
Appeal Decision

by **S Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/K3415/X/19/3233255

**Dairy Farm Cottage, Lynn Lane, Shenstone, Lichfield, Staffordshire
WS14 0DT**

- 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 James Tennant against the decision of Lichfield District Council.
 - The application Ref 19/00702/CLP, dated 10 May 2019, was refused by notice dated 10 July 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 outbuilding to dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address is noted as Dairy Farm Cottage on the application form and Dairy Farm Stables on the appeal form. The application is for a LDC and therefore I shall refer to the site as per the application form. The appeal site is an agricultural building that is one of three barns on the site of Dairy Farm, Lynn Lane. Two of the three barns have already been converted to dwelling houses. Planning permission was also granted for the conversion and extension of the agricultural building, the subject of this appeal, in July 2017¹. Conditions 9, 10 and 11 of the permission removed permitted development rights for enlarging or extending the building. These conditions were successfully removed by a subsequent planning application².
3. The application form states that the development for which the LDC is sought is "outbuilding to dwelling". The appellant's statement clarifies that following the successful removal of the conditions, plans were drawn up and submitted to the Council to make some minor alterations, which the appellant deemed to be acceptable, under the restrictions of Permitted Development rights. The appeal form confirms the LDC was for *"an extension to a store that had already been granted planning permission to form a 3 bedroom dwelling"* and this is how I shall assess the appeal before me.

¹ 17/00240/COU

² 18/01832/FUL

4. An application for a LDC is not an application for planning permission. Its purpose is to ascertain whether specified uses or operations would have been lawful on the date that application was made. As such, the planning merits of the development in question are not relevant in the determination of the appeal which must be made having regard to the facts of the case and any relevant judicial authority.

Main Issue

5. The main issue in the determination of the appeal is whether the Council's decision to refuse the application was well-founded.

Reasons

6. Under the provisions of Schedule 2, Part 1, Class A to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended, a deemed planning permission is granted for the enlargement, improvement or other alteration of a dwellinghouse subject to conditions and limitations. These provisions can apply to an existing building which has been converted and is, in this case, a dwelling house. However, before permitted development (PD) rights can be exercised there must be a dwellinghouse.
7. Established case law³ has determined that the dwellinghouse does not exist as such until it has been substantially completed, for instance, "until it has reached the stage at which no further planning permission would be required for any of the works being done to it". Furthermore, applying recognised case law would lead to the conclusion that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
8. The evidence presented shows that the change in the use of the agricultural building permitted by the planning permission had not been implemented at the date of the LDC application. Neither is the conversion into a dwellinghouse substantially completed. Accordingly, PD rights are not available until the dwellinghouse has reached this stage, even if the changes would have been PD had they been carried out to the completed dwelling. Furthermore, whether or not the proposal would comply with the relevant provisions of the GPDO, and thus whether the proposals would have been PD, is not applicable in these circumstances.

Conclusion

9. For the reasons set out above, I conclude that the development would not benefit from deemed planning permission granted by the GPDO at the date of the LDC, and express planning permission would be required. Consequently, the proposed development would not be lawful and the Council's decision to refuse the LDC was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S Hanson

INSPECTOR

³ *R (oao Townsley) v SSCLG* [2009] EWHC 3522181