



Appeal Decisions

Site visit made on 4 April 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 26th April 2023

Appeal A: Ref APP/B1550/X/21/3282463

Ivanhoe Nurseries, Ironwell Lane, Hawkwell SS5 4JY

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by John and Simon Roger against Rochford District Council.
 - The application is dated 28 May 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of an agriculture building under 150m² to a warehouse and storage use.
-

Appeal B: Ref APP/B1550/W/21/3283003

Ivanhoe Nurseries, Ironwell Lane, Hawkwell SS5 4JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by John Roger (Roger & Sons Ltd) against the decision of Rochford District Council.
 - The application (Ref 21/00769/DPDP3M) dated 9 July 2021, was refused by notice dated 3 September 2021.
 - The development proposed is the change of use of an agriculture building to dwellings class Q(a) only.
-

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Appeal A

Main Issue

3. The main issue in this appeal is whether or not the Council's deemed refusal of the LDC application was well-founded.

Reasons

4. The application form asks if the proposal has been started (section 4). The appellants marked 'yes'. Moreover, they explicitly stated in their grounds for the application (section 5) that the 'use had started'. This is consistent with the email sent by Mr John Roger to the Council dated 17 February 2020 saying that the change of use 'will begin in 10 days' time' and with the email from the Valuation Office Agency (VOA) dated 4 March 2020 confirming notification from Mr Roger that the property 'is being used' as a warehouse.

5. Section 192(1)(a) of the Act provides for the making of an application to ascertain whether any proposed use of buildings or other land would be lawful. It is a well-established legal principle that s192 certificates cannot certify the lawfulness of a use begun before the time of the application. In this case, it is clear that the use started some 15 months or so before the application for the s192 certificate was made. The LDC application and appeal have been made on fundamentally the wrong basis, as argued by the Council in its statement.

Conclusion

6. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of use of an agriculture building under 150m² to a warehouse and storage use was well-founded and that Appeal A should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

Procedural Matter

7. Notwithstanding the description of development set out in the banner heading above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises a change of use of agricultural buildings to two dwellinghouses (Class C3) and that Class Q.(b)¹ (not Class Q.(a)) of Schedule 2, Part 3, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) is the relevant provision: building operations would be clearly associated with demolition/dismantling of parts of the agricultural buildings, and with the creation of the housing units (Drawings G1, G2, G3). The Council dealt with the proposal on this basis and so shall I.

Main Issue

8. The main issue in this appeal is whether or not the proposed development would be granted planning permission by Article 3(1), Schedule 2, Part 3, Class Q.(b) of the GPDO.

Reasons

9. Notwithstanding the case law² raised by the appellants, which has no effect on the following findings due to its particular relevance to limitation Q.1.(b) of the GPDO, I agree entirely in respect to the matters before me with the following text of the Inspector's decision on the earlier appeal to which the appellants have referred³ (and which appears to be a materially similar proposal):

7. Paragraph Q.1(i) further states that development...is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or external walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse, and partial demolition to the extent reasonably necessary to carry out such building operations.

¹ Development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) together with building operations reasonably necessary to convert the building to that use.

² Including *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314.

³ APP/B1550/W/15/3131370; Building 1 and 2, Ivanhoe Nurseries, Ironwell Lane, Hawkwell, Essex SS5 4JY

8. *The scheme would involve removal of a larger structure than strictly required for the specific operations identified in paragraph Q1(i)(i). In particular, it would not involve partial demolition just to the extent reasonably necessary to carry out those specifically authorised building operations. The development would instead involve a more extensive operation relating to removal of a significantly larger existing building than the incidental works of partial demolition expressly authorised by the GPDO.*

9. *I also note that the government's Planning Practice Guidance states that the Permitted Development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. Given the extent of demolition required in order to physically create the new units, I do not find that assumption applies in this instance.*

10. *The appellants suggest the works to the wider structure would not involve demolition, but dismantling. Whatever the technical mechanics of that process, the scheme would involve a building operation comprising removal of a larger, enclosing structure.... As a matter of fact and degree, I consider the proposal to involve demolition which does not meet the terms of paragraph Q.1(i).*

10. For these reasons, the scheme is not development permitted by Article 3(1), Schedule 2, Part 3, Class Q.(b) of the GPDO. Consequently, it is development for which an application for planning permission is required, and it cannot be considered under the prior approval provisions of the GPDO.

Conclusion

11. For the reasons given above I conclude that Appeal B should be dismissed.

Andrew Walker

INSPECTOR