant's case. It is however directly contrary to what follows in the remainder of the Council's statement, summarised in paragraph 5.02, and so I am not persuaded that this is a concession to which I should attach any weight.

Conclusion

24. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC in the terms that were applied for, namely: "*Conversion of store to bungalow at "The Ham", off Silver Street, Cheddar*", was well founded. The appeal fails and I shall exercise the powers transferred to me in section 195(3) of the Act.

Pete Drew
INSPECTOR