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## Appeal Decision

Site visit made on 26 October 2021

**by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 November 2021**

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### **Appeal Ref: APP/A0665/X/21/3280819**

### **Honeyend Farm, Carrs Lane, Tattenhall, Chester CH3 9NT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 and Mrs Reg Crank against the decision of Cheshire West & Chester Council.
  - The application Ref 20/03520/LDC, dated 23 September 2020, was refused by notice dated 20 May 2021.
  - The application was made under section 191(1)(b) of the 1990 Act as amended.
  - The development for which a certificate of lawful use or development is sought is – Certificate of Lawfulness of Existing Use or Development to confirm the current residential dwelling was not carried out pursuant to planning permission reference 6/12775.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. My decision is based on the facts of the case, and on relevant planning law and judicial authority.
3. I note the reference to planning obligations and assertions about whether these are extant and enforceable. For the avoidance of doubt, it is not appropriate for me to make a finding on these matters in the context of an appeal made under Section 195 of the 1990 Act. I have focussed on the main issue as set out below.

### **Main Issue**

4. The appellants' case is that the dwelling was erected unlawfully, as a result of not being constructed on the approved site. It is claimed that the dwelling has become lawful due to the passage of time<sup>1</sup> and is not subject to any of the planning conditions imposed on the original permissions.

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<sup>1</sup> Section 171B of the 1990 Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under

5. In order to succeed in this appeal, the appellants must show on the balance of probability, that the dwelling was erected contrary to the terms and conditions of planning permission Ref 6/12775, and that the building operation was substantially completed four or more years prior to the date of the enforcement notice.
6. I consider that the main issue to be whether the Council's decision to refuse to grant an LDC was well-founded.

## **Reasons**

### *The Planning Permission*

7. Outline planning permission (Ref 6/12775) was granted on 13 November 1984 for a "proposed private dwelling and stud farm on land next to Beehive Farm Tattenhall" (the Outline Permission). This permitted the development in accordance with the application and accompanying plans. The applicant submitted a plan with reference 6/12775, dated 12th March 1984 and with title "Location Plan, Proposed Outline Planning Application for Dwelling House and Stud Farm on land opposite to Platts Lane Tattenhall, for Mr and Mrs R Crank" (Plan A). This included a block plan at scale 1:500 annotated 'sketch proposal'.
8. The outline permission was subject to 12 conditions. Of particular relevance are condition 1, which sets out the matters reserved for subsequent approval, namely the siting, design and external appearance of the proposed building and other structures and positions, widths, levels, construction and drainage of the means of access thereto and landscaping of the site. Condition 4, which limits the occupation of the dwelling and condition 12, which made the permission for the personal benefit of My R Crank only and not for the benefit of the land.
9. A subsequent application for reserved matters (ref 6/13339) was approved on 5 December 1984 for "details of dwelling to serve the stud farm" (the Reserved Matters Permission). This permitted the development in accordance with the Outline Permission, the application and the accompanying plans submitted by the applicant. The applicant submitted a plan with reference 6/13339-RC/001/WD1 and dated 16.08.1984, with title: "Proposed Dwelling on Land opposite to Platts Lane, Tattenhall for Mr and Mrs R. Crank. Planning (see outline approval) Approval of Reserved Matters and Approval of Building Regulations" (Plan B). The Reserved Matters Permission was subject to 11 conditions. Condition 2 repeated condition 4 above. Condition 9 largely repeated condition 12.
10. On 4 May 1986, the Council received a letter from Mr R Crank with the title "Application approval 6/12775. Date 13 November 1984" seeking the re-positioning the dwelling's first floor and bathroom from front to rear and the deletion of the middle dormer on the front elevation and re-positioning the dormers to both front and rear elevations. Also, the length of foul drainage was altered. An accompanying plan was submitted with Reference 6/13339, dated 8 May 1986 and titled "Proposed Amendment to detached dwelling on land opposite to Platts Lane, Tattenhall, for Mr and Mrs R. Crank, original. Approved 13 Nov 84, Ref 6/12775. Re. Position of F FL Bathroom from front to rear, delete 1 no dormer to front and reposition other dormers to both elevations, revised foul drainage, F4-F6 deleted from front dwelling and IC F6 to IC F4 as

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land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

indicated on location" (Plan C). This application for 'minor amendments' was approved by the Council on 19 May 1986.

### *Interpretation*

11. Given the matters in dispute, it is necessary to interpret the planning permission in order to decide whether the development was constructed lawfully. There is relevant caselaw on this matter, which I have set out below.
12. In *Trump International Golf Club Scotland Ltd*<sup>2</sup>, Lord Carnwath held that the process of interpreting a planning permission should not be regarded as differing materially from that appropriate to other legal documents, which must be interpreted in a particular legal and factual context. A planning permission is a public document which may be relied on by parties unrelated to those originally involved. The approach is to consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the planning permission and with common sense.
13. The basic rule is that a planning permission should stand by itself and the meaning should be clear within the four corners of the document. If something is not clear but the planning permission clearly incorporates the application and plans, they may be used as aids to interpretation or to understanding the scope of what is permitted<sup>3</sup>.
14. In addition, it was noted by the Court of Appeal in *Barnett*<sup>4</sup>, that the general rule in interpreting a grant of planning permission that, on its face, was unambiguous was that regard could only be had to the permission itself, including the conditions in it and the express reasons for those conditions. No regard could be given to the planning application or other extrinsic evidence unless the permission incorporated the application (by reference to *Ashford*<sup>5</sup>, which related to an outline planning permission). However, plans were an essential part of any grant of planning permission, and it could not be said that such a grant was to be interpreted without having regard to the plans that accompanied it. The extent to which those plans would matter would vary from case to case. On its face, therefore, a full planning permission for building operations does not purport to be a complete and self-contained description of the development that had been permitted. The public, reading the decision notice, would realise that it was incomplete, indeed useless, without the approved plans and drawings.
15. The interpretation of planning permissions was further considered in *Wood*<sup>6</sup>. Mr Justice Lindblom held that the Inspector, in seeking to identify the lawful use of the relevant planning unit, was entitled to consider all of the public documents and drawings comprised in the relevant planning applications, as well as the decision notices. He was also entitled to have regard to the development which had in fact been carried out.
16. The 'pragmatic' approach described in *Wood* was endorsed in *Kemball*<sup>7</sup>. The High Court held in the latter case that, in order to resolve ambiguity, it is

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<sup>2</sup> *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC 74.

<sup>3</sup> *Slough Estates v Slough BC (No 2)* [1970] 2WLR 1187.

<sup>4</sup> *Barnett v SSCLG & East Hampshire DC* [2009] 1 P&CR 24.

<sup>5</sup> *R v Ashford BC ex parte Shepway BC* [1998] EWHC 488 (Admin).

<sup>6</sup> *Wood v SSCLG & the Broads Authority* [2015] EWHC 2369 (Admin).

<sup>7</sup> *Kemball v SSCLG* [2015] EWHC 3338 (Admin) and *University of Leicester v SSCLG & Oadby & Wigston BC* [2016] EWHC 476 (Admin).

permissible to look at extrinsic evidence including but not limited to the application form and other documents, depending on the circumstances of the individual case.

17. In this case, it is first necessary to look at the both the Outline Permission and the Reserved Matters Permission, alongside the approved plans and drawings. The approved plan relevant to the Outline Permission, Plan A, showed the siting of the house to be indicative. A reasonable reader would be well aware from the plan and the planning condition, which reserved matters of siting, design and external appearance for subsequent approval, that the permission should be read in conjunction with further details. The Reserved Matters Permission approved the siting of the building, among other things. There are no dimensions on that plan and, when compared with the dwelling as constructed, it is apparent that the scale of the dwelling relative to the size of the plot, shown by a red line on Plan B, does not correspond with the situation on the ground today.
18. However, it is possible to use surrounding physical features to establish the intended siting. The road junction of Carrs Lane with Platts Lane can be relied upon since this is unlikely to have changed. Plan B shows the side or north facing gable to be positioned on a line which corresponds to the centre of the carriageway. This accords with the actual siting. The northern boundary, shown by a red line on Plan B, follows a line which corresponds with the verge of Platts Lane. I can see from the aerial photograph that there was a former boundary line in that location. Although that boundary is not defined at present by any form of enclosure, I saw evidence of its existence during my site visit. The north facing gable was intended to be set back from the boundary by a relatively short distance, as it appears today.
19. The rear, or north-eastern, boundary as shown on the plan is different to the current situation. The shape of the plot shown in Plan B was irregular at the rear, whereas now it follows a straight line, which suggests it has altered. As a result, the house appears much closer to the rear boundary than the approved Plan B. However, the plan shows a relatively large building to the south-east, which lies opposite a field boundary. If this is considered along with the aerial image, there is a building in that location today. It can be seen that the position of the house relative to that building on Plan B is comparable with the situation today.
20. The appellants place considerable reliance on Plan C, which was approved as a minor amendment. This is not significantly different from Plan B, aside from including dimensions, which show 12.5 metres plus 1.8 metres to the front boundary and 7 metres to the northern boundary. It is these measurements that give rise to the discrepancy. The appellants have plotted the measurements on an up-to-date plan, stating that the hedge and road have not moved. While I agree about the road, I consider that the hedge has moved and cannot be relied upon. As set out above, the northern boundary shown on Plan B follows a line which corresponds with the Platts Lane verge. The hedge shown on the appellants' plan is clearly not the same feature.
21. I accept that the dwelling as sited is more than 12.5 plus 1.8 metres from the road. However, it is possible to judge the intended siting of the house by reference to the large building to the south-east as explained above, which also

appears on Plan C. A building of this size, and its position relative to the road, can be considered a reliable point of reference.

22. Ultimately, it is necessary to consider what a reasonable reader would understand in the context of the overall purpose of the planning permission and with common sense. It would be apparent that the Outline and Reserved Matters permissions should be read together, alongside the approved plans and drawings. The approved plans A and B show a dwelling of the same type, form and construction as has been erected. I accept a discrepancy in the size of the building to the plot, shown in Plan B, but it is acceptable to have regard to the development which has in fact been carried out. Examination of physical features relative to the dwelling shows it has been built as intended in relation to those features. A reasonable reader would more than likely conclude that the dwelling has been sited within the plot in a location that is not wholly dissimilar to that approved.
23. If that reader also considers the approved plan C, it would be readily apparent that the purpose of this plan was to agree the minor amendments, which are very clearly set out. The plan was not intended to obtain approval for a different siting. Overall, I do not consider that Plan C should be interpreted in the way argued by the appellants. Moreover, it is only now that the matter has come to light as the appellants wish to sell the property, presumably free from the restrictive occupancy conditions. If there was an obvious ambiguity, I consider it probable that it would have come to light much sooner.

### **Conclusion**

24. Consequently, I find that the appellants have not shown on the balance of probability, that the dwelling was erected contrary to the terms and conditions of planning permission Ref 6/12775. As such, it is not an unlawful development that has gained immunity from enforcement action due to the passage of time.
25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Certificate of Lawfulness of Existing Use or Development to confirm the current residential dwelling was not carried out pursuant to planning permission reference 6/12775 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.

*Debbie Moore*

Inspector