

Appeal Decision

Site visit made on 21 October 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Appeal Ref: APP/Q3115/X/21/3273867

Mill Farm, Sonning Eye, Sonning, South Oxfordshire RG4 6TR

- 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 Bandell Properties Ltd against the decision of South Oxfordshire District Council.
 - The application Ref P20/S3970/LDE, dated 21 October 2020, was refused by notice dated 22 December 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 described as *'New building works and alterations to the existing carried out under permitted development'*.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the existing extension to Unit 2 which is found to be lawful. The appeal in respect of the existing extension to Unit 3 is dismissed.

Preliminary Matters

2. I note the Council's officer report refers to representation being received on matters including highway safety, noise, flood risk and character and appearance. I have also noted the appellant's submissions on a number of those issues as well as matters relating to the need to update the premises, sustainability, landscaping, need, access and parking.
3. However, an application under s191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act) seeks to ascertain whether the operations which have been carried out are lawful. Such applications are determined on the basis of fact and law, and this means that planning merits can form no part of my assessment as to whether a LDC should be granted.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the new building works and alterations would have been lawful on the date of the LDC application, being 21 October 2020, on the basis that the development was granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), as then in force.

Reasons

5. The appeal relates to a linear brick-built building with pitched roof that is split into three industrial units. Drawing numbers PL01 and PL02 accompanying the application show the removal of an existing flat roof front extension and the erection of three gable extensions to each of the three units, spaced across the front elevation. However, I saw at the time of my site visit that only two of the gable fronted extensions had been built and that the original flat roof extension remained.
6. Article 3 and Schedule 2, Part 7, Class H of the GPDO (hereafter referred to as Class H) grant planning permission for the erection, extension or alteration of an industrial building or a warehouse. This 'permitted development right' is subject to limitations and conditions set out in paragraphs H.1 and H.2. The Council's view is that the buildings would conflict with limitations H.1.(d) and (e).
7. H.1.(d) provides that development is not permitted by Class H if *the height of the building as extended or altered would exceed—(i) if within 10 metres of a boundary of the curtilage of the premises, 5 metres; (ii) in all other cases, the height of the building being extended or altered*. The Council's view is that conflict arises in that the building lies within 10 metres of a boundary and the height of the building being extended is over 5 metres. The appellant's position is that H.1.(d) (and (e)) relate to new extensions added to an existing building, rather than the original building.
8. I agree with the latter position, otherwise H.1.(d)(ii) would not make sense; it would effectively mean development is not permitted if the height of the building as extended or altered (the pre-existing building) would exceed the height of the building being extended (the pre-existing building). The appellant states that the ridge heights of the extensions are less than 5m and that is accepted by the Council as it confirms that limitation H.1.(c) does not apply¹. Moreover, the height of the extensions do not exceed the height of the building being extended. Therefore, on the balance of probability, the extensions would not exceed limitation H.1.(d).
9. Nevertheless, the extension to Unit 3 is positioned alongside the boundary to Mill Farm Cottages and as such does not comply with limitation H.1.(e) which states that development is not permitted if any part of the development would be within 5 metres of any boundary of the curtilage of the premises.
10. I therefore find that the appellant has not demonstrated that the extension to Unit 3 did not require planning permission, or that it has been granted planning permission by the GPDO. On the evidence before me and the balance of probabilities, the extension would breach the limitations set out in paragraph H.1.(e) of Class H.
11. Given the central position of the extension to Unit 2, it is not, on the balance of probabilities within 5 metres of any boundary of the curtilage of the premises. The extension to Unit 2 is also constructed using materials which have a similar external appearance to those used for the existing industrial building, in

¹ Development is not permitted if the height of any part of the new building erected would exceed—
(i) if within 10 metres of a boundary of the curtilage of the premises, 5 metres;
(ii) in all other cases, the height of the highest building within the curtilage of the premises or 15 metres, whichever is lower;

accordance with condition H.2.(d), which is applicable given the location of the site within Article 2(3) land².

12. On that basis I find that the appellant has demonstrated that the extension to Unit 2 is permitted development under Class H and was granted planning permission by Article 3 of the GPDO, subject to the conditions and limitations set out under H.2.
13. Where, as in this case, an application involves two or more operations, s193(4) of the Act enables a certificate to be issued for one of them. Since the extension to Unit 2 can be regarded as a separate operation, I shall issue a certificate in respect of that part of the existing development, modifying the description to accord with the facts and evidence, under the powers afforded to me by s191(4) of the Act.

Other Matters

14. The appellant explains that after several emails and amendments, the Council confirmed that the works would be permitted development. However, the email provided from the Council states that *'Should the proposed works now fall wholly within Schedule 2, Part 7, Class H and Class J of the GPDO then planning permission would not be required'*. My interpretation of that is not as categoric as that of appellant's. The appellant further explains that a statement was promised by the Council's legal departments on the decision but that was not received. Be that as it may, I have determined the appeal afresh in the terms set out in the preliminary matters.
15. Reference is made by the appellant to other projects carried out utilising Class H permitted development rights, without issue. However, I have no details of those projects and, in any case, I am only able to consider whether what is before me is lawful.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the extension to Unit 2 was not well-founded and that the appeal should succeed to that extent. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
17. 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 extension to Unit 3 was well-founded and that the appeal should fail in that regard. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

² The Sonning Eye Conservation Area



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 21 October 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 extension to Unit 2, shown in drawing number PL02 (20-10-2020), was granted planning permission by Article 3 and Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Richard S Jones

INSPECTOR

Date: 07 January 2022

Reference: APP/Q3115/X/21/3273867

First Schedule

The erection of a front extension to Unit 2.

Second Schedule

Land at Mill Farm, Sonning Eye, Sonning, South Oxfordshire RG4 6TR

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 operations 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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: 07 January 2022

by Richard S Jones BA (Hons), BTP, MRTPI

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Scale: NOT TO SCALE

