
Appeal Decision

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2020

Appeal Ref: APP/R1845/X/19/3230693

**Harborough Farm Barn, Birmingham Road, Blakedown, Kidderminster
DY10 3LH**

- 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.
 - The appeal is made by Mr Finnegan against the decision of Wyre Forest District Council.
 - The application Ref 19/0207/CERTP, dated 4 April 2019, was refused by notice dated 7 May 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 proposed side extension, porch, detached garage and changes to external fenestration.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed operations which are considered to be lawful.

Preliminary Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I am able to reach a decision based on the information already available. Both parties were invited to comment on this matter and although no response was received from the Council, the appellant agreed to the appeal proceeding on this basis.
3. Section 192(2) of the Town and Country Planning Act 1990 as amended (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.
4. For the avoidance of doubt, in an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The standard for the evidence is one of balance of probabilities.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the property is bound by the original planning permission, granted in 2001, for the conversion of the building to ancillary accommodation to the main dwelling.

Reasons

6. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined that the application for a proposed side extension, porch, detached garage and changes to external fenestration would be unlawful. This is because permitted development (PD) rights have been removed, by condition, from the original planning permission.
7. The property, subject to the appeal, is a former barn, which was converted pursuant to a planning permission (Ref WF.614/01, dated 14 August 2001) (the 2001 permission) for the "conversion of building to ancillary accommodation to main dwelling at Harborough Farm, Birmingham Road, Blakedown". Condition 4 of the 2001 permission removed permitted development rights from the property.
8. The condition stated: "Notwithstanding the provisions of Article 3 and Parts 1 & 2 of the Town and Country Planning (General Permitted Development) Order 1995, no development as specified in Part 1 Classes A, B, C, D, E, F and H within the curtilage of the dwellinghouse hereby authorised and/or any minor operations as specified in Part 2 Classes A, B & C other than that indicated on the plans hereby approved shall be carried out without the prior permission in writing of the Local Planning Authority".
9. In 2016 an LDC, Ref. 16/0466/CERTE, dated 7 September 2016 (the 2016 LDC), was issued by the Council for "The use of the property edged red on the plan as an independent dwelling for residential occupation in breach of condition 5 of Planning Permission issued under reference 16/04666/CERTE¹".
10. The appellant argues that because the property has a lawful use as an independent dwelling, established by the 2016 LDC, the proposed extensions and alterations to Harborough Farm Barn are lawful by virtue of Classes A, D and E, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
11. The 2016 LDC established the lawful use of the property, through the non-compliance with the planning condition, as an independent dwelling. A clear implication of this is that the use of the property as a single dwelling house had become immune from enforcement and was thereby lawful. At the point at which it became lawful it also formed a separate planning unit from the former host dwelling and was no longer subject to the terms of the 2001 planning permission. This is because the formation of the new planning unit, which is no longer within the curtilage of the former host property, and its separate use as an independent dwelling constitute the start of a new chapter in its planning history. As such, on the date of the application the property benefited from PD rights for a single dwelling house.

¹ The reference number refers to the LDC reference number rather than the original planning permission. It is considered that this is an administrative error and does not affect the lawfulness of the certificate.

12. Nevertheless, there is also a requirement to consider whether the proposals would have benefitted from deemed planning permission at the date of the application. By my own assessment, I find that the proposed development meets the requirements, limitations and conditions within Schedule 2, Part 1, Class A, D and E of the GPDO and the Council has not argued to the contrary. It follows, therefore, that the proposal would be development permitted by the GPDO.

Conclusion

13. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC in respect of the proposed side extension, porch, detached garage and changes to external fenestration was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

S Hanson

INSPECTOR

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 4 April 2019 the operations 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence shows that the use of the property as a single dwellinghouse is not subject to planning permission Ref WF.614/01, dated 14 August 2001, which removed, by condition, certain permitted development rights from the property it was comprised in at that time. At the date of the application it was a single dwellinghouse unrelated to the property the subject of planning permission Ref WF.614/01, dated 14 August 2001, and benefitted from single dwellinghouse permitted development rights.

The proposed operations described in the First Schedule and shown on the drawings titled: Proposed Extension and Alterations drawing no. 3740-02A dated 11/03/2019; Site Location Plan scale 1@1250 dated 25/03/2019; and Proposed Development drawing no. 3740-03 dated 25/03/2019 would be within the terms of Article 3 and Schedule 2, Part 1 Class A, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S Hanson

INSPECTOR

Date: 1 July 2020

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First Schedule

Side extension, porch, detached garage and changes to external fenestration

Second Schedule

Land at Harborough Farm Barn, Birmingham Road, Blakedown, Kidderminster
DY10 3LH

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 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, 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 operations 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.

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: 1 July 2020

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Land at: Harborough Farm Barn, Birmingham Road, Blakedown, Kidderminster
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Scale: Not to scale

