
Appeal Decision

Site visit made on 20 January 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 22 January 2021

Appeal Ref: APP/J3720/X/20/3257432

Block 1, Grange Meadow, Ingon Lane, Stratford-upon-Avon CV37 0QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr K Broadhurst against the decision of Stratford on Avon District Council.
 - The application Ref 19/02881/LDE, dated 11 October 2019, was refused by notice dated 10 February 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is use of Block 1 as a single dwellinghouse.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the use which is considered to be lawful.

Reasons

2. On 21 March 2016 the Council granted prior approval 16/00389/COUP (the PA), under the provisions of Class P of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), for Block 1 for 'change of use from storage or distribution building (use class B8) to dwellinghouses (use class C3)', subject to one condition, which is not relevant. The GPDO, at that time, stated that development under Class P is not permitted if, amongst other things, 'P.1(c) the use of the building falling within Class C3...of that Schedule was begun after 15 April 2018', and 'P.1(d) the gross floor space of the existing building exceeds 500 square metres'.
3. On 6 April 2018 Class P of the GPDO was amended by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018/343 (the 2018 Amendment). The aforementioned P.1(c) limitation was substituted by 'P.1(c) the prior approval date falls on or after 10 June 2019' and another limitation was inserted; 'P.1(k) the development is not completed within a period of 3 years starting with the prior approval date'.
4. Section 61D(2)(b) of the 1990 Act states that 'Planning permission granted by a development order is withdrawn if the order is amended so that it ceases to grant planning permission in respect of the development or materially changes any condition or limitation to which the grant of permission is subject'.
5. The Council refused the application for two reasons; first, at the time of occupation of the building on 20 March 2019, under the provisions of Section

61D(2)(b) of the 1990 Act, the planning permission granted by the GPDO had been withdrawn; and second, that lawful occupation pursuant to the PA has not taken place because, contrary to the limitation of P.1(d), the gross floor space of the building, when it was converted to a dwelling, exceeded 500 square metres.

6. With regard to the first reason for refusal of the application the following hypothetical scenario highlights the case being put forward by the Council. A prior approval for change of use from use class B8 to use class C3 was granted on 5 April 2018 and, in accordance with the original Class P.1(c) limitation in effect on that date, the change of use must have been begun before 15 April 2018. The 2018 Amendment comes into force on 6 April 2018 and if the Council's interpretation of Section 61(2)(b) is correct then the planning permission granted by the prior approval would have been withdrawn. The Applicant would have had no opportunity to take advantage of the grant of prior approval.

7. The scenario cannot have been the intention of the government when they drafted and brought into force the 2018 Amendment. The clear intention of the government was to extend the temporary Class P permitted development rights which had been created, along with other permitted development rights, to boost the supply of housing. The effect of the amendment of limitation P.1(c) and the insertion of limitation P.1(k) was to extend the period within which prior approval for Class P development could be granted, and to require any already granted but not yet implemented prior approvals, and any future prior approvals, to be completed within a period of three years starting with the prior approval date.

8. The Appellant did not begin the development for which prior approval had been granted before the time limit in the original P.1(c) limitation of 15 April 2018. However, after that date the prior approval remained extant and subject to the new time limit for completion set out in limitation P.1(k) inserted by the 2018 Amendment. In effect, the 2018 Amendment afforded the Appellant the opportunity to initiate and complete the proposed development but only if it was completed no later than three years after the date of the PA. The 2018 Amendment did not, as a matter of planning judgement, materially affect the substantive nature of the Class P permitted development right and Section 61D(2)(b) of the 1990 Act does not therefore have any effect on that right.

9. The date of the prior approval is 21 March 2016. The Council has not disputed the Appellant's assertion that he initiated and completed the change of use of Block 1 from use class B8 to use class C3 on 20 March 2019. In this regard, the development was completed in accordance with the PA and the limitations of the amended Class P rights of the 2015 GPDO.

10. With regard to the second reason for refusal the Council has compared a drawing submitted with the PA application with drawings submitted with the appeal application and has concluded that "...the floor space at first floor level has been extended, thus taking the whole floorspace of the building over the prescribed upper limit of 500 square metres". They do not dispute that the appeal application drawings accurately record the floor space of the building on 20 March 2019 and the ground floor plan does state that a covered store on the east side of the dwelling is 'not part of dwelling'. This store, which has now been removed, was a lightweight independent structure and was not, as a matter of fact, part of the building that was converted to a dwelling on 20 March 2019.

11. The building, scaled from the drawings and confirmed at the site visit, is about 18.6 x 18.6 metres; a gross ground floor area of about 346 square metres.

The Council calculate the gross ground floor area of the building to be 403 square metres but this must be an error. The first floor of the building that was converted to residential use, albeit more than was indicated in the PA drawing, is about 11.7 x 14.0 metres less about 4.0 x 4.6 metres; a gross first floor area of about 145 square metres. The gross floor area of the building that was converted to residential use on 20 March 2019 was therefore about 491 square metres. This is in accordance with the P.1(d) limit of 500 square metres.

Conclusions

12. The 2018 Amendment did not materially affect the substantive nature of the Class P permitted development right and Section 61D(2)(b) of the 1990 Act does not have any effect on that right. The development that was permitted by the PA was initiated and completed on 20 March 2019 and therefore in accordance with the time limitation stated in P.1(k) of Class P of Part 3 of Schedule 2 of the GPDO as inserted by the 2018 Amendment. The gross floor area of the building that was converted to a dwelling on 20 March 2019 was less than the limitation of P.1(d) of Class P of Part 3 of Schedule 2 of the GPDO. The use of Block 1 as a single dwellinghouse is thus lawful.

13. For the reasons given above, and on the evidence now available, the Council's refusal to grant an LDC in respect of use of Block 1 as a single dwellinghouse at Block 1, Grange Meadow, Ingon Lane, Stratford-upon-Avon was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 11 October 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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 dwelling was occupied in accordance with the limitations of Class P of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

John Braithwaite

Inspector

Date: 22 January 2021

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First Schedule

Use of Block 1 as a single dwellinghouse

Second Schedule

Land at Block 1, Grange Meadow, Ingon Lane, Stratford-upon-Avon CV37 0QF

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 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 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 January 2021

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Land at Block 1, Grange Meadow, Ingon Lane, Stratford-upon-Avon

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Scale: not to scale

