



Appeal Decision

Inquiry Held on 12 March 2020

Site visit made on 12 March 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2020

Appeal Ref: APP/P1045/X/19/3223796

Barn, Back Lane, Darley Moor, Matlock DE4 5LP

- 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 Ms S Marshall against the decision of Derbyshire Dales District Council.
 - The application Ref 18/00687/CLPUD, dated 22 June 2018, was refused by notice dated 9 October 2018.
 - The application was made under section 192(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 the conversion of a barn to guest house.
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Decision

1. The appeal is allowed and a certificate of lawful use is issued, in the terms set out below in the Formal Decision.

Preliminary matter

2. All oral evidence to the inquiry was given on oath or affirmation.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. In this case that turns on:
 - i. whether the appellant has demonstrated on the balance of probabilities, that on 3 July 2012 the building was solely used for an agricultural use as part of an established agricultural unit; and
 - ii. whether the proposal can reasonably be construed as being permitted development under Use Class C1 as set out in Class R of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).

Reasons

4. Class R – *agricultural buildings to a flexible commercial use* – permits development consisting of a change of a use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution),

Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended. The proposal comprises the change of use into a guest house which is classified under Class C1 of the Use Classes Order as a guest house where no significant element of care is provided.

5. Permission under Class R is not permitted under a number of particular circumstances which are listed under R.1. Among other restrictions development is not permitted if the building was not used solely for an agricultural use as part of an established agricultural unit on 3rd July 2012 and, in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
6. Consequently, it is clear to me that firstly the appeal turns on whether the appellant has provided sufficient evidence to demonstrate that ON (my emphasis) 3 July 2012 the building in question was used solely for agricultural use as part of an established agricultural unit, or, if not in use on that date, that that was its use prior to that date. Secondly, whether the Council's second reason for refusal is justified under the terms of the GPDO.
7. In seeking a LDC, the onus of proof is on the appellant to show that on the balance of probabilities the development would be lawful at the time of the application.
8. In refusing the application, the Council asserts that it has not been demonstrated that the building has been used solely for agricultural purposes PRIOR (my emphasis) to 3 July 2012. Plainly, in accordance with the GPDO that is not the correct test, but rather the appellant needs to establish the use of the building on 3 July 2012. In support of its position with respect to this matter, the Council states that their point remains relevant because of the need for the building to be part of an established agricultural unit.
9. Based on the evidence now before me the building was used by Mr Hinchley on the date in question for the purposes of his agricultural holding. There is insufficient clear evidence to the contrary. The items in the building served part of an agricultural unit and served an agricultural purpose. The evidence presented is consistent that Mr Hinchley used the land for grazing sheep and the building for storing fodder and other agricultural equipment
10. In 2009 planning permission was granted for the use of the building for stabling purposes but the photographic evidence of the interior of the building shows that it has not been used for those purposes. In any case, the particular use of the building in 2009 is not relevant to the key question of how the building was being used on 3 July 2012. The appellant also confirmed that she did not fully implement that planning permission. There is insufficient evidence before me that the building was used otherwise. It is clear to me that prior to the current occupant first starting to use the barn it was disused, and he is the only person to have used it since, which includes 3 July 2012.
11. Additional evidence from the appellant and other witnesses clarifies that the appeal building has not been used for equestrian purposes. It appears that horses may have been tethered outside the building and cared for within the vicinity of the building but this is insufficient for me to conclude that the building itself has been used for equestrian purposes or that the building has been used for purposes other than agriculture. I accept that the evidence

- points to instances of equestrian use on the wider agricultural unit, but Class R does not state that the established agricultural unit should not have any non-agricultural uses – that restriction is reserved only for the building itself.
12. There is some inconsistency in the evidence before me, such as the description of the proposed development and current use of the building in the 2009 planning application (conversion of a stables and feed store into a dwelling), but the Council has now conceded that significant weight should be given to the appellant's evidence given under oath and, on the balance of probabilities, the building was in agricultural use on the relevant date. I conclude that the appellant has demonstrated on the balance of probabilities, on 3 July 2012 the building was solely used for an agricultural use as part of an established agricultural unit
 13. Secondly, there is no minimum building size specified in Class R, but rather only a maximum size is specified. Had the intention have been to limit the permitted development right to a building or buildings over a particular size then I see no reason why it does not do so. The Council has identified an appeal decision¹ where the Inspector dismissed an appeal for a LDC under Class M (the pre-cursor to current Class R) on the grounds that the evidence presented did not show how the guest house would practically operate or function given the limited size of the building. Although that case demonstrates the approach that was taken at that particular time, I note that the particular circumstances of that case are materially different to those relating the current appeal and furthermore, that decision was not made under the current Class R.
 14. I have noted the Council's comments that the building is unsuitable for conversion, that it is necessary to consider whether the change of use of the building is possible and the outcomes that may arise from different interpretations of Class R. I find nothing in Class R which sets a minimum building size and therefore, in spite of the contention that this may result in some absurd outcomes, it is not reasonable for the Council to rely on a reason for refusal which relates to a matter not specified in the GPDO. I have also taken account of the Council's concerns regarding installing an additional floor of accommodation in the building, but in my opinion, this does not fall to be considered under the current appeal for a proposed use under Class R.
 15. Therefore, on this issue I conclude that the proposal can reasonably be construed as being permitted development under Use Class C1 as set out in Class R of Part 3 of Schedule 2 of the GPDO.
 16. In coming to my decision I have taken account of the detailed planning history of the site, including previous applications and appeals and other planning appeals and decisions. However, I have determined this appeal on the specific circumstances of this site, the particular requirements of Class R of Part 3 of Schedule 2 of the GPDO and the evidence given on oath at the Inquiry.

Conclusion

17. 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 the conversion of a barn to a guest house was not well-founded and

¹ APP/P1045/X/14/2215330

that the appeal should succeed. I will exercise 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 certificate of lawful use or development describing the proposed use which is considered to be lawful.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Mitchell of Counsel Appointed by Ms Shani Marshall

He called

Steve Hinchley
Martin Marshall
John Leslie Waterfall
Shani Marshall
Roger Alan Yarwood of Roger Yarwood Planning Consultants Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithead of Counsel Appointed by Derbyshire Dales District Council

He called

Gareth Griffiths

DOCUMENTS SUBMITTED AT THE INQUIRY

Planning History Document prepared by Mr Roger Yarwood January 2020

2016 Appeal documents (Reference APP/P1045/W/16/314736)

Appeal decision APP/P1045/X/14/2215330 Rear of 11A, Little Bolehill, Bolehill,
Matlock DE4 4GR

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

IT IS HEREBY CERTIFIED that on 22 June 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development described would be permitted development by virtue of the rights conveyed by Class R of Part 3 of Schedule 2 of the GPDO Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

A A Phillips
INSPECTOR

Date: 30 March 2020

Reference: APP/P1045/X/19/3223796

First Schedule

Conversion of a barn to guest house

Second Schedule

Land at Barn, Back Lane, Darley Moor, Matlock DE4 5LP

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

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 March 2020

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

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Scale: Do not scale

