
Appeal Decision

Hearing held on 28 February 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 20 April 2017

Appeal Ref: APP/J3720/X/16/3150649

Windmill View, Manor Farm, Ladbroke, Southam, Warwickshire CV47 2DF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Mrs J Moore against the decision of Stratford on Avon District Council.
 - The application Ref 15/01709/LDE, dated 14 May 2015, was refused by notice dated 22 October 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is unfettered use as a C3 dwellinghouse.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Background

2. On 16 June 2000, planning permission and listed building consent were granted for the change of use of, and alterations to, existing cart sheds at Manor Farm to form 2 holiday homes (Refs: 00/00870/FUL and 00/00883/LBC). Condition 2 of the planning permission required the use to be restricted to holiday accommodation and used for no other purpose including any other purpose within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987.
 3. The application, the subject of this appeal, is for a LDC to certify that Windmill View, one half of the pair of dwellings formed, has an existing lawful use as a dwellinghouse falling within Use Class C3 without any restriction on its use.
 4. The case for the Appellant is that the development for which planning permission was granted was never implemented so that the condition restricting the use did not bite. The argument is twofold. Firstly it is said that the deviations from the approved drawings are of such significance as to indicate an entirely different development from that approved. If that is not accepted, it is argued that there were two pre-commencement conditions attached to the permission which required the submission and approval of details. These were not discharged so that what was implemented was development without planning permission.
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5. The Council takes the opposite stance. It says the deviations from the approved drawings are minor and do not amount to a different development to that approved. In addition, the pre-commencement conditions did not go to the heart of the permission so that failure to discharge them did not result in the works undertaken being unauthorised. Thus the development is that for which planning permission was granted and the condition restricting the use is in force.

Reasons

Are the departures from the approved drawings of such magnitude that a materially different development was implemented?

6. The principal differences drawn to my attention between the approved scheme and that built are:
- changes to the external finish to the walls
 - changes to external openings
 - internal re-arrangement
 - the absence of lintels above openings and the introduction of a barge board to the east facing gable
7. With regard to the first of these, the planning permission granted expressly reserved consideration of the materials to be used on the external surfaces of the buildings by the imposition of condition 4. This said that, notwithstanding those indicated on the drawings and in the application, a schedule of materials was to be submitted for approval. Thus, since the permission had specifically excluded the approval of materials, a departure from those initially shown would not lead to the conclusion that a different development had been implemented.
8. Turning to the second difference identified, the arrangement of external openings has altered slightly in that in two places doors replace windows and in one place the location of a door and a window have been transposed. In addition, the design of the windows and doors and the size of the openings vary from those shown on the drawings. Whilst changes to openings might in some cases be of significance, in this instance domestic style windows and doors were to be introduced into two former agricultural buildings where previously there were none. Given that the number of openings has not changed and that the position of the openings on each elevation remains as approved, I do not find the changes identified to be of such magnitude as to indicate a materially different development to that approved.
9. Similarly the internal departures from the approved plans are relatively minor involving such matters as the repositioning of doors and the location of the kitchen units, turning the staircase in the two storey unit, and changes to cupboards. Despite these changes the layout of each unit remains largely as approved with the same amount of accommodation provided in each and with no appreciable change to overall room sizes or proportions. The full height space is retained in Horseshoe Cottage and the three cart shed bays are still reflected within Windmill View.
10. Finally, the absence of lintels above the openings and the introduction of a barge board to the east gable are minor changes which do not alter the nature or character of the development.

11. As a matter of fact and degree, I conclude that the departures from the approved scheme, even when taken together, are not of such significance so as to take the development as executed outside the scope of the planning permission granted. The ordinary man in the street, looking at the building both from outside and from within, would be likely to say that the units were those for which permission had been granted.

Are conditions 4 and 5 attached to planning permission 00/00870/FUL true conditions precedent such that failure to discharge them resulted in development carried out without planning permission?

12. The question of whether works undertaken in breach of conditions imposed on a planning permission are necessarily unlawful and thus amount to development without planning permission depends upon the nature of the conditions. Whether they might be considered as true conditions precedent has been held to depend upon whether they can be properly categorised as pre-commencement conditions and whether they go to the heart of the permission.
13. The two conditions in dispute are nos. 4 and 5. Both require the submission of details before the development is commenced by the inclusion of the words: *no part of the development hereby permitted shall be commenced until ...*. The inclusion of those words is sufficiently clear to indicate that they are both true pre-commencement conditions.
14. Looking at condition 5 first, the condition requires full details of hard landscape works including means of enclosure, car parking, vehicle and pedestrian areas and hard surfacing materials. This quite patently does not go to the heart of the permission since the development approved, the change of use and alterations to the cart sheds to form two holiday homes, could be carried out without such details being approved. The condition addresses peripheral matters that could have been the subject of a detailed submission after the development had commenced without any impact on the scheme. They were, in effect, separate matters which could have been considered at any time throughout the implementation of the development.
15. The same cannot be said of condition 4 which requires the submission of a schedule of all materials to be used on the external surfaces of the buildings. Given that finishes were specified on the application drawing and that the condition began with the qualification *"Notwithstanding the details indicated on the approved plans and in the approved application details ..."* it is clear that the Council attached considerable importance to the submission of these details, so much so as to preclude from the permission. That is perhaps unsurprising given that the building falls within the curtilage of the listed farmhouse.
16. Unlike the hard landscaping which could be considered separately, the finishes to the external faces of the building would have been an integral part of the alterations to the buildings needed to bring about the change of use. The cart shed, now forming Windmill View, was open along its long front elevation and the roof was clad with corrugated metal sheets. In providing new walls to the bays where previously there were none and in replacing the roof covering, it would have been necessary to have had the external finishes in mind in order to ensure that the new structure or, in the case of the roof, whether the existing structure was suitable to accommodate the chosen finish. The

requirement to provide a schedule of external finishes (which would also have included the materials for the numerous window frames and doors) was not a minor matter of detail but rather a major element of the alterations approved for the buildings.

17. Whether or not the materials employed are now found to be appropriate is immaterial to the consideration of whether the condition went to the heart of the permission.
18. In this case I find specification of the materials to be used for the external surfaces of the buildings was fundamental to the development permitted rather than comprising a minor component capable of separate consideration (such as the landscaping). Thus I find condition 4 to go to the heart of the permission such that it is a true condition precedent.

Conclusion

19. Condition 4 is a condition precedent which was not discharged at any stage. That being the case planning permission 00/00870/FUL was not lawfully implemented and condition 2 restricting use to holiday accommodation did not bite.
20. Section 191(2) of the Act says a use is lawful if (a) no enforcement action can be taken against it and (b) that it does not contravene the requirements of any enforcement notice in force. The development carried out was development without planning permission. It is common ground that the change of use of the cart shed to a dwellinghouse (Windmill View) took place more than 4 years before the date of the application for a LDC. Thus s191(2)(a) is met as the time for taking enforcement action against the use had expired (s171B(2)). Section 191(2)(b) is also met as there is no enforcement notice in force.
21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of unfettered use of Windmill View as a C3 dwellinghouse was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr N Brotherton	Agent
Mrs J Moore	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs T Swan	Senior Planning Officer
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DOCUMENTS submitted at the hearing

- 1 Notification letters and list of those notified
- 2 Appeal decision APP/J3720/W/16/3153502 submitted for the Council
- 3 Approved drawing for 00/00870/FUL with departures highlighted in red submitted for the Appellant
- 4 Legal Authorities submitted for the Council

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 May 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

There was no lawful implementation of planning permission 00/00870/FUL so that the condition attached to that permission restricting use to holiday accommodation did not bite.

The unauthorised change of use of the building to a dwellinghouse took place for a continuous period of more than four years before the date of the application so that no enforcement action could be taken (s191(2)(a)).

The use does not contravene the requirements of any enforcement notice in force (s191(2)(b)).

Signed

B M Campbell
Inspector

Date: 20 April 2017

Reference: **APP/J3720/X/16/3150649**

First Schedule

Unfettered use of the building as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987

Second Schedule

Land at Windmill View, Manor Farm, Ladbroke, Southam, Warwickshire CV47 2DF

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 April 2017

by B M Campbell BA(Hons) MRTPI

**Land at Windmill View, Manor Farm, Ladbroke, Southam,
Warwickshire CV47 2DF**

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Not to Scale

