



Appeal Decision

Site visit made on 25 July 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Appeal Ref: APP/E2001/X/22/3311015

Acres, Clay Lane, Market Weighton YO43 3PU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tom Sergison against the decision of East Riding of Yorkshire Council.
 - The application ref 21/03302/CLE, dated 28 August 2021, was refused by notice dated 31 October 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 LDC is sought is described as "erection of a detached bungalow and garage which is a material divergence from the approved planning consent (outline Q.2756 (B) and reserved matters Q.2756 (B)) and therefore the occupancy restriction does not apply."
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well founded. This turns on whether or not the bungalow and garage were built in accordance with the outline and reserved matter planning permissions Ref: Q.2756(B).

Reasons

3. The burden of proof is on the appellant and the relevant test of the evidence is the 'balance of probability'.
4. S191(2)(a) of the Act provides that uses and operations are lawful at any time if no enforcement action may then 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.
5. Outline planning permission (ref: Q.2756(B)) was granted on 24 October 1978 for an agricultural dwelling subject to conditions. Condition 2 of this permission limited occupancy of this dwelling to a person solely or mainly employed, or last employed, in the locality in agriculture. The reserved matters planning permission (ref: Q.2756(B)) was granted on 4 March 1980 which included an approved plan titled "Proposed Bungalow and Garage".
6. The appellant's case is that the "as built" development was constructed so materially different to what was approved that it did not implement the planning permission (and its conditions). Consequently, it is argued, having

been built without planning permission it became immune from enforcement action 4 years after it was substantially completed.

7. The approved plan "Proposed Bungalow and Garage" has been submitted by the appellant although the plan is not to scale as it was taken from a microfiche. The appellant has provided a layout plan which shows the existing site, including the extent of the curtilage and the positioning of the bungalow and garage, and overlaid is the extent of the curtilage and the positioning of the garage and bungalow as shown on the approved plan "Proposed Bungalow and Garage".
8. Differences between the existing development and the approved plan include the orientation of the bungalow and garage being pivoted by some 5.4 metres, elevational changes to the bungalow, increased garage size and a larger residential curtilage, described by the appellant as being 118% larger than was originally permitted.
9. In *Handoll*¹, referred to by the appellant², the Court held that what has to be considered is whether the differences between what was granted approval and what was constructed on site are so significant as to be considered material. Each case is different and therefore has to be assessed individually on a fact and degree basis. Paragraph 002 of the Planning Practice Guidance advises that there is no statutory definition of 'non-material' as it will depend on the context of the overall scheme – an amendment that is non-material in one context may be material in another.
10. The appeal site is located in a largely rural location where development is sporadic and there are no buildings directly adjoining the site. There is high hedgerow to the front of the site which largely screens the bungalow and garage. The differences in the sizes, positioning and elevations of the bungalow and garage, are not noticeable when viewed from within the site or from any public vantage points and are therefore minor in nature. The submitted plans show that the majority of what has been built overlays the footprint of the approved bungalow and whilst there is some change in orientation of the footprint resulting from a 5.4 metre pivot to the east, the difference in the siting of the bungalow is minimal. On this basis, as a matter of fact and degree, the changes to the bungalow and garage are not considered significant either by themselves or cumulatively, and are therefore not materially different from what was approved.
11. The residential curtilage of the site is noticeably larger when compared with the approved plan. However, the location of the bungalow and garage is within the red line boundary of the approved plan. It is not entirely clear whether the increase in the residential curtilage happened at the time the bungalow and garage were built or whether this happened later. Regardless, any increase beyond the approved curtilage of the site would have been a separate breach of planning control on land outside of the extent of the approved site. Hence, it would not have formed a deviation from the planning permission.
12. Accordingly, having regard to all of the evidence before me, and from my own observations on site, I find as a matter of fact and degree and on the balance of probability, that what has been built does accord with what was approved

¹ *Handoll and Others v Warner Goodman and Streat and Others* (1995) 25 EG 157 JPL 930

² Referred to in appeal decision APP/J9497/X/22/3298085

under the terms of the outline and reserved matter planning permission refs: Q.2756(B). Therefore, the agricultural occupancy condition attached to the permission remains in force.

Other Matters

13. I have had regard to the appellants statement of case including concerns over how the Council handled the case with no information having been requested by the Council and subsequently leading to delays in a decision. However, these matters are not relevant to this appeal which is only concerned with lawfulness of the development.

Conclusion

14. I conclude on the balance of probability, that the Council's refusal to grant a LDC in respect of the bungalow and garage without an occupancy condition imposed by outline and reserved matter planning permissions refs: Q.2756(B) was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the Act.

Chris Baxter

INSPECTOR