



Appeal Decision

Inquiry Held on 11 and 12 November 2020

Site visit made on 12 November 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2020

Appeal Ref: APP/M0655/X/18/3208009

Barns at Park Lane/Firs Lane, Appleton, Warrington WA4 5LG

- 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 J Bryan against the decision of Warrington Borough Council.
- The application Ref 2017/31853, dated 20 December 2017, was refused by notice dated 13 June 2018.
- 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 erection of two agricultural buildings.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. The application the subject of this appeal sought confirmation that the erection of two agricultural buildings was lawful. However, since the submission of the appeal one of the two buildings was subject to extensive fire damage and has been demolished for safety reasons. Only Building A remains.

Background

2. In March 2005 the Council granted planning permission under reference 2005/05043 for the erection of two barns. A further application was submitted to the Council in August 2005 for the erection of two barns. The application was conditionally approved under reference 2006/06404 on 20 September 2005. The latter is the most relevant to this appeal. Condition 2 specifies the approved drawings as:

JB/2004/9/2.A

JB/2005/4/1.A

JB/2004/9/3.A

3. Subsequently, an alteration to the window details and confirmation of the internal layout of the buildings was submitted pursuant to condition of the planning permission under drawing number JB/2004/9/1 which was approved by the Council in December 2005. Therefore, with respect to the building in question there are four approved drawings.

Main Issues

4. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. In this case that turns on:
 - i. whether the erection of the building has been undertaken within the terms of planning permission reference 2005/06404 granted by Warrington Borough Council on 13 December 2005; or
 - ii. whether, if the building do not accord with the approved planning permission, it has been substantially completed for a period in excess of 4 years leading to the date of the application; the material date being 20 December 2013.

Reasons

Legal Basis for Determination

5. When dealing with a case such as this, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of Gabbitas¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed. These represent the legal principles against which I have determined this appeal.

Whether the building has been built in accordance with the planning permission

6. There is no dispute between the main parties that the building is different from the development that was approved under planning permission 2005/06404 in terms of size, external appearance and internal layout. However, in this case the most relevant consideration is whether those differences are material to the extent that the building does not benefit from planning permission.
7. Although there is no single set way of determining whether a built development is different from an approved development, case law² provides the legal context for such determination, stating that if a building is not carried out internally and externally in full accordance with a planning permission, the whole operation is unlawful. In this case that means that if the building has not been implemented in accordance with the approved drawings under 2005/06404 and the subsequently approved drawing it is unlawful and a certificate cannot be granted on that basis. It is not sufficient to look at differences in isolation, but an holistic approach should be adopted whereby the cumulative effects of differences on the materiality of those differences together must be considered.
8. It is accepted in the appellant's evidence that no previous considerations of, and deliberations on, this matter should be binding on this decision. Therefore, in my opinion the first and best way to determine this issue is to look at the building against what has been granted planning permission. It is clear to me that what has been built is materially different to what has been approved by the Council. The approved plans have a residential appearance, but over time the design edges closer to appearing to be a residential building and this is

¹ Gabbitas v SSE & Newham LBC [1985] JPL 630

² Sage v SSETR & Maidstone BC [2003] UKHL 22

- even more apparent when looking at what has been built on site rather than merely studying drawings.
9. Features that move away from the approved scheme include additional doors, changes to the number and design of windows, changes to the design of the approved door and a reduction in the width of the originally approved door. In the light of what was approved, these changes are significant, even more so in the light of the residential appearance of the building which has been designed and subsequently amended through the build process to be residential.
 10. The Council's evidence includes a table which summarises different measurements of the building. The appellant does not dispute this evidence which is helpful in identifying the dimensions of the building and the differences in its form compared to what was approved. Irrespective of the Green Belt designation of the land, the height increase of 0.75 metres is alone a material change from the approved scheme and I find it inconceivable that a local planning authority would not consider such a change to be materially different in terms of a building of this scale. Other alterations to the footprint and overall bulk and massing compound the difference. Therefore, it is quite evident to me that there is a material difference between what was approved and what has been built.
 11. The appellant has not undertaken the same type of detailed analysis as the Council with respect to the differences and, in any case, there seems to be no dispute that the Council has taken an unreasonable approach in identifying the differences. Instead, the appellant's case appears to rely on previous assessments and documentation, which in my mind is not necessarily a reasonable or reliable means of assessment.
 12. The appellant's evidence shows that the external work to the building was not completed until June 2006 according to the Planning Contravention Notice (PCN) responses given by Mr Bryan dated November 2014. The application form submitted on behalf of Mr Bryan identifies that the date the development was substantially completed is 1 February 2007. Both of these dates post-date the visits made by three Council Officers (as clearly identified in their correspondence to the appellant. Therefore, I cannot be certain that the building was in a condition where an accurate assessment of completion could be made, nor can I be certain of the basis upon which their assessments were made. In addition, the evidence is clear to me that the analysis carried out by at least one of the Council officers was not detailed, and states that "*having had a quick look through the plans....it would appear that the design/appearance of the approved structure does look similar to a residential property*". This confirms two key things. Firstly, that there was no full detailed assessment of material differences between what had been approved and what had subsequently been built, and secondly, there was concern that the approved structures looked similar to a residential property.
 13. Although the appellant's evidence clearly states that detailed measurements of the building are required to determine the differences between the approved scheme and the as-built development I do not understand why there is reliance on other reports including those written by Platt White Partnership (Chartered Building Surveyors) and Deesurveys (Chartered Surveyors) where there is quite a glaring lack of measurements given. The fact that the height of the

building is not even measured is more surprising given the burden of proof placed on the appellant in such applications.

14. Furthermore, the sketch drawing dated 9 May 2006 submitted as part of the appellant's evidence does not show the building as it existed during the relevant four year period for the determination of the application. The number of windows is different to those on site and the sketch is far removed from the approved plans listed above.
15. The appellant has also stated that internal walls were built around the time the building was erected and these are not just partitions, but have entry openings, creating separate rooms which are not normally found in agricultural buildings for which permission was granted. The internal areas of the building should also be included in this assessment and it is quite clear that the as built internal space deviates from the approved scheme.
16. I have noted the approach presented by the Council with respect to material and on material amendments and the appellant's objection to applying an up to date methodology for assessing amendments that was not adopted in 2005 and 2006. However, even without applying those tests, it is evident that irrespective of whether or not the Council accepted working amendments around the time the building was erected, that does not alter the fact that the building is now materially different to the one that was approved.
17. I have also taken account of the fact that the Council approved various plans for the building which are not consistent with one another. For example, the approved plans shows different footprints, window locations and window numbers. The appellant contends that the Council wish to revert to the originally approved plans showing round windows, but this is not necessarily the case. Subjective preferences are not relevant in this case. What is of fundamental relevance is whether the building is in accordance with the approved scheme. It has not been undertaken within the terms of the planning permission and that is a simple fact of the matter.
18. In summary, the exercise that should be undertaken is a relatively simple comparison between what was approved and what has been built. Holistically, in accordance with established case law, the building is different to what was approved. Therefore, on this issue I conclude that the erection of the building has not been undertaken within the terms of planning permission reference 2005/06404 granted by Warrington Borough Council on 13 December 2005.

Whether the building has been substantially completed

19. The application the subject of this appeal is for an existing agricultural building and for that to be lawful it must have existed at the date the application for a certificate was made and for a period of four years before it. Again, Sage is directly relevant to consideration of this main issue, stating that the character and purpose of a structure falls to be assessed by examining its physical and design features. The relevance of such an assessment is to determine whether or not the building operation requires planning permission. In making such a determination, Sage makes it clear that the actual use made of a building does not change the answer to be given. Putting it simply, keeping hay and agricultural equipment in the appeal building does not make it a barn. Instead, the physical design of the building is what should be assessed.

20. Furthermore, when considering whether it has been substantially completed this building should not be assessed against any approved permission because the matter of substantial completion is only relevant because I have concluded that what is built is materially different from the building that was approved, making it a building which does not benefit from planning permission. It is clear to me that the appellant is arguing that the building became lawful four years after it was initially built and consequently remains lawful to the date the application for the certificate of lawful development was made. However, that consideration would only arise once a determination has been made that the building was not actually built in accordance with the approved planning permission. Then an assessment would need to be made about what the building that has been built actually is.
21. There is a range of external features on the building as it currently exists that indicate that it is a dwelling rather than an agricultural building. The approved plans and the existing building clearly show to me that the building is actually a residential building rather than an agricultural one. However, in this case it is important to understand that that is not actually the legal test that should be applied because the building does not have planning permission. Therefore, this case cannot simply be determined as a one where regard should be had to the totality of the development which the appellant originally contemplated and intended to carry out (as advocated by Sage). There is some evidence that the building was used for a period of time for agricultural storage purposes but that does not necessarily mean the building was originally intended for that purpose and does not mean it is actually an agricultural building. Even though the appellant originally applied for, and was granted permission for, the erection of two barns, it has the appearance of a residential dwelling but has never been substantially completed as one.
22. There is extensive and detailed evidence, including a total of 10 residential-related planning applications for the site, that are a clear indication to me that it has been the long-intended intention of the appellant to use the site for residential purposes. Furthermore, the evidence illustrates that there have been many different assessments made regarding the plans drawn for the building. Council officer comments on the original planning application 2005/05403 state that the form and construction of the proposed buildings is untypical of the majority of new farm buildings being built at that time, but that was not considered to be justification for withholding the grant of planning permission. It appears to me that as a consequence of that concern a condition was imposed on the planning permission to ensure that the use of the buildings was tied to their alleged intended agricultural function.
23. The officer also acknowledged the intended use of the buildings for agricultural purposes but also expressed that it would not be appropriate to withhold permission on the grounds of potential future conversion of the buildings for less appropriate purposes, which would require planning permission for a change of use in any case. It is also telling that the planning permission includes a condition requiring the submission of full details of the construction, internal arrangements and details of external openings in order to ensure the buildings were constructed in accordance with the intended agricultural use where new buildings for non-agricultural uses would normally be unacceptable.

24. It is also evident that in dealing with an appeal in 2014³ against the Council's refusal to grant permission for change of use of the two redundant buildings to form detached dwellings, my colleague Inspector stated that, *"notwithstanding the description in my opinion the buildings have a domestic character and appearance, in terms of their overall form, materials, design and number of openings."* This assessment is repeated later in his decision letter when he states again that the buildings have a domestic appearance and are not ideally suited for agricultural purposes. Although he acknowledged that he had no evidence to suggest that they could not be used for agricultural purposes, the appeal was dismissed on the grounds that the development would be at odds with the countryside setting.
25. That previous appeal was concerned with a proposed change of use of the redundant buildings to residential whereas this particular case is a legal determination specifically about whether the building is authorised either by compliance with a previously granted permission or as a consequence of the passage of time. It appears to me that there is no dispute between the main parties that, if the building is a residential dwelling, then it is not substantially complete as such. Therefore, it is necessary to assess the appearance of the building and its intended purpose by looking at its physical features. There are a range of external features that accord with those of a residential dwelling rather than an agricultural building. From the evidence presented and my own observations these include the following.
26. Firstly, the main front doorway is relatively narrow and has a domestic scale with a rounded lintel detail and framed by windows of a domestic scale on either side. The width of this main doorway is particularly narrow if intended to be used for agricultural purposes and leaves very little manoeuvring space for the machinery shown as being intended to be used in the building in previous planning submissions. I cannot see that the main entrance doorway is suitable for a range of agricultural activities and for manoeuvring every day agricultural machinery and would surely have been designed otherwise if domestic use had not been intended when it was built. The appellant's evidence shows that machinery can enter the building and can be used to move agricultural material and stored items in and out of the building, but that does not sufficiently satisfy me that it has been designed with main agricultural barn use in mind. Even relatively small vehicles would find it very difficult to access the building and carry out a range of routine activities in these circumstances.
27. External louvre window features are also a domestic rather than agricultural design feature and the uniform nature of this design enhances the domestic appearance of the building. I have also noted the rounded brick lintel features at first floor level on the side elevations, feature stone cills and lintels on the front and rear elevations and general opening details throughout the design. Additional windows have been formed in the side elevations of the short projecting rear and front parts of the building and I can see no reason why these would be included in an agricultural building. They clearly inhibit practical agricultural use of the building and are far more likely to be associated with an intended residential use.
28. Throughout the building window openings have been lengthened. Again, I can find no practical or logical reason why this would be implemented in an

³ Reference APP/M0655/A/13/2200859

agricultural building where optimising functional and practical operational considerations would surely outweigh the aesthetic design features. In addition, the actual number of openings is at odds with the design and appearance of normal rural agricultural barn buildings which are usually robust and functional structures.

29. The cruciform shape of the building and the use of high quality brick with slate roofs provide a far more domestic residential appearance than I would expect for an agricultural barn. I have noted the appellant's evidence that he wished to achieve a high quality building but the building does not lend itself to efficient operation for agricultural purposes.
30. In accordance with the Sage case previously referenced I have looked at the building and have asked what it is designed to be. The building looks like a residential property and, irrespective of the fact that it was used for a period of time for agricultural purposes, that does not mean that it was built for agricultural purposes. Indeed, I agree with the Council's point that any building can be used for storage. Based on the evidence submitted and my own site observations, the building has not been designed to meet agricultural purposes or requirements, but rather it is built and designed as a residential dwelling. There is insufficient clear evidence from the appellant to address this issue and there is a notable absence of evidence to show how the design and appearance of the building meets its alleged originally intended use as a barn.
31. As well as the external appearance, I have seen that there are internal walls within the building. The relatively small spaces created and narrow entrances to the 'rooms' that have been formed are clearly not intended for agricultural purposes and would inhibit rather than facilitate such use. Again, there is insufficient evidence before me to understand why the internal space in the building was configured in the way it has been.
32. The evidence presented with particular reference to Building Regulations does not help the appellant's case in my opinion. It does not inform me what the building was intended to be and, indeed, in some respects it erodes the appellant's case by clarifying that an agricultural barn would be expected to have provision for services, which this building does not.
33. In addition, the evidence provided by a Chartered Surveyor appears to me to be based on arguments relating to property values and the fact that such values are not optimised by the location of the building within the plot of land. That may well be the case, but it does not help to explain the intended purpose of the building. The evidence presented in this regard is also undermined by the undisputed intention of the appellant to use the building for residential purposes proposed by previous applications submitted to the Council and a related appeal following the refusal to grant permission. I have noted that those previous applications were for a change of use and evidence from the 2008 application shows that no external changes to the building were proposed – suggesting that the external structure of the building is indeed suitable for residential use.
34. In 2012 internal alterations to the building were carried out for residential purposes. As I have previously set out, those works could not be used for or facilitate agricultural use. The evidence presented at the Inquiry and my own site observations clarify that those internal works were never completed. They are relevant to this case as they now form part of the building in question and

constitute works intended to facilitate use of the building for residential purposes. Since they are incomplete, they are further evidence that the building is not substantially complete.

35. Therefore, for the above reasons I conclude that the building has not been substantially completed for a period in excess of 4 years leading to the date of the application.

Conclusions

36. Taking account all of the evidence presented to me and for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development 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.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Freddie Humphreys of Counsel He called	Appointed by Warrington Borough Council
Angela Forsyth	Planning Officer

FOR THE APPELLANT:

Eric Owen of Counsel He called	Appointed by Stephen Goodwin
Stephen Goodwin BA (Hons) MCD MRTPI	Goodwin Planning
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