



Appeal Decision

Site visit made on 13 December 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/A3010/X/22/3296411

Land north side of Lincoln Road/Broadgate, East Markham Easting (x) 474524, Northing (y) 373183

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alan Broadbent against the decision of Bassetlaw District Council.
 - The application ref 21/01698/CTP, dated 18 November 2021, was refused by notice dated 26 January 2022.
 - The application was made under section 192(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 a 4 bedroomed dwelling with a greenhouse and polytunnel, a 2 entrance 4 bay garage and workshop, machinery, ground source heat pump.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to section 191 of the Act, which concerns certificates of lawfulness of existing use or development. However, the appellant submitted the application under section 192 and, from the evidence as well as my inspection of the site, it is clear that the development has not yet occurred and so should be considered under section 192. I shall therefore consider the appeal under section 192.

Reasons

3. An application under section 192(1)(b) of the Act seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities.
4. The appeal site comprises part of a field which is adjacent to the railway line. The appellant states the previous known use of the land was as part of the Great Northern Railway in conjunction with East Markham Signal box and crossing at Lincoln Road/Broad Gate. Buildings are stated to have been

- removed in October 1976 and the site is understood to have been earmarked as part of the East Markham Station under the Grantham and York Act 1847.
5. In the grounds for application, the appellant has highlighted the provisions of section 57 and Schedule 4 of the Act and section 90 of the Act. Through the appeal, the appellant also suggests that planning permission is granted by virtue of Part 18, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(the GPDO).
 6. Development, as set out in the Act, comprises two limbs: The carrying out of building, engineering, mining or other operations in, on, over or under land; and the making of any material change in the use of any buildings or other land. Section 57 of the Act sets out when planning permission is required for development and has effect subject to Schedule 4 (the Schedule) which makes special provision as to land use in 1948.
 7. Schedule 4 of the Act sets out certain circumstances where planning permission is not required. However, it relates to the use of the land. Even if the land were used for the purposes of the railway by the dates specified in the Schedule, the appeal scheme would comprise operational development which is not authorised by the Schedule. Whether a building was historically present within the site or not is therefore not relevant in my consideration of this appeal.
 8. Section 90(1) of the Act sets out where the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out...by statutory undertakers who are not a local authority...that department may, on granting that authorisation, direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
 9. Part 18, Class A of the GPDO also permits development under local or private Acts or Order. Development authorised by (a) a local or private Act of Parliament, which designates specifically the nature of the development authorised and the land upon which it may be carried out. Development is not permitted by Class A if it consists of or includes – (a) the erection, construction, alteration or extension of any building...unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.
 10. The Great Northern Railway (Deviations between Grantham and York) Act 1847 enabled the Great Northern Railway Company to make certain alterations in the line of their Railway as already authorised between Grantham and York and empowered it to deviate from the Line of Railway. The provisions of The Railways Clauses Consolidation Act, 1845 except where repealed, altered or otherwise provided for, extend to the 1847 Act.
 11. Part 16 of the Railway Clauses Consolidation Act 1845 states that subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith...they may erect and construct such houses...as they think proper.
 12. The appellant has submitted a document provided by Network Rail which advises that the land in question formed a Demarcation site which was managed by the British Railway Board following privatisation of the railway and

has subsequently been sold. It is not disputed that the appeal site was previously owned by the British Railway Board or that the provisions of the 1845 and 1847 Acts referred to above apply.

13. However, while the erection of houses on the land may be authorised by the 1845 Act, this is only for the purpose of constructing the railway, or the accommodation works connected therewith. There is no suggestion that the proposed dwelling is for the purposes of constructing the railway, or that it would in any way be connected with the railway. Consequently, the appeal scheme is not authorised by the 1845 Act and is therefore not deemed to be granted by section 90 of the Act, nor is it permitted by Part 18, Class A of Schedule 2 of the GPDO.
14. Moreover, even if I had found it is development which would fall within Class A of Part 18 of Schedule 2 of the GPDO, condition A.1. requires that where it would consist of the erection of a building, the prior approval of the appropriate authority to the detailed plans and specifications is first obtained. I have no evidence to show that prior approval has been obtained.
15. Thus, I find on the balance of probabilities, the proposed works are development for which planning permission is required.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a 4 bedroomed dwelling with a greenhouse and polytunnel, a 2 entrance 4 bay garage and workshop, machinery, ground source heat pump 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.

M Savage

INSPECTOR