



Appeal Decision

Site visits made on 28 July 2022 and 30 August 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/X1355/X/22/3298700

Harehill Farm, Harehill Farm Road, Haswell Plough DH6 2BA

- 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 M Ford against the decision of Durham County Council.
 - The application Ref DM/21/02986/CEU, dated 23 August 2021, was refused by notice dated 28 January 2022.
 - 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 Conversion of Agricultural Barn under Full planning 4/11/00598/FPA to Residential Dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the development i) has been lawfully implemented in accordance with planning permissions granted and, if not, ii) is lawful because it is immune from enforcement action due to the passage of time.
3. The decision in this case will turn on matters of fact and law. The merits of the development, including the quality of construction work undertaken, are not therefore before me for consideration, and there is no planning application being considered.

Reasons

The question of lawful implementation

4. Planning permission was granted, subject to conditions, for the conversion of the agricultural barn to a residential dwelling in 2008¹. This permission was renewed in 2011². Condition 2 required the development to be in accordance with approved plans and specifications; whilst Condition 9 stated that "The amount of demolition and rebuilding shall be restricted to that shown on the annotated plan 08071-2 and the supporting structural statement by Welsh and Baker dated the 29th August 2007". The Council's case is firstly that the

¹ Planning permission ref 4/08/00774/FPA.

² Planning permission ref 4/11/00598/FPA.

building has not been constructed in accordance with approved plans and secondly that the original barn was demolished and rebuilt, such that the appellant failed to adhere to the terms of the aforementioned condition.

5. The rectangular building, subject of the appeal, is broadly aligned north to south. In terms of progress, from my visit it was evident that work had commenced. The brickwork comprising the main east and west elevations appeared substantially complete to eaves level, though windows and a door remained to be fitted in empty apertures. The north and south gable elevations were only partially constructed and trusses have been fitted for approximately half of the roof area, such that a substantial part of the roof structure still remains to be formed. Internal finishes are yet to be applied.
6. The approved plan confirms that, although broadly rectangular in form, the building did incorporate a partly inset wall along the west elevation and a variation in the roof ridge and eaves levels. These features do not appear to be reflected in the development as built, even if as claimed by the appellant, the loss of the inset resulted from the construction following the foundations of an original exterior wall line. There also appears to be variance in terms of the position of window openings when compared with the approved drawing.
7. Certain dimensions of the building were checked, with the parties present, during a site visit. This revealed the internal width of the structure to be approximately 7 metres, considerably greater than the corresponding maximum internal width of 5.18 metres, as shown on the approved plan. I am not persuaded that this degree of difference can simply be explained by the irregularities of leaning or bulging walls in the original building. In any event, I have no reason to doubt the Council's representation that no previous application was made to vary the plans condition, if that plan was previously discovered to have been inaccurate.
8. It therefore seems to me that the building has not been constructed in accordance with the aforementioned approved plan. When considering the nature and degree of the aforementioned differences in totality, it seems to me that they would be noticeable and therefore material. I do not therefore agree that the variations would be *de minimis*.
9. Turning to the extent of demolition and rebuilding permitted, the approved plans distinguish the parts where new walls are proposed (notably the south elevation and part of the east elevation) and where existing walls are to remain (notably the west elevation and most of the north elevation). The original officer report referred to the degree of rebuild as around 40 per cent.
10. The aforementioned Welsh and Baker report identified the occurrence of cracking, tilting and bulging to varying degrees within certain elevations. The report recommended various remedial works including the removal and replacement of existing roof coverings; the replacement of timber lintels with stone lintels to the outside leaf; all existing floors to be replaced with concrete floors.
11. The report also recommended locally taking down and rebuilding areas of severely cracked or bulged brickwork / stonework, particularly at the north end, with reinforcement works applied to more minor areas of cracking. Notably the report does not appear to identify any severely cracked or bulged brickwork in relation to the south and west elevations, and referred to the

brickwork walls to the south end of the barn as appearing structurally adequate. It did however advise that on all of the walls it would be necessary to partially rebuild and make good the top sections, prior to accepting a new roof wall plate. The report also envisaged the potential need to underpin existing foundations.

12. There does appear to be some discrepancy between the wording of the Welsh and Baker report and the approved plans in terms of the need or otherwise for rebuilding of the north and south elevations. On closer inspection it appears possible that the report has confused references to the north and south elevations and the east and west elevations. For example the south elevation is described in the report as constructed in brick, with a main door opening, when the 'existing' elevations show this elevation to be a blank stone wall. Similarly the report describes the north elevation as comprising random stonework, when the existing elevations show this to be a brick wall with main door.
13. However drawing the above considerations together, it is clear that both the report and plan envisaged that parts of the existing structure were sufficiently sound to be used in the barn conversion, such that total demolition and rebuild would not be necessary. This is not disputed by the appellant.
14. The appellant has, however, provided a sworn statement confirming that the building suffered further deterioration since the time of the Welsh and Baker report, such that by the time he commenced work on the project in 2013 more remedial work was required than originally envisaged. He also refers to problems with the barn being made worse by storm damage. The appellant accepts that what has been reconstructed was perhaps in excess of that initially deemed necessary in 2007. In support of the application the appellant has provided a series of photographs depicting progress with reconstruction work on the site. It seems to me that together the photographs show that each of the four elevations were taken down (demolished) to a significant extent, despite the appellant seeking to draw an erroneous distinction in his sworn evidence between 'taken down for reconstruction' and 'demolished'. For example, a significant part of the west elevation of the building is shown in one photograph to be below waist height, and in a second photograph to be even lower than that.
15. I have taken into account the Council's representations that Building Control Officers had reported the building as having been demolished, thus necessitating a revised application. Drawing the above considerations together, I am not therefore persuaded, on the balance of probability, that the works on site have not departed materially from the limitations envisaged in the Welsh and Baker report and on the approved plan. I have considered the further structural engineer's report³, referred to in the appellant's representations. Whilst concluding that it appears the building had been constructed to modern day standards and with care and professionalism, the report does not contradict my findings. The same is true with regard to a second sworn statement provided by an acquaintance of the appellant, who refers to only the bare minimum, absolutely necessary, being taken down for reconstruction.
16. I acknowledge that the building may have been subject to further progressive physical deterioration over time, such that it would have been necessary to

³ A E Hogg Associates – 28 July 2020.

undertake remedial work over and above that envisaged in the Welsh and Baker report and on the plan. However the restrictive wording of the planning condition would not have justified those works. The correct course of action would, under such circumstances, have been to seek a variation of the condition in question before carrying out the development. Because of the degree of demolition involved, such an outcome may not have been successful. There is no evidence before me to suggest that the degree of demolition envisaged in the Welsh and Baker report would not have remained pertinent when planning permission was renewed in 2011.

17. I conclude, on the balance of probability, that the development has not been constructed in accordance with conditions requiring adherence to approved plans and technical specifications, when read as a whole. Accordingly the development is in breach of planning control; the planning permission not having been lawfully implemented.
18. The Council has also raised the concern that the development may have proceeded in breach of 'conditions precedent'. However, it did not give this as a reason for refusing the LDC, and given that I have found the development to be in breach of planning control in any event, there is no need for me to consider this specific matter.

The question of whether the development is immune from enforcement action

19. I turn to the question of whether the development is lawful by way of being immune from enforcement action due to the passage of time. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'. In this regard I have set out above how the building has been only partially constructed. From the evidence before me I am in no doubt that significant building operations remain to be undertaken and that as a matter of fact and degree the building has not been substantially completed. Accordingly the development is not immune from enforcement action.
20. In the alternative the appellant suggests that he is able to rely on permitted development rights as providing authority for the development in accordance with Article 3, Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This part of the GPDO allows for the change of use of an agricultural building to a dwelling, together with building operations reasonably necessary to convert the building. Conditions and limitations apply however. These include that building operations are limited to expressly described measures "to the extent reasonably necessary for the building to function as a dwellinghouse".
21. The Government's Planning Practice Guidance sets out that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use; therefore it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right⁴.

⁴ Paragraph ref ID: 13-105-20180615.

22. From the information before me I am not satisfied that the building operations carried out did not go beyond what was reasonably necessary for the conversion of the building. Moreover, even if it was the case that any building operations were reasonably necessary, the permitted development right is predicated on a determination being gained from the local planning authority⁵, before beginning the development, as to whether the prior approval of the authority will be required in respect of various matters described in paragraph Q.2. of the GPDO. There is no evidence before me that such prior approval was applied for, and that the change of use would therefore be lawful.
23. The appellant also claims that under Section 55(2)(a) of the Act, they would be permitted to carry out works necessary for the maintenance, improvement or other alteration of any building. Thus, it is claimed, they would be entitled to restore the barn and would then be permitted under Class Q of the GPDO to "convert the same to a dwelling on prior notice." However, when considering the nature of work undertaken on the building, I am not satisfied that restoring the barn could reasonably be described as works of maintenance, improvement or other alteration. Even if I am wrong on this point, as set out above there is no evidence before me that the necessary prior approval was applied for, in accordance with paragraph Q.2 of the GPDO. In other words, even if the restoration of the original building could be achieved without constituting development, which I am not persuaded it could, it would nevertheless still be necessary to undertake the prior approval procedure as part of any consideration of lawfulness.
24. I note that the appellant has been highly critical of the manner in which this case has been dealt with by the Council, including the advice that he has been given. However this is not a matter that is relevant to my consideration of this case.
25. Therefore, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Conversion of Agricultural Barn under Full planning 4/11/00598/FPA to Residential Dwelling 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.

R. Merrett

INSPECTOR

⁵ Subject to provisos.