
Appeal Decision

Site visit made on 31 March 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/D2320/X/20/3256913

The Compound, Coppull Enterprise Centre, Mill Lane, Coppull, Chorley PR7 5BW

- 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 Kevin Smith against the decision of Chorley Borough Council.
 - The application Ref 19/01015/CLEUD, dated 23 October 2019, was refused by notice dated 17 February 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 an existing fence.
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Summary Decision: the appeal is dismissed

Procedural matter

1. The address to which this appeal relates is variously described as 'Compound 5' on the application form and as 'The Compound' on the Council's formal Decision Notice. The appellant has not challenged the latter as being inaccurate, and indeed has adopted it on his appeal form. I am therefore satisfied that these descriptions both relate to the same site.

Reasons

2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
3. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

I am satisfied that, by reason of its height, length and degree of permanence, the fence for which the LDC is sought is a building operation and therefore constitutes development for the purposes of Section 55(1) of the 1990 Act. Section 57(1) of that Act provides that planning permission is required for development.

4. Section 58(1)(a) of the 1990 Act provides that planning permission may be granted by a development order. The erection of a gate, fence, wall or other means of enclosure is permitted under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out in Class A.1. Insofar as relevant to the fence for which the LDC is sought, these limitations include (b) that the height of the fence as erected or constructed exceeds 2 metres above ground level and (d) that it is not within the curtilage of a listed building. If the fence fails to accord with either of these limitations, Class A.1. makes it clear that the development is not permitted by Class A. It is convenient to consider the limitation under Class A.1(d) in the first instance.
5. The building now occupied as the Coppull Enterprise Centre is a Grade II Listed Building. The listing description indicates that the building was originally a cotton spinning mill built in 1906 in the "art nouveau" style. The character and appearance of the building, with the 5-stage tower and the 2-storey engine house at right-angles to the main part of the building, reflects that industrial heritage.
6. To the east side of the building is the car park associated with the Coppull Enterprise Centre. Although there is no well-defined boundary, this car park has a direct and intimate relationship with the listed building, both in visual and functional terms. For that reason, in my view this car park forms part of the curtilage of this listed building.
7. The fence for which the LDC is sought is within that car park and therefore within the curtilage of the listed building. Accordingly, the fence fails to accord with the limitation set out in Class A.1(d) of the GPDO.
8. In reaching that conclusion, I recognise that the appellant has rented a compound on this site for some fifteen years or so, and relocated the compound from a position even closer to the listed building. However, the latter was an entirely different development and my consideration must relate solely to the fence for which the LDC is sought.
9. The appellant fairly concedes that part of the fence as erected exceeds 2 metres in height above ground level but explains that the surrounding ground level was due to be raised in order to address a flooding problem. It appeared to me that the ground level had still not been raised at the time of my site visit. In any event, my decision must relate to the position on the date on which the application was made, in this case 23 October 2019. It is apparent from the appellant's statement that, on that date, at least part of the fence exceeded 2 metres in height when measured from the then existing ground level. For that reason, the fence as whole fails to accord with the limitation set out in Class A.1(b) of the GPDO.

10. Having regard to the above, I find that the fence for which the LDC is sought constitutes development for the purposes of the 1990 Act but that the development is not permitted by a development order. It follows that express planning permission is required for the existing fence.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing fence at The Compound, Coppull Enterprise Centre, Mill Lane, Coppull, Chorley PR7 5BW 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.

Formal Decision

12. The appeal is dismissed.

Paul Freer
INSPECTOR