



Appeal Decision

Hearing held on 11 July 2017

Site visit made on 11 July 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 04 August 2017

Appeal Ref: APP/N2739/X/16/3162970

Bank End Farm, Hirst Road, Carlton SELBY DN14 9PX

- 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 Trevor Morris against the decision of Selby District Council.
 - The application Ref 2015/0746/CPP, dated 3 July 2015, was refused by notice dated 12 May 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is change of use from agricultural barn to residential dwelling in accordance with planning permission 2005/0787/FUL.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse a certificate of lawful use or development was well founded.
3. The onus of proof is firmly on the appellant and the legal test is on the balance of probability. The gist of the appellant's argument is that the demolition and rebuild of the barn is authorised by virtue of the planning permission granted in 2005. The Council's stance is that neither the permission granted in 2005 nor that granted in 2002 authorised the complete demolition and rebuild of the structure to create a single dwelling.

Reasons

4. The appeal site is located on Hirst Road approximately 10km south of Selby. The site was occupied by a brick barn and a more recently built portal frame building but these have now substantially disappeared through demolition and storm damage.
5. Planning permission ref. CO/2001/1279 – 8/29/178A/P was granted on 21 May 2002 for 'Proposed conversion of existing barn into a two storey detached dwelling and the erection of a single storey garage on land at Bank End Farm, Hirst Road, Carlton, Goole'. The permission included Condition 10 which stated that 'The development hereby permitted shall not be carried out otherwise than

- in strict and complete accordance with the amended plans and specifications received by the Local Planning Authority on 4 April 2002.'
6. A further application 2005/0348/FUL – 8/29/178C/PA for amendments to the approved barn conversion to incorporate part of an ancillary building (the portal frame building) and erection of a single garage and stable block was withdrawn on 24 May 2005.
 7. The subsequent planning permission 2005/0787/FUL – 8/29/178D/PA for revision of previously withdrawn application 8/29/178C/PA is for the retention of part of ancillary building to enlarge barn conversion and an integral garage. There was no condition on the latter permission requiring the development to be carried out in accordance with the approved plans.
 8. Generally, in interpreting planning permissions, the basic principle is that a permission should stand by itself and the meaning be clear within the 'four corners' of the document. The public should be able to rely on a document that is plain on its face without having to consider whether there is any discrepancy between the planning permission and the application. In *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196, Lord Denning Master of the Rolls found that: '...a grant of planning permission runs with the land and may come into the hands of people who have never seen the application at all. It cannot be cut down by reference to the application...' The implications are that any controls or limitations attached to a planning permission need to be clearly and precisely stipulated within the four corners of that permission.
 9. The description of the development approved by the 2002 permission is given as 'conversion of existing barn into a two storey detached dwelling'. The description in the 2005 permission is given as "revision of previously withdrawn application 8/29/178C/PA for the retention of part of the ancillary building to enlarge barn conversion and an integral garage". Whilst the description of the development is ambiguous in that it refers to a withdrawn application, it is clear, nevertheless, that the permission is to allow part of the portal frame building to be used to extend a previously approved barn conversion. It is not, on its face, a permission for the barn conversion and reliance must be placed on the original permission reference CO/2001/1279 – 8/29/178A/P for a description of that part of the development, namely conversion of existing barn into a two storey detached dwelling.
 10. The appellant states that planning permission was implemented in that visibility splays were provided, the access was constructed, the portal frame building was demolished and other works were carried out in 2006 when both planning permissions were extant. However, the Council contend that a number of pre-commencement conditions were not discharged and hence any start on site was not lawful. In this respect the Council rely, in the Officer's Report, on Condition 2, Condition 3 and Condition 5 of the 2005 permission.
 11. Condition 2 requires the approval of details of external materials prior to the commencement of development. The appellant has provide no evidence that this condition has been discharged. However, in order for it to be a true condition precedent so as to make the preparatory works which were carried out unlawful, the condition would have to go to the heart of the permission. The approval of materials to be used on the external surfaces of the building is a matter which could reasonably be agreed following the completion of preliminary works and therefore does not go to the heart of the permission and

the carrying out of preliminary works prior to the discharge of that condition was not unlawful.

12. Condition 3 requires the access to be laid out in accordance with specified requirements and Condition 5 requires visibility splays of 2x45m to be provided. Both of these conditions require the work to be undertaken before the development commences but neither requires the prior approval of any details. The Council do not dispute that the works required by Conditions 3 & 5 were carried out and, given the above reasoning in respect of Condition 2, the works were lawful. The works were sufficient to constitute a start of the development capable of keeping the permissions alive.
13. There is no specific definition of the words 'convert' or 'conversion' in the context of development control. It is reasonable to interpret the meaning of the word by looking at The Oxford English Dictionary. It defines the verb to 'convert' as to 'change the form, character, or function of something... adapt a building for a new purpose'. The word 'change' is to make or become different, or is a description of a process through which something becomes different. The word 'conversion' is the action of converting, and can include a building that has been converted to a new purpose.
14. The appellant argues that the lack of a condition attached to the 2005 permission requiring adherence to approved plans is significant and recognises that considerable rebuilding work was likely to be needed.
15. If it is plain on the face of a planning permission that it is a full permission for the construction, erection or alteration of a building, the public will know that, in addition to the plan which identifies the site, there will be plans and drawings that will describe the approved building works. This is precisely because the permission is not, on its face, an outline planning permission. In such a case, those plans and drawings describing the building works were part of the description of what has been permitted. On its face, a grant of full planning permission for building operations is incomplete without the approved plans. In the absence of any indication to the contrary, those plans and drawings will be the plans included with the application for permission, unless stated to the contrary in the decision notice, and placed on the planning register. Absent any statement to the contrary, the reasonable inference is that a grant of full planning permission approves the application drawings.
16. The 2005 permission relates to 'retention of part of ancillary building to enlarge barn conversion...' (emphasis added). The approved drawings show an 'extension' to the barn conversion with substantial changes in appearance from that of the portal frame building and specifically show parts of that portal frame building as to be demolished. It is reasonable to assume, therefore, that the permission included significant demolition works to the portal frame building and replacement of concrete blockwork with reclaimed bricks to match existing. The drawings also show a new pantile roof.
17. However, the approved drawings show little in the way of reconstruction work to the walls of the original brick barn. Drawing 5A is annotated 'all new and patching masonry to be reclaimed brick to match existing' and 'area of existing blockwork to be replaced with facing brick. The latter may be taken as referring not only blockwork to the portal frame building but also areas of infill within the brick barn.

18. Approved drawing 4A is also annotated 'area of existing blockwork to be replaced with facing brick. Both drawings also show a new pantile roof and substantial alterations to the form of the portal frame building but not to the brick barn.
19. The appellant argues that the lack of a condition requiring adherence to drawings is significant in that it indicates an acceptance by the Council that extensive demolition and rebuilding work would be necessary. In 2005 such a condition was not routinely imposed on planning permissions but was 'taken as read'. It is not, therefore, reasonable to assume that there was any specific recognition that demolition would be necessary. In any event the general principle is that the intention of either the developer or the Council is immaterial. It is the content of the documents that were placed on the planning register that is relevant.
20. Therefore what was permitted by the two planning permissions read together was the conversion of the brick built barn, and the retention of part of the portal frame building to form an extension thereto, in accordance with the drawings approved under the 2005 planning permission.
21. The approved drawings are, as reasoned above, instructive as to the nature of works required to achieve the approved conversion of the pre-existing building. The brick built barn is shown as incorporated into the conversion scheme to a great extent, albeit that the works would entail a significant degree of demolition and rebuild of the portal building. However it is clear that neither the 2002 nor the 2005 permission permitted the complete demolition and rebuild of the brick barn.
22. It is the appellant's contention that a structural survey carried out in July 2006 indicated that both gables and the rear elevation were in a poor state of repair so as to be dangerous and recommended immediate demolition. Furthermore the portal frames of the portal frame building were in such a poor condition that it was proposed to remove these. That demolition was carried out and further damage occurred during a later storm such that little remains of the structure to this day other than comparatively small areas of brickwork.
23. It is the appellant's contention that it had been agreed with Council Officers that the development was to be achieved in accordance with discussions that had taken place where it was accepted that substantial demolition and rebuilding would be required. However, as reasoned above, it is the content of documents on the planning register that are relevant, not the understanding or intention of the developer or the Council.
24. The appellant further suggests that the Council did not require a structural survey at the time of the 2005 permission in order to be satisfied that the proposal complied with the then Selby District Local Plan (2005). That policy stated that proposals for the conversion of rural buildings to residential use in the countryside will only be permitted where, *inter alia*, the building is structurally sound and capable of re-use without substantial building. Little weight can be given to the argument that the lack of a requirement for a survey adds support to the appellant's case. It is the responsibility of an applicant for a barn conversion to ensure that the works can be carried out. However, policy H12 also adds little weight to the Council's case in that the original permission to convert the brick barn, upon which the 2005 permission relies, was granted before the adoption of the Selby District Local Plan (2005).

25. It follows, that despite extensive dialogue on the demolition works that were carried out and their being necessitated by the poor and dangerous condition of the existing structure, that the planning permission did not include the extensive demolition and reconstruction of the brick barn but did permit the incorporation of a substantial part of the portal frame building's structure into the resultant converted building.
26. The portal frame building no longer exists and all that remains of the brick barn are small areas of brickwork. What is left of the structure on site is incapable of conversion in accordance with the planning permissions.
27. Both parties have referred to examples of case law in support of their respective positions. In each case said to be comparable the precise wording and content of the permissions is of paramount importance and this will differ to some degree in each case. This appeal has been determined on its individual merits, taking account of case law where appropriate
28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of change of use from agricultural barn to residential dwelling in accordance with planning permission 2005/0787/FUL was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Hammond

Inspector

APPEARANCES

FOR THE APPELLANT:
Mrs Lucy Miles (Solicitor)
Mr Trevor Morris

FOR THE LOCAL PLANNING AUTHORITY:
Mr Keith Thompson