The Planning Inspectorate

Appeal Decisions

Site visit made on 24 July 2017

by D H Brier BA MA MRTPI

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

Decision date: 14 August 2017

Stud Farm, Westwoods, Sturton by Stow, Lincoln LN1 2AP
Appeals by Lincolnshire Industrial Doors Limited

Appeal A Ref: APP/N2535/X/16/3165925

- 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 against the decision of West Lindsey District Council.
- The application Ref 134810, dated 3 August 2016, was refused by notice dated 18 October 2016.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is B8 storage or distribution.

Summary of Decision: The appeal is dismissed.

Appeal Ref B: APP/N2535/C/16/3166057

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made against an enforcement notice issued by West Lindsey District Council.
- The enforcement notice was issued on 7 December 2016.
- The breach of planning control as alleged in the notice is the erection of a metal clad building.
- The requirement of the notice is remove the building from the site.
- The period for compliance with the requirement is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed.

Appeal A and Appeal B on Ground (d)

Preamble

1. As the matters involved in these appeals concern the same building and are common to both, I deal with them jointly.

2. The LDC application form indicates that the development for which the certificate was being sought was an existing use, - hence the description contained in the case details for Appeal A outlined above. However, both the notice of refusal and the parties' cases are directed at the erection of a building

which is also the subject of Appeal B. In the light of this, my decision on Appeal A will proceed on the basis that the matter at issue concerns operational development, namely the erection of a building and I will deal with this appeal as one that derives from the provisions of section 191(1)(b) of the 1990 Act.

3. In order for either of the appeals to succeed, it has to be shown the time for taking enforcement action had expired, in that the operations had been substantially completed more than 4 years beforehand. The relevant dates in this respect are somewhat different; 3 August 2012 in the case of Appeal A, and 7 December 2012 in the case of Appeal B. The test for the evidence is the balance of probability, and the Courts have held that in cases such as this the onus on proving it lies with the appellant.

Appeals

4. According to the LDC application form, the building works were substantially completed on 1 August 2011. The Council, however, have a more fundamental concern, namely that it is contended that the building in question has not been substantially completed. I address this matter first. In so doing I have had regard to the House of Lords judgement in *Sage v SSETR and others [2003] 1 W.L.R. 983*, cited by the Council.

5. Photographs of the building taken during an officer's site inspection on 16 February 2016 show a number of what appear to be unfinished elements. These more or less coincide with what I observed, and I can understand why they are thought to give the impression of a building that is not yet fully completed.

6. As no plans of the building have been put forward, it is difficult to tell exactly what was contemplated, and the appellant has offered no guidance in this respect. That said, while the 'missing' elements identified by the Council are noticeable, their scale is relatively small in relation to the building as a whole and it seemed to me that their function would probably have been largely cosmetic in nature. Moreover, the absence of the items does not have appeared to have impeded or prevented full use being made of the facilities provided by the building. Having regard to the 'holistic' approach advocated in *Sage*, my view is that the circumstances of this case are such that, as a matter of fact and degree, it is reasonable to regard the building in question as having been substantially completed.

7. As to just when this occurred, however, the evidence does not paint a particularly clear picture. In support of the proposition that the building was substantially completed on 1 August 2011, my attention has been drawn to a statutory declaration by the proprietor of the premises. He indicates that construction of the 'unit' began in 2010; work was undertaken in stages and was completed by August 2011 by which date the building was in daily use for the garaging of vehicles and equipment used in connection with his business.

8. A letter dated 19 September 2016 from a long standing employee of the appellant states that he "*did some work on the buildings [sic] to which the application relates 5 years ago*" and goes on to refer to them being "*gradually developed over the next year by which time they were done*". In addition, an undated letter from a neighbour submitted with the LDC application on 3 August 2016 states, "*I can recall that the construction of these units [sic] took place some five years or so ago*."

9. Neither the contents of the letters, nor the declaration, have been challenged. However, while there is a degree of consistency between the respective recollections of the individuals concerned, the information provided is not particularly strong on precision. Indeed, this point is acknowledged by the appellant who indicates that precise dates regarding an event from some 5 years ago or so are not likely to be easily recalled. The appellant criticises the Council for being unrealistic in expecting the provision of precise information, but precision and clarity are important factors in establishing lawfulness.

10. Having explained how the appellant company's business operates, with work often taking place away from the site, and other tasks needing to be done there, I can appreciate why construction work was somewhat intermittent and dependent upon opportunities arising. But, as the appellant has opted to pursue his appeals by means of written representations, this has precluded the opportunity for this evidence to be tested by cross-examination. This tends to diminish the weight to be attached to it somewhat.

11. Documentary evidence is not especially abundant either; it amounts to 3 invoices for the supply of concrete, corrugated sheeting and roller shutters. As the dates of the invoices are between 9 November 2010 and 14 December 2010, they could well be indicative of some sort of work taking place at the appeals site at that time and so, to this extent, there is some consistency between the invoices and the rest of the appellant's evidence. However, although the invoices are all addressed to the appellant company at Stud Farm, they are silent insofar as where the items were actually delivered to. Nor do they contain any indication of what the items were used for. Indeed, having read that roller doors are central to the appellant's business, it is not inconceivable that some of the invoices could relate to this work. It simply is not clear. The lack of clarity in this evidence is such that I find it somewhat inconclusive. I am reluctant therefore to attribute a great deal of weight to it.

Conclusion

12. Notwithstanding my conclusion regarding the question of the substantial completion of the appeal building, I am concerned that evidence showing just when this happened is not particularly clear. As noted above, the appellant has acknowledged the difficulty inherent in recalling the precise dates of events that occurred some time ago. And, I appreciate that, at the time, such events may not have appeared particularly noteworthy to those involved. Be that as it may, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the time for taking enforcement action had expired on either of the relevant dates. The burden of proof that lies with the appellant has not been discharged.

13. For the reasons given above, and having regard to all the other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a building at Stud Farm, Westwoods, Sturton by Stow, Lincoln LN1 2AP 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.

14. The section 174 appeal on ground (d) also fails.

Appeal B – Ground (g)

15. The case under this heading cross references the period for compliance to the decision on the LDC appeal – I am unable to identify anything else that expressly supports the appeal on this ground. In the light of this, I see no reason to conclude that the period is too short.

16. The appeal on ground (g) therefore fails.

Formal Decisions

Appeal A Ref: APP/N2535/X/16/3165925

17. The appeal is dismissed.

Appeal Ref B: APP/N2535/C/16/3166057

18. The appeal is dismissed and the enforcement notice is upheld.

D H Brier

Inspector