



Appeal Decision

Site visit made on 15 September 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/P1805/X/20/3252434

Thornborough Farm, Redhill Road, Kings Norton B38 9EH

- 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 Ken Moore against the decision of Bromsgrove District Council.
 - The application Ref 20/00292/CPE, dated 2 March 2020, was refused by notice dated 29 April 2020.
 - The application was made under section 191(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 existing timber building first erected in February 2015.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

3. The appellant applied for a Lawful Development Certificate (LDC) on the basis that the building had been substantially completed more than 4 years ago. To succeed on this appeal, the appellant must prove on the balance of probability that the refusal of an LDC was not well founded. This will turn on whether the building had been substantially completed on or before 2 March 2016¹. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) under S191 of the Act. The proposed development must be considered in the light of the facts and the law.
4. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force. S171B sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building... no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

¹ This being the date 4 years prior to the date of the LDC application.

5. The appellant describes the building the subject of this appeal as consisting of a timber building with external dimensions of some 19m x 6.1m which sits adjacent to, and in part over-sails, a static caravan. Planning permission has previously been refused and dismissed on appeal for the retention and use of the building constructed, incorporating a caravan². However, from the plans provided and from my inspection on site, the appeal building appears to form part of a larger building which has been erected on site. Since it may be possible for more than one operation to have occurred, such that the first may be outside and the second inside the four year period, it is necessary for me to consider whether there have been two distinct operations.
6. The appellant asserts that officers of the Council acknowledged that the timber building appeared to be lawful by dint of the passage of time. However, I do not have full details of the discussion referred to before me and cannot therefore be sure on what basis this view was formed. The appellant states that the building, the subject of this LDC, was erected and substantially completed in February 2015 and provides storage and office facilities in association with the lawful agricultural enterprise. During my visit, however, I saw that the building was being occupied as a dwelling, with office use, some limited storage of animal feed and keeping of dogs evident in one of the rooms. Whilst the use of the building is not the subject of the LDC before me, it is relevant in my consideration as to whether two distinct operations have occurred.
7. The appearance of the building in the photographs taken by the Council on 19 November 2015 appears typical of a building that is under construction, with sections open to the elements and building materials stored beneath. Works to integrate the caravan with the timber structure appear in progress in the photograph and, whilst not finished, appear consistent with what was eventually built. Whether the building was constructed as a dwelling or for agricultural purposes, the storage of building materials was not its intended use and I cannot conclude that the structure present on 19 November was itself a substantially complete building. Photographs provided by the Council, dated 30 November 2017, show the building as one structure, which is consistent with what I saw on site.
8. Given the above, I conclude that there have not been two distinct operations. If the development as a whole can be enforced against, then there is no saving for part of it which may have been carried out more than four years before the issue of an enforcement notice. As such, in order for the building to be lawful, it would, as a whole have had to be substantially completed on or before 2 March 2016.
9. The appellant posits that any outstanding works in 2016 were cosmetic rather than structural. However, it is clear from an aerial photograph, dated 20 April 2016, that the roof of the building had not yet been completed. Such works are not simply cosmetic but is development for which planning permission would be required. Furthermore, whilst the aerial photograph indicates that part of the roof was in place in 2016, it does not demonstrate that the structure of the building was substantially complete or that it was capable of being or was being occupied for its intended use, as is suggested by the appellant.
10. In an LDC the burden of proof is firmly on Mr Moore to prove, on the balance of probability, that the building was substantially complete by the relevant date.

² APP/P1805/W/19/3234201

He has not done so. The photographic evidence submitted by the appellant and Council points towards the structure as being part of one building which was incomplete on 20 April 2016. The appellant has provided no compelling evidence to show that there were two operations or that the building was substantially complete by the relevant date.

11. It has not therefore been demonstrated, on the balance of probabilities, that the building was substantially completed on or before 2 March 2016 for the purposes of s171B(1) of the Act. Consequently, the appeal must fail.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the timber building 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.

M Savage

INSPECTOR