



Appeal Decision

Site visit made on 2 September 2019

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/W1145/X/18/3212851

Rosie's Barn, Woolsery, Bideford, Devon EX39 5RE

- 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 Mr George Carlin against the decision of Torridge District Council.
- The application Ref 1/0100/2018/CPE, dated 25 January 2018, was refused by notice dated 6 April 2018.
- 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 use as a residential dwelling without restriction to holiday accommodation, in accordance with planning permission 1/1830/2000/62/0002.

Summary of Decision: The appeal is dismissed

Background

1. Rosie's Barn is the smaller of two former agricultural barns, previously within the same ownership, for which planning permission for residential conversion was granted in 1997 ("the Original Permission").¹ At that time, and at other times during the rather complex planning history which I shall set out below, the barns were known by different names; in the interests of clarity, throughout this decision I shall refer to the barn that is the subject of this appeal as "Rosie's Barn" and the other barn as "Higher Barn".
2. The Original Permission for the conversion of the two barns was granted subject to five conditions. The first of these required the development to be carried out in complete accordance with the approved plans, and it is common ground that the relevant approved plan is drg no. 971568/1a. The fourth condition specified that Rosie's Barn shall only be used for holiday accommodation serving Higher Barn, and for no other purpose.
3. A few years later, an application was made to vary the terms of the Original Permission, so as to exchange the roles of the two buildings. Planning Permission was granted in 2000 ("The First Variation")², subject to a number of conditions. The relevant condition for present purposes is condition 4, which specifies that Higher Barn shall only be used for holiday accommodation serving Rosie's Barn, and for no other purpose. The plans approved by this First Variation were the same as those approved by the Original Permission.

¹ Ref 1/0883/97/62/0002

² Ref 1/1830/2000/62/0002

4. The following year, a revised drawing (drg no. 971568/3) was submitted to the Council by the developer's agent, with an accompanying letter (dated 19 July 2001) detailing proposed amendments to the First Variation. The Council approved these amendments by letter dated 15 August 2001.
5. In 2013 planning permission was granted for *Variation of condition 4 of planning permission 1/0883/1997 – amended description* ("The Second Variation")³, subject to a number of conditions. The relevant condition for present purposes is condition 4, which specifies that the premises (identified as Rosie's Barn) shall be used for short term holiday accommodation and for no other purpose.
6. In the interests of clarity it is worth noting here that while the development permitted by both the First Variation and Second Variation is described in the terms of "variation of condition X of planning permission reference Y...", in each case the permission granted is not simply an amendment to an earlier grant of planning permission, but a stand-alone grant of planning permission in its own right.
7. In May 2016 the Council issued a LDC ("the Existing LDC")⁴ certifying that on 14 March 2016, compliance with Condition 1 of the Original Permission, being the occupation of Higher Barn for full residential purposes and Rosie's Barn for holiday accommodation, was lawful.
8. In January 2018 the Appellant applied for a LDC to certify that Rosie's Barn may be used for full residential purposes, without restriction to holiday accommodation. The Council's refusal to issue the requested LDC is the subject of the current appeal.

Main Issue

9. The Appellant's case is that the use of Rosie's Barn as an unrestricted dwelling is lawful, because it complies with an extant grant of planning permission (the First Variation). The Council's case is that the conversion of the two barns was carried out in accordance with the Original Permission rather than the First Variation, and that the First Variation was never implemented, such that there is no existing planning permission for the unrestricted residential use of Rosie's Barn.
10. The main issue in this appeal, then, is whether or not extant planning permission exists for the use of Rosie's Barn as a residential dwelling without restriction to holiday accommodation.
11. The Appellant has raised a number of concerns about the evidence and procedure which informed the Council's decision to issue the Existing LDC for Higher Barn. It is not open to me, in the context of this appeal, to re-visit that decision - s.191(6) of the 1990 Act states that the lawfulness of the matters certified by a LDC is to be conclusively presumed. However, it is worth noting that the existence of that LDC does not automatically rule out the success of the current appeal: the test is whether, *on the balance of probabilities*, the Appellant (on whom the burden of proof lies) can demonstrate that on the date he applied for a LDC, the unrestricted residential use of Rosie's Barn was lawful.

³ Ref 1/0111/2013/FUL dated 3 April 2013

⁴ Ref 1/0264/216/CPE dated 12 May 2016

Analysis

12. There are three grants of planning permission to consider here: the Original Permission, the First Variation, and the Second Variation.
13. The Original Permission did not restrict the residential use of Higher Barn but specified that Rosie's Barn should only be used for holiday accommodation "serving" it, whereas the First Variation reversed the roles of the two buildings and did not restrict the residential use of Rosie's Barn, but specified that Higher Barn should only be used for subsidiary holiday accommodation "serving" it.
14. In assessing which of these permissions was in fact implemented, it is helpful to compare what is detailed in the relevant approved plans with what has actually been built. The relevant approved plan for the Original Permission is drg no. 971568/1a. This was also the plan approved by the First Variation, but the Council subsequently approved a revised plan showing amendments to the First Variation (drg no. 971568/3). If the finished appearance of the development accords more closely with the revised plan than the original plan, that would suggest that it was the First Variation, rather than the Original Permission, which was implemented.
15. At my site visit I saw that the external appearance of Rosie's Barn does not in fact align directly with either the original or revised plan. There are features which accord more closely with the original plan (for example, the east elevation does not contain either the additional door or the stainless steel chimney detailed as amendments in the revised plan) and features which accord more closely with the revised plan (for example, the north gable end contains a first-floor window as shown in the revised, but not the original, plan). There are also features which are not detailed in either plan: for example, the doorway in the east elevation does not match that shown in the original or the revised plan. Neither does the window to the right of it, nor the window above these two openings.⁵
16. In my judgment, the outcome of this comparison exercise is inconclusive. I am not satisfied that the development carried out accords sufficiently closely with the details shown on either the original or the revised plan for me to conclude, with any degree of confidence, that it must have been built in accordance with one rather than the other. Put another way, there is insufficient clarity to demonstrate that, on the balance of probabilities, the permitted conversion was carried out in accordance with the details shown on the revised plan rather than those on the original plan.
17. The third grant of planning permission – here called the Second Variation – was granted in 2013, more than a decade after the first two. Some background is set out in a letter dated 11 March 2016, written by the agent who acted for the owners of Rosie's Barn at that time, and submitted by the Appellant. The letter states that having purchased both barns in 2002 and converted them, the then-owners lived in Higher Barn and let out Rosie's Barn as holiday accommodation. Their understanding was that this was in accordance with the Original Permission, and that the First Variation was never implemented. That is borne out in the terms of the application they submitted, when they came to

⁵ I note that the current internal layout differs from that shown in the original plan. However, that does not assist for present purposes because internal alterations do not constitute development, and so can be carried out at any time without the need for planning permission. The revisions to the original plan approved by the Council's letter dated 15 August 2001 are, rightly, confined to the proposed external alterations.

sell Rosie's Barn in 2013, to sever its functional link to Higher Barn: the proposal is described as the variation of condition 4 of planning permission 1/0883/1997 (that is, the Original Permission).

18. It is important to note that the Second Variation applies specifically to Rosie's Barn, and not to Higher Barn. As noted above it does not effect a variation to the Original Permission, but rather is a separate grant of planning permission in its own right. Condition 4 of this later permission does not (as did condition 4 of the Original Permission) restrict the use of Rosie's Barn to holiday accommodation serving Higher Barn, but it *does* specify that "the premises shall be used for short term holiday accommodation and for no other purpose."
19. There is no dispute that Rosie's Barn has subsequently been used to provide short term holiday accommodation that does not "serve" Higher Barn, such that the Second Variation has been implemented.
20. Turning to other available evidence, the letter dated 11 March 2016 that was written by the agent acting for former owners of Rosie's Barn (referred to above) refers to records of Council Tax paid in respect of Higher Barn, and Business Rates in respect of Rosie's Barn. The Council has confirmed that Rosie's Barn was registered for Business Rates from 1 September 2004 to 29 January 2011, and the Appellant has confirmed that since he purchased it in 2013, Rosie's Barn has been used exclusively for holiday rental use.
21. The undisputed evidence of the Appellant is that at the date of his purchase, Rosie's Barn was registered for Council Tax, having most recently been used as a residential dwelling, and he regards this as endorsement by the Council that full residential use was allowable. The Council accepts that Rosie's Barn may have been occupied during this period on a residential basis, but maintains that any such use was unlawful. Crucially, there is no evidence to suggest that any use of Rosie's Barn as a dwelling rather than as holiday accommodation subsisted for such a period of time as to become immune from enforcement action.⁶

Conclusion

22. In summary, then, for the purposes of establishing whether Rosie's Barn was converted in accordance with the Original Permission or the First Variation, a comparison of the existing building with the details shown in the original and revised plans is inconclusive. However, the letter written by the agent acting for the owners who carried out the conversion sets out their understanding that it was done in accordance with the Original Permission, and that the First Variation was never implemented. This version of events is not contradicted by any other available evidence, and is supported by the fact that the Second Variation specifically seeks to vary a condition imposed by the Original Permission, rather than the reversed form of that condition imposed by the First Variation.
23. Taking all of this into account, I consider that the evidence currently before me indicates that on the balance of probabilities the Original Permission and Second Variation have been implemented, whereas the First Variation has not. This means that there are two extant planning permissions concerning Rosie's Barn, both of which restrict its use to holiday accommodation.

⁶ In accordance with the time limits set out at s.171B of the 1990 Act.

24. For these reasons I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of Rosie's Barn as a residential dwelling without restriction to holiday accommodation, in accordance with planning permission 1/1830/2000/62/0002, 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.

Formal Decision

25. The appeal is dismissed.

Jessica Graham

INSPECTOR