

Appeal Decision

Site visit made on 6 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 9 January 2017

Appeal Ref: APP/W1905/X/16/3152636

Building at Oak View Farm, Crouch Lane, Goffs Oak, Hertfordshire EN7 6TL

- The appeal is made by John Smith under section 195 of the Town and Country Planning Act 1990 against a refusal by Broxbourne Borough Council to grant a lawful development certificate.
 - The application Ref: 07/16/0313/LDP, dated 24 February 2016, was refused by notice dated 5 May 2016.
 - The application was made under section 192(1)(a).
 - The development for which the certificate is sought is "change of use from storage to residential C3 (3 no. three bed dwellings)".
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is dismissed.

Reasons for the appeal decision

Background and procedural matters

3. The background to this appeal is that in September 2015 the appellant submitted application 07/15/0864/PNRES to the Council, pursuant to Class P of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, for prior approval in connection with a proposal to change the use of the building to three dwellings. The Council decided to refuse the application on the ground that the proposed change of use was not permitted development "as no written evidence has been provided to demonstrate that the building was used solely as a storage and distribution centre on 19 March 2014 and Council records do not support this use". However, as the Council have acknowledged, the notice of refusal was not issued until after the expiry of the 56-day period referred to in paragraph W.(11)(c) of Part 3.
 4. The appellant maintains that, as a result, the proposed change of use can lawfully be instituted. His application to the Council for a lawful development certificate to that effect was, however, refused. The reason for refusal repeats the ground stated in paragraph 3 above and adds, "Regardless of the period in
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which that decision was issued, the site does not benefit from the provisions of Class P and accordingly the development would not be lawful”.

5. The appeal is made under section 195 against the Council’s refusal of the application for the lawful development certificate. Section 195 requires an assessment to be made as to whether the refusal is or is not well-founded. The assessment is based on whether or not the proposed change of use would be lawful if begun at the time of the application for the certificate. The planning merits of the proposed change of use are not relevant to the appeal and there is no planning application or prior approval application before me.
6. The Council’s failure to meet the 56-day deadline is not determinative of the outcome of this appeal on its own, since (i) the starting point is that the proposed change of use must be within the terms of paragraphs P and P.1 in the first place and (ii) the condition in paragraph P.(2)(a) must have been complied with at the time of the application for there to be an application to which the 56-day period referred to in paragraph W.(11)(c) applies at all.

Is the proposed change of use within the terms of paragraphs P and P.1 and was the condition in paragraph P.(2)(a) complied with?

- The use of the building must have fallen within Class B8 (storage or distribution centre) at the time the application for prior approval was being considered. (Paragraph P)
- The building must have been used solely for a storage or distribution centre use on 19 March 2014 or, if the building was in use before that date but was not in use on that date, when it was last in use. (Paragraph P.1(a))
- The building must have been used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins. (Paragraph P.1.(b))
- The application for prior approval must have been accompanied by a statement setting out the evidence the developer relies upon to demonstrate that the building was used solely for a storage or distribution centre use on 19 March 2014 and for the 4-year period referred to. (Paragraph P.(2)(a))

7. The appellant’s grounds of appeal contain the following statement: -

“7.6 The Council is reliant upon the Appellants not providing evidence in accordance with the legislation. There [*sic*] are contending that satisfactory evidence has not been provided. The Appellants would dispute this. The Planning Statement that accompanied the notification included a statement (at 3.1) that said the following;

‘The building was used solely for storage purposes on the 19th March 2014, its agricultural use having been ceased in June 2011.’

This statement is the evidence.

- 7.7 In essence, the Council’s real concern is the quality of the evidence, and not that the evidence was not provided. The Regulations only

require that evidence is provided, and it makes no reference to the quality of that evidence ...”

8. The statement was inadequate in my view. To have been sufficient to comply with paragraph P.(2)(a), it should have set out particulars of the evidence relied upon to demonstrate that the building was used solely for a storage or distribution centre use on 19 March 2014 and for the four-year period referred to. No such evidence accompanied the application and without it the statement was no more than an assertion by the appellant.
9. Moreover, the statement was not supported by other information available at the time of the application. In another application for prior approval submitted by the appellant in May 2014 (ref: 07/14/0436/P4D), the use of the building immediately before 20 March 2013 (or the last use before that date) was described as “agriculture” and the proposal was described as the subdivision and conversion of an “agricultural building” into dwellings. A Desk Study Report prepared for the appellant’s agents in June 2015 states in paragraph 1, “The site currently comprises of a former agricultural/nursery building ...”. Also, the Council has no record of any change of use of the building for storage purposes being authorised for planning purposes; they regard such a change of use, if it took place, as being unlawful and therefore incapable of benefiting from Class P (because of the provisions of Article 3(5)(b) of the 2015 Order).

Conclusion

10. My conclusions on the two issues raised in paragraph 6 above are (i) that the proposed change of use is not within the terms of paragraphs P and P.1 and would therefore not be permitted development and (ii) that, since the condition in paragraph P.(2)(a) was not complied with, there was no application to which the 56-day period referred to in paragraph W.(11)(c) applied. I am satisfied that the Council’s refusal of the application for the lawful development certificate is well-founded, since the proposed change of use would not be lawful if begun at the time of the application for the certificate. The appeal has therefore been dismissed, as required by section 195(3).

D.A.Hainsworth

INSPECTOR