



Appeal Decision

Site visit made on 6 October 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 9 November 2020

Appeal Ref: APP/C1570/X/20/3247315

Barns at Park Gate, Park Road, Pleshey, Chelmsford, Essex CM3 1JA

- 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 & Mrs T Hazlem against the decision of Uttlesford District Council.
 - The application Ref UTT/19/2932/CLP, dated 21 November 2019, was refused by notice dated 21 January 2020.
 - 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 described as *'The proposed demolition of the building used as a butchery ancillary to the farming activities at the Application Site followed by the Change of Use of Two No. Agricultural Buildings to Five No. Dwellinghouses (Use Class C3) including reasonably necessary building operations pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015.'*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (GPDO) grants deemed consent for various works and changes of use subject to such development meeting the conditions and limitations set out in the Order. Under the heading 'Permitted Development' 3(4) the document states:
3. *'Nothing in this Order permits development contrary to any condition imposed by any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.'*
4. Class Q of Schedule 2 Part 3 says that (a) development consisting of a change of use of an agricultural building to a dwelling house is permitted development subject to specified limitations. In turn Class Q(b) says that building operations reasonably necessary to convert the building are also permitted development.
5. In either case, whether it concerns a change of use or operational works, by way of Q.2(1) the developer is required to make application to the local planning authority for a determination as to whether the prior approval of the authority will be required. This is a different type of application to that here made.

6. The effect of this requirement is that under Class Q, and for that matter other classes specified in Part 3, development can only proceed if the Council determines that its prior approval will not be required, or if the Council gives its approval in respect of the matters that the authority is required to consider.
7. Importantly, to this extent the relevant classes of development are not really permitted development in the sense in which that term has been widely used and understood, but are subject in effect to the grant of a new type of consent, which requires less formality in its submission and processing than a planning application made under Part III of the 1990 Act as amended, and is intended to be a light touch form of development management. Nonetheless, the process still allows the authority to determine, within strictly defined parameters, whether the proposed change of use should be allowed to take place, or not.
8. In this particular case, as mentioned, despite the above requirement, the applicants (now the appellants), did not make such an application for the development here proposed. Instead, they applied for a lawful development certificate (LDC) which is not the appropriate vehicle given the GPDO's relevant provisos that must be met.
9. By way of the approach taken by the appellants the matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time the application was made. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 21 November 2019.
10. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the matter applied for do not fall to be considered. Rather, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.

Main Issue

11. S195(2) and (3) refer to the Secretary of State's role on appeal as one of being satisfied that the local planning authority's (the Council's) decision is or is not "well-founded". In other words, the appeal is confined to the narrow remit of reviewing the LPA's decision.
12. This is therefore the main issue in the appeal. Accordingly, my assessment must relate to the decision itself, not the reasons for it. It would clearly be wrong to grant a LDC where the evidence, taken as a whole, suggests that the matter in question is not lawful, even if the Council's original reason(s) can be shown later to be misplaced.

Reasons

13. On 20 March 2015 planning permission (ref UTT/15/0611/AG) was granted for a lean-to extension to one of the two barns the subject of this appeal. The appellants' agent's letter dated 31 May 2018 gives the decision date as 17 March 2013 but, given the application ref no, this is clearly incorrect. Nonetheless, the permission, relating to the south barn (referred to by the appellants as Barn no 2), was subsequently implemented and the structure was erected. Referred to by the appellants as "a butchery" I noted the extension's existence at the time of my site visit.

14. The GPDO, under Class Q, paragraph Q.1(g) says that development is not permitted where development involving extensions or alterations of agricultural buildings under Class A(a) or Class B(a) of Part 6 has been carried out on the established agricultural unit since 20 March 2013. As such, the proposal fails to satisfy this proviso. The Council's case report identifies this failing and the stated reason for refusal on its decision notice relates to this point, but this point alone.
15. The appellants say that the intention is to demolish the butchery building before the proposed development is carried out and, in their appeal representations, invite the assessment of a proposed development with the following clarified wording:

"The proposed demolition of the building used as a butchery ancillary to the farming activities at the application site followed by the change of use of two no. agricultural buildings to five no. dwellinghouses (Use Class C3) including reasonably necessary building operations pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)..."
16. However, this approach is surprisingly at odds with the supporting statement, submitted alongside the application originally made which, on page 12, in relation to Q.1(g), states:

"No development pursuant to the relevant agricultural buildings and operations permitted development rights has been undertaken on the unit since 20 March 2013. Whilst a butchery was erected on the east side of Barn no 2, this was subsequently demolished, so no such development remains and effectively is not 'carried out'."
17. As mentioned, at my site visit, I found otherwise. Further, in this connection, a literal interpretation of Q.1(g) prohibits development if the agricultural unit *has* been carried out since 20 March 2013.
18. Notwithstanding the above, the appellants, by way of the representations made at both the application and appeal stages, have attempted to justify the proposal by setting out and commenting on the various provisos under Class Q. In the circumstances, though, it was beyond the local planning authority's remit from the s192 application submitted to assess the proposal in the proper regard and make the necessary determination as to whether the prior approval of the authority would be required for the development to proceed. As such, no formal consultation exercise inviting responses from bodies such as the local highway authority, the Council's environmental health team nor, if required, the Environment Agency would have reasonably been undertaken. Certainly, none are indicated on the case sheet.
19. In essence, the limitations of the s192 application in this regard did not allow for the necessary procedure to be carried out. Accordingly, in the absence of any responses crucial to the requirements under Q.2(1) a-g, it is not for the Secretary of State to set aside statutory process, and usurp the Council's involvement and responsibilities which would have occurred should the appellants have approached the matter by the appropriate means.
20. In light of my findings, whilst the Council was correct to identify the said conflict with Q.1(g), the overriding reason why the proposal would not have

been, and is not, lawful under s192, relates to the fundamental matter of statute. The decision reached – 'Refusal of Certificate of Lawful Use or Development' - is clearly stated even if certain wording in the notice is somewhat unorthodox.

21. As such, in terms of the Council's decision itself, for the above reasons, I must conclude that its decision not to issue a LDC was well founded.
22. Accordingly, the appeal is dismissed, and I shall therefore exercise my powers under s195(3) of the 1990 act as amended.

Timothy C King

INSPECTOR