The Planning Inspectorate

Appeal Decision

Site visit made on 18 September 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

Appeal Ref: APP/D3315/X/18/3218599
Newtons, Nailsbourne, Taunton, Somerset TA2 8AQ

- 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 Newton Scanlon against the decision of Taunton Deane Borough Council.
- The application Ref 20/17/0011/LE, dated 24 May 2017, was refused by notice dated 18 August 2017.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as: an "unencumbered dwelling".

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 and Main Issue

2. I have used the description above as set out on the application forms. Planning permission was granted at what was then known as Nailsbourne Nursery for the "erection of an agricultural workers dwelling" originally on 29 November 1993 (ref 20/93/027) and this included 8 planning conditions. The appellant is seeking to establish that the conditions have no ongoing effect as, in his view, that permission was not implemented. Of particular relevance to this case is Condition 6 which states:

   "The occupation of the dwelling shall be limited to a person solely or mainly employed, or at last employed, in the locality in agriculture, as defined in Section 336(1) of the Town and Country Planning Act, 1990, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person".

3. Although development appears to have been commenced towards the end of the then standard 5-year period for commencement, on 25 November 1998, there is no suggestion that the development was commenced out of time. Following the commencement of construction work on the site, the Council allowed what are referred to by the parties as "minor amendments" to the planning approval by way of a letter dated 15 April 1999. Those changes were acceptable to the Council as minor non-material amendments.

4. The dwelling was completed by 2 March 2001 according to the Council's building control service. The plans deposited for building control purposes are not before me and so I do not know what the building control inspectors were expecting or what level of checking of planning drawings, if any, would have taken place by them.

5. There is some agreement between the parties regarding the nature and extent of the difference between what has been constructed in comparison with the approved plans. There is also some difference of view between the main parties about the extent of the increased floor areas.

6. As well as changes that, on the balance of probability, appear to have been incorporated at the time of construction, further alterations have been made to the dwelling, including a large conservatory with a pool inside, since the dwelling was occupied. For these purposes it is only necessary to consider the changes incorporated during the initial construction.

7. The main issue is the materiality and significance of the differences between the dwelling as constructed and the approved plans which will determine whether or not the planning conditions imposed on 20/93/027 have effect. The onus is upon the appellant to prove their case on the balance of probabilities.

Reasons

8. The parties have referred to numerous legal authorities. The appellant refers to, Sage[1] amongst others, and suggests that if there are any differences between what was approved and what was constructed the planning permission has not been implemented. However, from these specific cases and others that have been cited, it is clear that the materiality of the differences between what was built and the approved permission have to be considered as does the significance of them.

9. Looking first at the differences between what was approved and what was constructed, at the site visit I was asked to view the property relative to the remaining part of a wall that formed part of the former greenhouse which both sets of approved plans show. Relative to that, it appears that the dwelling is in a similar position on the site as that shown on the minor amendments drawing. The appellant's schedule of differences and illustration was also based upon that drawing.

10. Changes from the approved plans made at the time of construction included the erection of a conservatory on the southern elevation (next to a much larger conservatory added subsequently). A glazed porch was also added to the eastern elevation to provide covered access to the garage as well as a window within that wall. Other external changes were such things as use of brick-quoins, some differing window sizes and details as well as a different front door and different window design within the western elevation. Roof-lights have been installed rather than dormers within the eastern roof-slope. Internally there have also been differences in the layout from the approved plans such as the reversal in the direction of the stairs and a change in the number of bedrooms.

11. I now turn to the significance of the differences identified. Many of these such as the internal differences, reducing the number of bedrooms, minor external

[1] Sage v SSETR & Maidstone BC [2003] UKHL 22

changes to fenestration and other detailing can in my view be considered minor, non-material amendments. They are a similar magnitude as the Council had previously accepted when making their decision in 1999. Such changes would necessitate very close inspection from close quarters and would be difficult to notice. The ordinary person 'in the street' with some knowledge of what was approved would see those changes as not making a significant difference to what they expected to be constructed.

12. The loss of the dormer windows on the eastern roof elevation, the additional porch (or small conservatory) on that side and the substantial conservatory on the southern elevation adjoining the living room are however clearly more substantial alterations. These changes alone as well as when they are looked at cumulatively with less obvious changes, have made a significant difference to the style and appearance of the dwelling. Although there is not complete agreement about the proportional increase in floorspace, the size is also significantly larger from what was approved.

13. The ordinary person 'in the street' seeing the changes would in my view consider a significantly different form of development had been constructed. Had the Council taken enforcement action within 4 years of completion of the development the minor changes along with these more substantial changes, in my view would mean that the allegation should have been one of the construction of a building without planning permission and in that way the circumstances are similar to those in Copeland[2]. A different dwelling was constructed in comparison to that approved.

14. The Council has referred me to the Commercial Land decision[3]. Taking that into account, there are some similarities between the dwelling as approved and as constructed such as the broad design approach and the siting resembles that shown on the minor amendment drawing. However, as a matter of fact and degree, cumulatively the dwelling has a significantly different external appearance, is noticeably larger and the internal layout is different from the originally approved drawings as well as the subsequent non-material amendments.

15. Some of the changes are not prominent from outside of the site but whilst that does influence the significance of the changes, it does not make them insignificant. From the evidence provided, the increase in floorspace of the dwelling is not off-set by the reduction in number of bedrooms to a decisive degree.

Conclusion

16. 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 an unencumbered dwelling, 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.

Andy Harwood

INSPECTOR.

[2] Copeland BC v SSE & Ross & Ross [1976] JPL 304
[3] Commercial Land Ltd v SSTLR & Kensington and Chelsea RBC [2002] EWHC 1264 (Admin), [2003] JPL 358

The Planning Inspectorate

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 dated 24 May 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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:

On the balance of probabilities, the dwelling was constructed not in accordance with any planning permission and has been substantially completed for a period in excess of 4 years. Consequently, its use is immune from planning enforcement action and the conditions attached to previous planning permission, including the agricultural occupancy restriction, have no effect.

Signed

Andy Harwood
Inspector

Date 17 October 2019
Reference: APP/D3315/X/18/3218599

First Schedule

An unencumbered dwelling.

Second Schedule

Land at Newtons, Nailsbourne, Taunton, Somerset TA2 8AQ

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

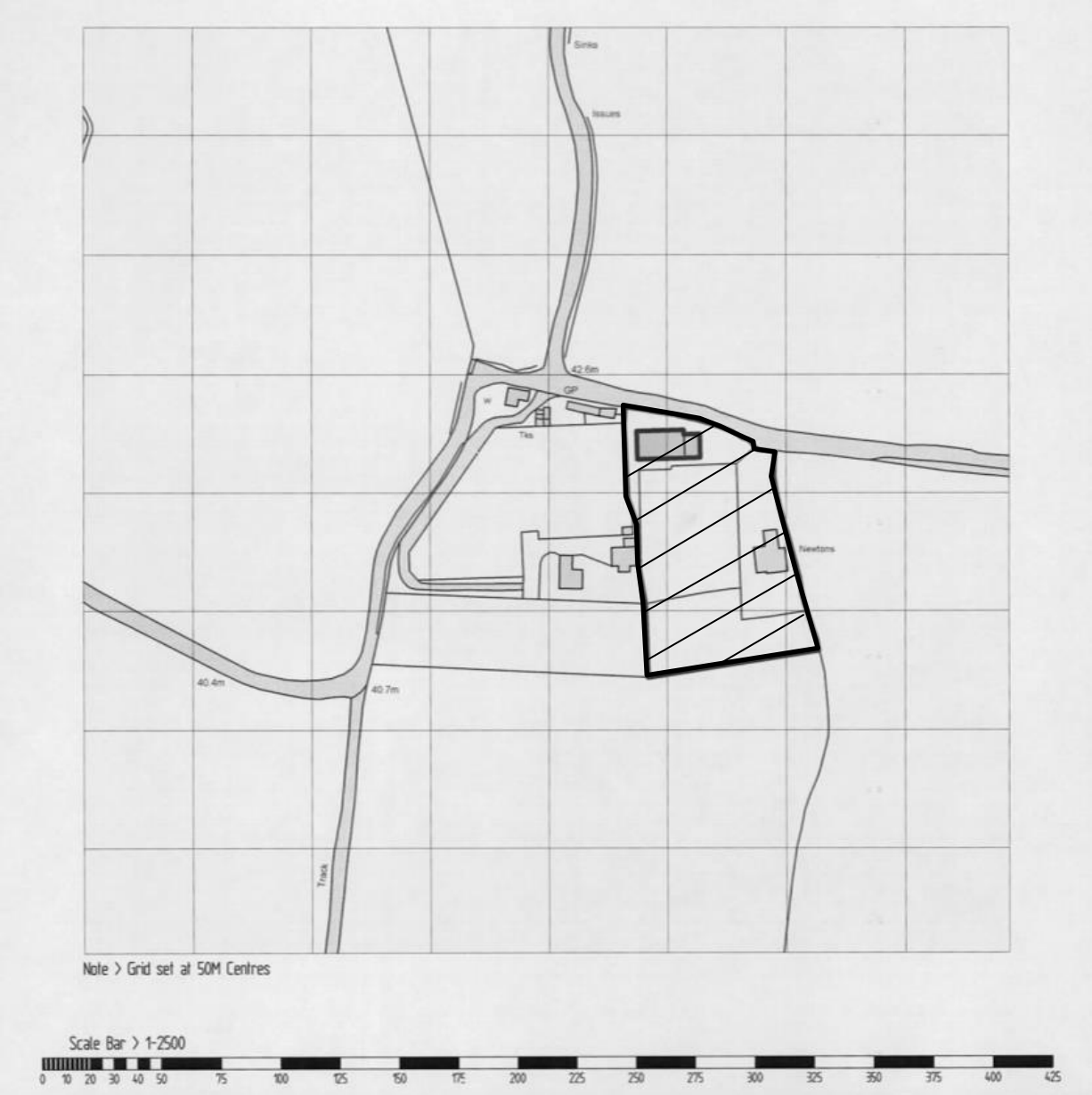
The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 17 October 2019

by Andy Harwood CMS MSc MRTPI

Land at: Newtons, Nailsbourne, Taunton, Somerset TA2 8AQ

Reference: APP/D3315/X/18/3218599

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