



Appeal Decision

Site visit made on 28 January 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal Ref: APP/Z1510/X/19/3233727

Whitehouse Business Park, White Ash Green, Halstead, Essex CO9 1PB

- 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 Simon Bragg per Whitehouse Holdings (Halstead) Ltd against the decision of Braintree District Council.
 - The application, Ref 19/00648/PLD, dated 26 March 2019, was refused by notice dated 13 June 2019.
 - 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 described as a warehouse extension and associated ground works.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Simon Bragg against Braintree District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development was well founded.

Reasons

5. The appeal relates to a proposal to extend a warehouse on a business park. The park is owned by the Whitehouse Holdings (Halstead) Ltd Group and is occupied by a number of operators who make use of several detached buildings

around the site. Whitehouse Services Group is a distribution company dealing in food spices and they occupy two buildings in the north west corner of the park.

6. The larger building (Building A) is the more modern of the two with a high ceiling height and contains offices as well as being largely used for storage. The proposal is to demolish a small outbuilding adjacent to it to make way for an extension approximately 992.77sqm in area. To the south of Building A is what is known as the linear building (Building B), a long narrow older building with a lower ceiling height used predominantly for warehousing. The area between the buildings is used as a delivery yard. The extension to the storage area would be 'L' shaped and would enclose one end of the yard. Whilst it would be in close proximity to Building B, there would be no physical connection.
7. The appellant submits that for the purposes of permitted development (PD) Building A and Building B and the buildings to be demolished are original buildings within the same curtilage and are used for the same undertaking. As such, they can be used as a single original building in making any measurement (Interpretation of Class H, paragraph H.3.). The proposed extension would also be within the curtilage of these warehouse buildings and would be used for the same purpose (Conditions, paragraph H.2.).
8. In addition, he states that the extension would also be constructed from materials similar to the original buildings (Paragraph H.2.(e)). As both buildings meet the definition of 'original', Building A can be extended by up to 50% or 1000sqm, whichever is the lesser. The total area of warehousing on site is 3812sqm and therefore the proposed extension at 992.77sqm would not exceed 50%, which equates to 1906sqm, and would also be less than 1000sqm.
9. The principle points at issue are the Council's determination that the proposal would conflict with paragraph H.1.(b)(iii) and that Buildings A and B do not share the same curtilage. The Council accepts that in all other respects the extension would accord with the limitations set out in Class H of the GPDO and I see no reason to take a different view.
10. Following the Council's initial assessment of the appellant's application, only two planning applications were referred to in their officer's report setting out the planning history of the site. However, after the receipt of the appellant's case at appeal, the Council undertook a full history check to ascertain the original planning permission and footprint of Building A and whether Building B was erected as part of the same proposal.
11. As a result, the Council now submits that Building A was extended after planning permission was given in 2002. The original building as built had a footprint of 1100sqm and was extended by 750sqm. It is now their view that this reduces the amount by which Building A can now be extended.
12. Furthermore, they have ascertained that Building A and Building B were not built at the same time. The use and development of Building B for storage and packing was established via an established use certificate in 1994. This building then received planning permission to be rebuilt in 1996 and was restricted in use to the established use. Building A was erected for a storage and packing use following a planning permission in 1994. The use of this

building changed in 2000 to an indoor play area, which was extended in 2002. It was returned to a storage and packing use in two stages following grants of planning permission in 2015 and 2018.

13. Notwithstanding this planning history, it is considered that the interpretation of Class H does not require that the original buildings should have been built at the same time. The limitations are only that where two or more original buildings are within the same curtilage and are used for the same undertaking they ought to be treated as a single original building in making any measurement.
14. I saw at the site visit that the use of both buildings is part of the same undertaking, namely the storage and packaging of spices. Before I can consider the effect of the 2002 planning permission to extend Building A, I need to make an assessment on whether or not both buildings are within the same curtilage.
15. Curtilage is not defined in the GPDO for Part 7 purposes. It is a legal concept and its interpretation is a matter of fact and degree. The term generally refers to land which serves the purpose of a building in some reasonably necessary or useful manner. It has been held that the tests of physical layout, ownership (past and present) and use (past and present) apply. Curtilage defines an area of land in relation to a building and is not a use of land in itself.
16. It is my view that Building A and Building B are within the same curtilage. Whilst all of the business park is in one ownership, these two buildings are set apart from those near the point of access from the main road. They are separated from the rest of the park by a hedge line and the tree line. Building B backs onto the tree line. Building A is separated from the adjacent field by a lawn. The hard surfaced area between the buildings is used for parking delivery vehicles that serve both buildings and the car park at the end of Building A also serves both buildings.
17. The use of Building A may have changed over time in that the original storage and packaging business was absent between 2000 and 2015, nevertheless this does not change my finding that the same service yard, car parking area and lawn define an area in relation to these buildings. They serve the buildings in a reasonably necessary and useful manner. As such they form a singular curtilage to these buildings. For the purposes of Class H then, Building A and Building B can be treated as a single original building in making any measurement.
18. The effect of the 2002 planning permission to extend Building A though means that the current proposal would not accord with (b)(iii) of the GPDO as the 1000sqm limitation would be exceeded. The appellant submits that the 2002 extension does not reduce the amount by which Building A can be extended under PD. However, it is my view that it does as the Interpretation of Class H refers to 'original building' and 'original' is defined in the GPDO as 'in relation to a building, other than a building which is Crown land, built on or after 1st of July 1948, as so built'. For these reasons the proposal would not be lawful as it would not accord with Schedule 2, Part 7, Class H of the GPDO.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a warehouse extension and associated ground works 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.

D Fleming

INSPECTOR