



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: 26 January 2023

Appeal Ref: APP/R2520/X/21/3282085

Enfield 1, Spalford Road, North Scarle, Lincoln, Lincolnshire LN6 9HF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Steve Russell of S.N. Supplies Ltd against the decision of North Kesteven District Council.
 - The application ref 21/0357/LDPRO, dated 23 February 2021, was refused by notice dated 14 June 2021.
 - 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 change of use of agricultural building and land within its curtilage to 3 dwellings and building operations.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matters

2. I have taken the description of development from the application form. The appellant included reference to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) and the Class under which they consider the development should be permitted within the description of development. Since this is not itself an act of development, I do not consider it necessary to include this within the banner heading above.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

4. An application under S192(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. S191(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.
5. The appeal site comprises a redundant poultry building which is accessed via an access track from Spalford Road. The building is a timber clad, timber frame

building with blockwork plinth walls and corrugated sheeting roof. Lean-to verandas run along both sides of the building. Class Q, Part 3 of Schedule 2 of the GPDO permits development consisting of (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

6. It is not disputed that the building is an agricultural building or that it complies with the requirements of paragraph Q.1(a) of Part 3 of Schedule 2 of the GPDO. The main area of dispute is whether the proposed demolition is reasonably necessary and would therefore comply with paragraph Q.1(i) of the GPDO. Although not specifically referenced in its decision notice, in its appeal statement, the Council also raises concern with the degree of building works then required to complete the development.
7. Condition Q.2. of the aforementioned Part sets out that where development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required.
8. Part 3, paragraph W(11) states that the development must not begin before the occurrence of one of the following... (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused. The Council advises that, due to an accepted error on the part of the Council during the validation process, a decision was not issued within the statutory 56 day time limit. The implications of this are that, if I find the proposed works fall within the scope of works permitted under Class Q, the appeal scheme would benefit from deemed consent.
9. The Planning Practice Guidance (PPG)¹¹ advises the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission.... 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 right.
10. The appeal building is a substantial structure which comprises a central building with lean-to structures either side. The appellant proposes to demolish the lean-to structures and to demolish sections of the central building to create three detached dwellings. Three of the existing original walls would be retained for the end units, with gable end walls created for each dwelling, including two gable walls for the central unit. It is stated that the roof would be retained. The

¹¹ Paragraph: 105 Reference ID: 13-105-20180615

appellant has provided a structural report, the findings of which are not contested by the Council. Following my inspection of the site, I have no reason to doubt the findings of the structural report.

11. There is no definition of the term 'reasonably necessary' with regards to proposed demolition in the legislation. The Council's position is that the building could be converted into dwellings within the existing structure without the amount of demolition proposed. The appellant has drawn my attention to a number of appeals and points out that nowhere in the cases cited does it state that a conversion scheme must be limited to the least amount of building operations possible. I agree that the operations do not need to be absolutely necessary, it is a question of whether the course chosen is one that a reasonable person would choose.
12. The lean-to structures are limited in height and area. In order to insert windows and doors into the structure, I consider it is reasonably necessary to demolish these structures. Sections of the building would also be removed so that the dwellings are detached. Although it would be possible to convert the building without removing these sections so that the dwellings are terraced, I can see nothing in the GPDO which prevents a building from being converted, in principle, to detached dwellings.
13. I note the Council's concern that the prime purpose of the demolition would be to reduce the size of the building by way of partial demolition, presumably to accord with the limitations set out in the GPDO. However, even if this were so, this does not mean the works proposed are not reasonably necessary for the purposes of Q.1(i) of Part 3 of Schedule 2 of the GPDO. A much greater proportion of the central building would be retained than would be demolished and I consider the level of proposed demolition is one that a reasonable person would choose. I acknowledge that lesser sections of walls could be removed to facilitate the works, however, as set out above, the GPDO does not require that the works are the least possible, just that they are reasonably necessary.
14. Windows and doors would be inserted into the end gables, which would be constructed following the demolition of sections of the building. As a whole, the building operations proposed are, in my view, limited. Although two gable walls would be required for Unit 2, when considering the building as a whole, the surface area that would be constructed is far less than that which would be retained. The GPDO specifically permits the installation or replacement of external walls and since walls are needed for a building to function as a dwellinghouse, I consider they are reasonably necessary in this case.
15. *Hibbitt v SSCLG* [2016] EWHC 2853 concerned the conversion of a barn into a dwelling. No demolition was proposed, and the existing steel frame would be retained in its entirety, as would the roof. The Inspector found that the building would not be capable of functioning as a dwelling without the building works proposed, which included the construction of all four exterior walls and that the works were so extensive as to comprise rebuilding. This is clearly not comparable to the appeal scheme before me, which proposes the retention of significant parts of the existing structure. Nevertheless, the principles established are consistent with the advice contained within the PPG.
16. Both parties have referred to an appeal decision in relation to Southwell Mushroom Farm, appeal reference APP/B3030/W/19/3223635. The appellant advises that the central building was to be converted to residential use,

creating 3 detached dwellings. However, the Council advise the proposed demolition was of mushroom growing tunnels only, leaving a central core as proposed living accommodation, which required additional walls and a roof. The Inspector, at paragraph 9 describes the proposal as involving 'demolition of the growing tunnels; construction of one end wall and dividing walls between proposed dwellings...'. Neither party has provided me with plans to show the extent of demolition and it is not clear from the decision letter whether the dwellings would be detached. I cannot therefore be sure it is comparable to the appeal scheme before me.

17. The appellant has drawn my attention to a number of appeal decisions, including appeal reference APP/E2734/W/17/3181890 at Little Acres Farm. In this case, the Inspector considered the creation of two detached properties. Although the decision is older than some of those commended to me by the Council, it was issued following the *Hibbit* judgement. I can see no inherent flaw in the decisions commended to me by either the Council or the appellant. Critically, whether or not proposals go beyond the scope of conversion is a matter of fact and degree and requires an element of judgement.
18. The appeal decisions² referred to by the Council in support of its case all describe varying levels of demolition and/or works, with some seemingly not comparable because they would comprise significantly more works than the appeal scheme before me. Even where the extent of works is not clearly different, each inspector has based their findings on their own inspection of the respective site and the evidence before them. While I have considered the examples cited, without full details it is therefore difficult to determine whether they are all comparable to the appeal scheme before me.
19. In appeal APP/Y3940/W/19/3241533, for example, it is simply not clear from the evidence whether the scheme considered by the Inspector is comparable to the scheme before me. In appeals APP/H1840/W/19/3239021, APP/J3720/W/20/3254462 and 3254463, APP/W4705/W/20/3258181, APP/J3720/W/20/3253634, APP/J3720/W/20/3247479 and APP/U1105/W/19/324 [sic] the proposals appear to comprise more extensive rebuilding compared with the appeal scheme before me. Appeal APP/N3020/W/20/3244145 proposed the total demolition of two barns, whereas the GPDO permits partial demolition. This is not comparable to the appeal scheme before me.
20. Appeals APP/U1105/W/20/3261197 and 3261200, which are asserted to share similar characteristics to the appeal before me, concerned the removal of a single bay of an existing barn and to provide covered 'ways' as protection from the elements. I note the Inspector concluded there is no necessity for dwellings to be separate, however, as set out above, I can see nothing in the GPDO which prevents the creation of detached dwellings. I note the Inspector concluded the formation of four semi-detached buildings from a single building would be far more transformative than a true conversion scheme and would include superfluous demolition and building operations. However, the appeal decision should be read in its entirety.

² APP/U1105/W/20/3261197 and 3261200, APP/Y3940/W/19/3241533, APP/H1840/W/19/3239021, APP/J3720/W/20/3254462 and 3254463, APP/W4705/W/20/3258181, APP/J3720/W/20/3253634, APP/N3020/W/20/3244145, APP/J3720/W/20/3247479, APP/U1105/W/19/324 [sic].

21. The Inspector, at paragraph 7, describes the construction of two entire walls (elevations A-A and B-B) and large proportion of the south-east elevation also being an entirely new wall. Approximately two-thirds of the lower north-east elevation is described as requiring new sections of wall. Gaps in the north-west elevation and the vertical timber boarding are also discussed. At paragraph 14, the Inspector summarises that with the exception of the south-west elevation, the other elevations are largely being constructed anew or have even more sizeable gaps which need to be infilled. Although I do not have full details of the case before me, from the decision letter, I consider the works proposed as part of that appeal were far more substantial than the works proposed as part of this appeal. It is therefore not comparable to the appeal scheme before me.
22. I consider the works comprise partial demolition which is reasonably necessary to carry out the installation of windows, doors and exterior walls which are themselves, reasonably necessary for the building to function as a dwelling house. Consequently, the proposed works fall within the scope of works permitted under Class Q and since they benefit from deemed consent would therefore be lawful.

Conclusion

23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use of agricultural building and land within its curtilage to 3 dwellings and building operations was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Savage

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 24 February 2021 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed works, as shown on drawing numbers 397-PLN-E-00, 397-PLN-E-01, 397-PLN-P-01, 397-SPE-P-01, and detailed in the Structural Engineers Report, reference 019_058 and Flood Risk Assessment, fall within the scope of works permitted under Class Q, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and prior approval is deemed to be granted. The proposed development would therefore be permitted development.

Signed

M Savage

Inspector

Date: 26 January 2023

Reference: APP/R2520/X/21/3282085

First Schedule

Change of use of agricultural building and land within its curtilage to 3 dwellings and building operations.

Second Schedule

Land at Enfield 1, Spalford Road, North Scarle, Lincoln, Lincolnshire LN6 9HF

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 January 2023

by M Savage BSc (Hons) MCD MRTPI

Land at: Enfield 1, Spalford Road, North Scarle, Lincoln, Lincolnshire LN6 9HF

Reference: APP/R2520/X/21/3282085

Scale: Not to Scale

