The Planning Inspectorate

Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/D3640/X/20/3250740
The Tithe Barn, Chobham Park Farm, Chobham Park Lane, Chobham, Woking GU24 8HG

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs M Evans against Surrey Heath Borough Council.
- The application Ref: 19/0703/CEU is dated 26 September 2019.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the residential use of the Tithe Barn without compliance with conditions 7 and 17 of planning permission 02/1436.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition/limitation which is considered to be lawful.

Preliminary Matters

2. I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available.

3. The description of the existing use given on the application form simply states the retention of the residential conversion of the Tithe Barn. Section 191(4) of the 1990 Act allows the LPA to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence. Case law has established the same power applies to the Secretary of State on appeal. Therefore, the terms of the LDC application on which I have based my decision, as shown in the heading above, is derived from the appeal form which makes clear that the LDC application was sought under section 191(1)(c) on the basis the residential use was in breach of two planning conditions. In addition, it is apparent from the evidence before me that building operations to replace the main access doors to the barn was also in breach of one of those conditions.

Background and Main Issue

4. The appeal is submitted against the failure of the LPA to determine the LDC application within the prescribed period. In such circumstances, the application is deemed to be refused.

5. In this instance, the LPA has indicated in its appeal submissions that it is satisfied the use is lawful and that an LDC should be granted. However, since the application has been deemed to be refused, the matter of whether or not an LDC should be granted falls on me, as an Inspector appointed by the Secretary of State, to determine.

6. Planning permission (LPA ref: 02/1436) was granted on 24 February 2003 for the erection of replacement buildings comprising 15 stables, following demolition of the existing buildings comprising 34 stables, hay barn and indoor riding area, recladding and re-roofing of the existing barn, refurbishment of the existing ancillary residential accommodation known as Chobham Park Cottage, including insertion of a dormer and erection of a porch, and the erection of car port to replace the lean to. The recladding and re-roofing of the existing barn element of the development related to the Tithe Barn to which this LDC application relates.

7. The permission is subject to several conditions. Condition 7 states:

   "The buildings hereby approved (including the existing and refurbished buildings) shall be used in connection with the livery of horses and for no other purpose."

8. Condition 17 states:

   "The main access doors to the barn shall be retained and maintained at all times to the reasonable satisfaction of the Local Planning Authority. No alterations shall be undertaken to these doors without the prior approval in writing of the Local Planning Authority."

9. The LDC application was submitted on the basis that the Tithe Barn has been used for residential purposes without compliance with condition 7 and 17 for a period of 10 years or more.

10. In the first instance, it is necessary to establish whether or not what has taken place amounts to implementation of the 2003 planning permission in relation to the Tithe Barn. If the development which has been carried out in respect of the Tithe Barn does not, as a matter of fact and degree, amount to development for which the 2003 permission was granted, then what has been carried out would be development without planning permission. Conditions 7 and 17 would be of no affect since the 2003 permission would not have been implemented.

11. The 2003 permission approved the recladding and re-roofing of the Tithe Barn. Whilst there is a not a substantial level of evidence before me regarding the extent of building work undertaken, the approved drawings from the 2003 permission show the approved recladding and re-roofing included the provision of a larger and alternatively shaped roof. The materials to be used in the recladding appear to have been reserved for the approval of the LPA under condition 2 of the 2003 permission. Nevertheless, the plans of the building as constructed submitted with the LDC application and the photographs of the building provided by the appellants in their statement indicated that the works to the Tithe Barn which have been done are in accordance with the 2003 permission. In the absence of evidence to the contrary, I am satisfied as a matter of fact and degree, that the 2003 permission was implemented in respect of the Tithe Barn.

12. The Court of Appeal in *FFS v Arun DC and Brown [2006] EWCA Civ 1172* held that breaches of condition which prevent use as a single dwellinghouse are subject to the four year rule under section 171B(2) of the 1990 Act. Since condition 7 prevents the use of the barn for any purpose other than horse livery, this would prevent its use a single dwellinghouse. However, it is clear from the evidence of the appellant that the barn has provided overflow guest accommodation in connection with the main house at Chobham Park Estate (Chobham Park House), which is also in the ownership of the appellants. It is said that the Tithe Barn has not been used as an independent dwellinghouse. The use in breach of the conditions attached to the 2003 permission would not therefore fall for consideration under section 171B(2) of the 1990 Act.

13. On that basis, the onus is on the appellants to demonstrate, on the balance of probabilities, that the Tithe Barn has been used for residential purposes as guest accommodation in connection with Chobham Park House without compliance with conditions 7 and 17 of planning permission 02/1436 for 10 years or more prior to the date the application was made. It will also be necessary to demonstrate that the replacement of the barn doors with a window to facilitate the residential use in breach of condition 17 was substantially complete 4 years or more prior to the date of the application in accordance with section 171B(1) of the 1990 Act, since such works amount to building operations.

Reasons

14. The Tithe Barn comprises a building measuring 18.7m in length and 6.3m wide. The 2003 permission granted consent for the barn to be altered with new cladding and a new roof. Condition 7 sought to ensure its use remained in connection with the livery of horses. The appellant indicates that the refurbishment works permitted by the 2003 permission commenced in 2005. Thereafter, it is said the residential use of the barn in connection the main dwelling commenced from 1 December 2006.

15. A total of 28 invoices have been provided covering the period from 1 March 2006 to the 28 November 2006. In particular, they include invoices for plumbing and heating work in the new barn conversion. An invoice dated 7 September 2016 was for the installation of underfloor heating and connecting the plumbing in the kitchen and bathrooms. The invoice indicates that the works were to be completed ready for the floors to be laid 14 August to 2 September. There is an invoice dated 18 September 2006 for the supply and fit of engineered oak boards in the barn conversion building and 20 October 2006 for the supply and fitting of carpets in the barn. There are also further invoices in respect of the plumbing and heating work which largely included pipe and other fittings in the barn conversion. They are dated 9 August 2006, 16 August 2006, 7 September 2006, 3 October 2006, 13 October 2006 and 7 November 2006.

16. Several invoices relating to materials and furniture have also been supplied dating between 8 June 2006 and 19 September 2006. There are also several invoices from Keith G. Rimmer Design and Decorate dated between 28 July 2006 and 28 November 2006 which refer to labour and various materials relating to decorating works being supplied. Whilst none of the invoices specifically refer to the works being carried out in the barn, there are items

itemised specifically for the farmhouse, suggesting that the bulk of the works invoiced for related to the barn.

17. Moreover, the appellants have provided a signed Statutory Declaration from Mr Rimmer confirming that he worked on the project for the residential conversion of the Tithe Barn and that renovation works to the structure of the Tithe Barn commenced in 2005 with the works to facilitate the residential use carried out in the summer of 2006 with all works completed by 1 December 2006.

18. I have also been provided with a joint Statutory Declaration from the appellants in which they declare that renovation works to the Tithe Barn commenced in 2005 with the actual residential conversion commencing in the summer of 2006, and the conversion works completed by 1 December 2006. It is declared that the residential conversion involved the formation of a kitchen and open living space on the ground floor, with two bedrooms and 2 bathrooms at first floor level. The works also involved the installation of a boiler, under floor heating, the laying of timber floors, carpets and decorating.

19. In order to immune from enforcement action under S171B(1) of the 1990 Act, the Tithe Barn would have to have been occupied as guest accommodation in connection with the main house for a continuous period of ten years or more, without significant gaps in occupancy.

20. Evidence of the occupation of the barn is limited. I have not been presented with evidence as to how long guests stayed or when they stayed. However, the appellants' statutory declaration makes clear that the form and layout of the Tithe Barn has remained unaltered since 1 December 2006. Importantly, they confirm that from the period 1 December 2006 to the date the 3 July 2019, just before the submission of the application, the Tithe Barn was used as overflow guest accommodation in connection with the main house. In addition, the LPA's evidence indicates that building is laid out in accordance with the plans submitted as part of the LDC application and there is no evidence of recent works. In the absence of evidence to the contrary, I am satisfied on the balance of probabilities, that the use of the barn as guest accommodation in connection with the residential use of the main use has taken place continuously.

21. As a result, I am satisfied that, on the balance of probabilities, the Tithe Barn has been in use as residential accommodation in breach of condition 7 of planning permission 02/1436 for a continuous period of 10 years or more prior to the submission of the LDC application on 26 August 2019. Moreover, the LPA is satisfied that the building operations carried out in breach of condition 17 were substantially complete in 2006 - more than four years prior to the date of the LDC application. On the basis of the evidence before me, I have no reason to conclude otherwise.

22. I conclude, therefore, that it has been demonstrated on the balance of probabilities, that no enforcement action in respect of the breach of conditions 7 and 17 of planning permission 02/1436 may be taken because the time for enforcement action has expired. In accordance with section 191(3) of the 1990 Act, the residential use of the Tithe Barn and the building operations to replace the main barn doors is lawful.

Other Matters

23. The appellant indicates that an agreement under section 106 of the 1990 Act dated 14 February 2003 included the covenant of the appellants not to occupy the barn of permit the barn to be occupied for residential purposes.

24. However, the obligation under section 106 of the 1990 Act is not a condition or limitation subject to which planning permission is granted. Rather, it is legal agreement which binds the parties who enter it to it to the obligations contained therein. Section 106(5) of the Act makes clear a restriction or requirement imposed under a planning obligation is enforceable by injunction. Section 106A(1) makes clear that a planning obligation may not be discharged or modified except by agreement between the parties or on application to the LPA. It is not enforceable as a breach of planning control under section 171A of the Act.

25. Consequently, consideration of the relevant clauses contained with the section 106 agreement referred to are not a matter for my consideration under this appeal under section 191(1)(c) of the 1990 Act since it is not an appeal under section 106B of the Act arising from an application to modify or discharge a planning obligation under section 106A of the 1990 Act.

Conclusions

26. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the residential use of the Tithe Barn and the replacement of the main doors without compliance with conditions 7 and 17 of planning permission 02/1436 was not well-founded and that the appeal should succeed.

J Whitfield

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 26 August 2019 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, 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(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action in respect of the breach of conditions 7 and 17 of planning permission 02/1436 may be taken because the time for enforcement action in accordance with section 171B of the 1990 Act has expired. In accordance with section 191(3) of the 1990 Act, the residential use of the Tithe Barn and the replacement of the main doors to the barn without compliance with conditions 7 and 17 of planning permission 02/1436 is lawful.

Signed

J Whitfield

Inspector

Date: 04 December 2020

Reference: APP/D3640/X/20/3250740

First Schedule

The residential use of the Tithe Barn as guest accommodation in connection with Chobham Park House and not as a separate dwellinghouse without compliance with condition 7 of planning permission 02/1436. The replacement of the main access doors to the barn without compliance with condition 17 of planning permission 02/1436.

Second Schedule

Land at The Tithe Barn, Chobham Park Farm, Chobham Park Lane, Chobham, Woking GU24 8HG

IMPORTANT NOTES – SEE OVER

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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 Planning Inspectorate

Plan

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

by J Whitfield BA (Hons) DipTP MRTPI

Land at: The Tithe Barn, Chobham Park Farm, Chobham Park Lane, Chobham, Woking GU24 8HG

Reference: APP/D3640/X//20/3250740

Scale: NTS