



Appeal Decision

Site visit made on 5 October 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/U1105/X/20/3251141

Rhode Hill Farm, Rhode Hill, Uplyme, Lyme Regis, DT7 3UF

- 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 Mrs Veronica Strawbridge against the decision of East Devon District Council.
 - The application Ref: 20/0015/CPE, dated 4 January 2020, was refused by notice dated 14 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 the erection of a dwellinghouse.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Procedural Matters

2. Although the background to the application for a LDC centres on whether planning permission granted for the house at Rhode Hill Farm was ever implemented, which I shall consider below, the act of development carried out is the erection of a dwellinghouse. I have referred to that operation in the banner heading above and I shall consider the appeal accordingly.
3. In 1993 outline planning permission (Ref: 7/89/93/P0249/507) was granted for the erection of a farmhouse. In 1994 a further permission (Ref: 7/89/94/P0221/00507) was also granted for the erection of a new farmhouse. The appellant refers to the second permission as being a reserved matters permission. However, the Council asserts that the 1994 permission was a new full planning permission and looking at the submitted evidence, that appears to be the case. However, either way, the appellant's case is that the house subsequently erected was not in accordance with the approved plans and thus the planning permission granted was never implemented.
4. I note the appellant's point that the red line plans for the 1993 and 1994 permissions do not correspond. The outline planning permission would ordinarily limit the application site and usually assist in defining the domestic curtilage of the house. However, given that the 1994 permission was a full permission it is the plans with that which I shall consider.

5. In view of the above, in my view the status of the 1994 permission does not fundamentally affect the case of either party.

Main Issue

6. Under s191(1)(b) of the 1990 Act, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. For the purposes of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them, such as because the time limit for enforcement action has expired. The relevant time limit under S171B(1) of the 1990 Act is four years beginning with the date on which the operations were substantially completed. In this case, although it has not been specified when the house was substantially completed, there is no dispute that four years has elapsed since the house was built given that the event occurred back in the mid-1990s.
7. Turning to the dispute between the parties, the appellant points to several reasons why they consider that the house erected did not accord with the approved plans meaning, if that is the case, the operation was at the time unlawful. However, with the passage of over four years since the house was completed, the operation carried out is now lawful. Consequently, the agricultural occupancy conditions imposed on the aforementioned planning permissions (Condition No.2 in each case) have no effect. Consequently, a LDC should be issued. This is the main issue.
8. It has been held where operational development is carried out in a way which differs materially from approved plans, it amounts to development without planning permission, and any conditions imposed on the planning permission for those operations are unenforceable because the particular planning permission has not been implemented. The 'test' to be applied is whether any differences between what has been built and approved are material or not. This is a judgement based on the balance of probability by making a fact and degree assessment dependant on the individual circumstances of the case.

Reasons

9. The Council asserts that the approved plans under the 1994 planning permission show the dwelling with a wraparound lean to. As such, that is what was approved, and both show an approval date stamp. I have looked at drawings 1 Rev A dated 30 November 1993 and 2 Rev A dated 29 November 1993. Both feature a Council date stamp dated 10 February 1994 which corresponds with the date stamp on the submitted 1994 application form. Both also have a further Council date stamp of 16 March 1994 which matches the date on the Council decision notice for the 1994 planning permission. With the wraparound being on the approved plans, the differences between the extension as it has been built and what the Council say was approved, the Council argues that the differences are minor and thus do not represent a material departure from the approved plans. While it is the case that the plans do show a wraparound extension, which is denoted as a conservatory, loo and larder, what the Council say was actually approved as part of the 1994 may not be the case.

10. In the Council's records of this planning permission is a decision by the Council's Chief Engineer and Planning Officer and Chairman to approve a "Proposed provision of conservatory/extension shown as conservatory on approved plan". The date of 19 December 1994 on that "Report on Delegated Applications" corresponds with one of the "amendment sheets" referred to by the Council in its delegated report on the LDC application "which postdate the issuing of the March 94 consent".
11. Although the Council says it does not have any scanned amended plans reflective of this agreed amendment, drawing 1 Rev A for the proposed ground floor layout shows a wraparound conservatory/loo/larder which appears to be a freehand drawing which does not match the precise bold lines of the rest of the drawing that appears to be a computer produced plan. The notations of door openings and the proposed sinks are also different. The same considerations apply to the drawings of the proposed elevations on drawing 2 rev A. Moreover, looking at the shape of the footprint/position of the proposed house shown on the submitted and approved 1994 Block Plan (with the same date stamps) it does not include an area equivalent to the wraparound lean to shown on drawings 1 Rev A and 2 Rev A.
12. It looks to me that the wraparound was added to the plans at a later date and they probably show what the applicant sought by way of an amendment on the approved plans (which accords with the "Report on Delegated Applications" referred to above) and which the Council agreed to in December 1994 after the planning permission was issued in March 1994. The Council's scanned plans are more likely to be the agreed to amendment in December 1994. On the balance of probability, having regard to this background, as a matter of fact and degree it seems very likely that the originally approved plans did not have a wraparound extension on them.
13. The appellant has referred to a letter from the Council dated 13 December 1994 which is said to have approved a lean-to extension and I have looked at the plan allegedly related to that amendment. Although the Council says it has no record of that, it is clearly a Council letter. However, the letter only refers to a proposed amendment for the provision of a utility room toilet and larder. It does not clearly cover a wraparound. Nevertheless, it further goes to show that amendments were sought after the scheme was granted permission.
14. Another scanned Drawing 1 Rev A sent by the Council has a handwritten note on it stating, "Amendment to original plans as per telephone call" and another date stamp of 6 December 1994. There is another hand drawn wraparound extension larger than the one referred to above. While it is not clear whether that might have related to the 13 December 1994 letter or some other amendment agreed to by telephone, it is further evidence that amendments related to a wraparound extension were sought after March 1994 when the full planning permission for the new house was granted.
15. On the basis that a wraparound extension was not originally granted planning permission, there was no lawful basis in 1994 to agree changes to plans that had been approved in the manner that the Council did. I am aware that many Councils did do this but whether they should or should not have done, the judgement that was usually made was whether the change amounted to a material change and thus whether or not it fell within the scope of the approved plans. So, whatever the Council did, the test then as now is one of

materiality. However, in the context set out above, assessing the difference between the approved plans and what has been built is not about comparing one wraparound extension with another. In this case it is about comparing the house as approved without a wraparound and how it is now. The Council does not dispute that the house with the wraparound was built at the same time.

16. At around 32.5 sqm the existing lean to is a sizeable projection that extends across the whole of one side of the house and wraps around to extend approximately one third across the rear elevation. It is clearly a material difference from what was approved. As the development carried out was done in one operation, this meant that the whole scheme was development without planning permission and unlawful. The relevant planning permission was also not implemented. However, given the time limit specified under s171B(1) of the 1990 Act it has now become lawful. This also means that the house is not encumbered by the agricultural occupancy condition, or any of the other conditions, of the 1994 planning permission.
17. Other contended variations from the approved plans are not in my view material departures from the approved drawings. As such they do not add to my overall conclusion and I have not considered them in detail.

Conclusion

18. 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 erection of a dwellinghouse was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Gareth Symons

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 January 2020 the operation 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwellinghouse erected was materially not in accordance with planning permission Ref: 7/89/94/P0221/00507. That planning permission was thus never implemented. It was therefore development carried out without planning permission. The dwellinghouse has been substantially completed for more than four years. Therefore, by virtue of the time limit specified in s171B(1) of the Town and Country Planning Act 1990 as amended, no enforcement action may be taken against it. Consequently, under s191(2)(a) of the 1990 Act, the operation is now lawful, and it is not encumbered by any of the planning conditions on planning permission 7/89/94/P0221/00507.

Signed

Gareth Symons

INSPECTOR

Date 22 October 2020

Reference: APP/U1105/X/20/3251141

First Schedule

Erection of a dwellinghouse.

Second Schedule

Land at Rhode Hill Farm, Rhode Hill, Uplyme, Lyme Regis, DT7 3UF

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 October 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

Land at: Rhode Hill Farm, Rhode Hill, Uplyme, Lyme Regis, DT7 3UF

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Scale: Do not scale.

