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## Appeal Decision

Site visit made on 4 February 2020

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 February 2020**

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**Appeal Ref: APP/N2739/X/19/3224700**

**Oakwood, Main Street, Healaugh, Tadcaster LS24 8BU**

- 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 and Mrs Jeremy Richardson against the decision of Selby District Council.
  - The application Ref 2018/0748/CPE, dated 29 June 2018, was refused by notice dated 21 December 2018.
  - The application was made under section 191(1)(c) 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 "existing use of a building as a single dwellinghouse which is not the subject of the conditions imposed by permission 8/82/15B/PA".
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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 matter constituting a failure to comply with conditions which is considered to be lawful.

### Application for costs

2. An application for costs was made by Mr and Mrs Jeremy Richardson against Selby District Council. This application is the subject of a separate Decision.

### Background

3. Although this case relates to the use of the dwelling in question, the principle argument presented by the appellant is that the dwelling was built in a different location to that shown on the approved permission 8/82/15B/PA. Furthermore, that the location was such to be more than an error in laying out the building but was of such magnitude so as to take the dwelling outside the scope of the approved planning permission. Consequently, it is argued that when built the dwelling was unlawful but has become lawful through the passage of time. Because the original permission was never implemented, it is contended that none of the conditions imposed ever took effect, including condition 2 which restricts the occupancy and, consequently it is lawful for the dwelling to now be occupied without complying with the occupancy condition 2.

### Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. In this case, that turns on whether

the appeal property has been used as a permanent dwellinghouse, in breach of conditions subject to which planning permission was granted, for such period as to be immune from enforcement action.

## **Reasons**

5. Under s171B(2) of the 1990 Act as amended no enforcement action may be taken at the end of the period of four years beginning with the date of a breach of planning control
6. In December outline planning permission was granted for the erection of an agricultural workers dwelling on the site. Subsequently, in April 1999 planning permission was granted under reference 8/82/15B/PA for the erection of a new four bedroomed detached agricultural workers dwelling on the site. Although the Council states that this was a reserved matters application pursuant to the original outline permission, this seems to be a matter of speculation and there is insufficient evidence before me to conclude that this is correct. Instead, the evidence now presented, including the officer report relating to 8/82/15B/PA and the permission itself, indicates that it was granted in full. Condition 2 relates to agricultural occupancy of the dwelling.
7. In April 2003 permission was granted for alterations and extensions to provide a double garage with store/WC and dayroom and the installation of two former windows to the rear elevation. Condition 2 of that permission restricts the occupancy of the dwelling.
8. In February 2015 an application to remove the occupancy condition was refused by the Council. In December 2017 a certificate of lawful existing development for the erection of the dwelling in question was granted for the dwelling constructed in a different position to the siting approved, but it was clarified that the agricultural occupancy condition still applied. In response to that decision the appellant sought advice from Counsel who recommended that the application the subject of this appeal should be submitted.
9. In summary, the appellant states that the dwelling was not built in accordance with the plans approved under application 8/82/15B/PA. It was therefore unlawful at the time it was constructed and the planning permission and all its conditions have now lapsed, including condition 2 which restricts occupancy of the dwelling. In particular, the appellant has demonstrated that the dwelling was not originally constructed in the position for which planning permission was granted. Although there is some disagreement between the main parties with reference to the actual measurements involved, there is no dispute that the siting is different.
10. The property has been altered and extended since it was originally built, with the addition of a double garage with store/WC, a dayroom and associated alterations pursuant to planning permission granted in 2003. As noted above, this permission was also the subject of an occupancy condition.
11. The Council states that although the siting of the dwelling is different, it is clear that it has been built in a similar position to that approved. Furthermore, it is stated that the design of the dwelling is exactly in accordance with the originally approved plans and this indicates a clear intention to implement the permission. The Council also states that the footprint, shape, size and orientation match the approved plans. My attention has also been drawn to

the fact that there is no condition on the original permission requiring implementation in accordance with approved plans and therefore the variation to the siting would not contravene any condition of the permission.

12. As with many appeals of this type, the case rests on whether the differences between what was approved and what has been built are material or not. This is a subjective judgement based on a fact and degree assessment and is dependent on the specific circumstances of each case.
13. Case law<sup>1</sup> holds that in assessing whether a material operation is comprised in the development it is not sufficient to consider the differences between two plans but to consider the significance of the differences. That case dealt with the issue of substantial completion rather than the implementation of a particular plan or plans, but the principles established are helpful in dealing with the current appeal. As previously stated above, there is no dispute that the dwelling has been built in a different location to that which was approved. I also agree with the Council's comments that the design is the same as originally approved and the property has been subsequently altered and extended in accordance with permission approved in April 2003.
14. However, in this case the most significant issue is the siting of the dwelling. The appellant's evidence states that the dwelling has been built 15 metres from its approved location, there is no overlap in the footprint of the approved siting and the dwelling as built and part of the dwelling built falls outside the application site to which the original permission related. The Council disputes the degree of variance from the approved plans. However, it is evident from the plans submitted by both main parties, aerial photographs, my own observations on site and other evidence provided, that the dwelling as a matter of fact and degree is in a different location to that approved. The degree of difference is not small but is a matter of several metres which I consider to be significant and materially different to the approved plans.
15. Therefore, it is my view that the dwelling has not been built in accordance with the approved plans but rather has been built without planning permission. The Handoll case<sup>2</sup> relates to a dwelling subject to an agricultural occupancy condition which was not built as approved. The planning permission was not implemented and the agricultural occupancy condition did not apply. The building was immune from enforcement and free from conditions. Similarly, in this case the development has been carried out otherwise than in accordance with planning permission granted and as such was unauthorised and unlawful and therefore the conditions imposed on that permission can have no effect whatsoever. The relevant original permission has not been implemented and the Council could have taken enforcement action at any time up to four years after the development was substantially completed. They did not do so and consequently the dwelling is now immune from enforcement action.
16. The Council contends that if prior to the construction of the dwelling the applicant had requested the current position as a minor amendment to the approved plans, it is considered that it would have been agreed. However, there is no evidence that such a request was submitted and to state this position now is conjecture. In coming to my decision I have had regard to the

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<sup>1</sup> Commercial Land Ltd v SSTLGR & Kensington and Chelsea RBC [2002] EWHC 1264 (Admin), [2003] JPL 358

<sup>2</sup> Handoll & Suddick v Warner & Goodman & Street & East Lindsay DC [1995] JPL 930 (CoA)

evidence of both main parties, including case law, the detailed planning history of the site and other appeal decisions.

### **Conclusion**

17. For the reasons given above I conclude, on the evidence available to me, that the Council's refusal to grant a lawful development certificate was not well-founded and that the appeal should therefore succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

### **Formal Decision**

18. The appeal is allowed and attached to this decision is a lawful development certificate describing the extent of the existing operation considered to be lawful.

*A A Phillips*

INSPECTOR

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

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**IT IS HEREBY CERTIFIED** that on 19 June 2018 the matter described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling as built is in a materially different location to the dwelling permitted under planning permission reference 8/82/15B/PA such that the original permission was not implemented. As the 'as built' dwelling was completed in excess of four years prior to the application for the LDC, it is immune from enforcement action and the conditions imposed on the original permission do not apply.

Signed

*A A Phillips*  
Inspector

Date: 23 February 2020

Reference: APP/N2739/X/19/3224700

### ***First Schedule***

Existing use of a building as a single dwellinghouse which is not the subject of the conditions imposed by permission 8/82/15B/PA.

### ***Second Schedule***

Oakwood, Main Street, Healaugh, Tadcaster LS24 8BU

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, 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 operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 23 February 2020

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

**Oakwood, Main Street, Healaugh, Tadcaster LS24 8BU**

**Reference: APP/ N2739/X/19/3224700**

Scale: Do not scale

