



Appeal Decision

Site visit made on 13 September 2023

by D Hartley BA(Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH SEPTEMBER 2023

Appeal Ref: APP/K0235/X/22/3308253

Tenacres, Little Staughton Road, Colmworth, Bedfordshire MK44 2LB

- 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 & Mrs Stone against the decision of Bedford Borough Council.
 - The application Ref 22/00327/LDE, dated 21 February 2022, was refused by notice dated 13 September 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as retention of a dwelling (C3) and occupation without compliance of an agricultural occupancy condition on land at Tenacres, Little Staughton Road, Colmworth, Bedford, MK44 2LB.
-

Decision

1. The appeal is dismissed.

Main Issue

2. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether condition No. 4 (i.e., an agricultural occupancy condition) of outline planning permission B/TP/78/1389 is enforceable and, if not, whether the dwellinghouse can be occupied without compliance with such a condition.

Reasons

4. The above outline planning permission was approved on 8 January 1979. It was subject to condition No. 4 which states that *'the occupation of the dwelling shall be limited to a person wholly or mainly employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, or a dependent of such a person residing with him'*. It is noteworthy that a further planning permission has recently been granted on appeal¹, for the same dwellinghouse, under section 73 of the Act.

¹ Appeal Ref APP/K0235/W/21/3272973 dated 9 December 2021

This was subject to condition No. 2 which states '*the occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in section 336 of the Town and Country Planning Act 1990, or in forestry, or in an equestrian enterprise or a dependent of such a person residing with him or her, or a widow or widower of such a person*'.

5. The evidence is that when the dwellinghouse was built, it was occupied by a person wholly or mainly employed in agriculture until about 2015. However, the current occupiers who have lived at the property since 2018, do not meet the requirements of the condition. There is therefore no evidence to demonstrate that there has been a continuous breach of either of the above conditions for more than ten years to equate to an immunity from enforcement action.
6. The claim made by the appellant that condition No. 4 is not enforceable is in essence two-fold. Firstly, the claim is that the dwellinghouse on the site has not been built in accordance with approved plans and hence there is no planning permission in place for it and therefore the condition does not bite. Secondly, the claim made is that if there is still a planning permission in place for the dwellinghouse on the site, even accounting for discrepancies when assessed against approved plans, a condition precedent was not complied with and hence there is no planning permission in place and the condition does not bite. As the building has been constructed and used for residential purposes in excess of 40 years, the appellant claims that it is therefore immune from enforcement action and hence is lawful without compliance with condition No. 4 of planning permission B/TP/78/1389.

Construction of the dwellinghouse

7. There is no dispute between the main parties that in terms of the siting of the dwellinghouse, it has not been built in the exact same position as shown on the approved plans. The appellant has provided a plan showing the difference between what has been approved and what has been built on the land within the statement of case prepared by Aragon Land and Planning Ltd. This has not been disputed by the local planning authority (LPA). The green line shows the siting of the approved dwellinghouse, and the red line shows the siting of the dwellinghouse that has been built on the land.
8. In reaching a view as to whether what has been erected on the land amounts to the implementation of planning permission B/TP/78/1389, case law has established that this involves looking at what has been done as a whole and reaching a judgment as a matter of fact and degree upon that whole. Case law has established that it is insufficient to consider the material differences between what has been built and what was approved. Consideration of the similarities or the degree of compliance of the operations relied on with the approved plans is also relevant, together with the substantial usability of those works in the permitted development and the degree of alteration in order for them to be effective to that end.
9. In this case, there is no evidence before me that the dwellinghouse does not comply with approved plans in terms of fenestration treatment, scale, height, internal configuration or in terms of its 'L' shape. In this regard, the evidence supports a view that there are a significant number of similarities between what was approved and what has been built on the land.

10. There is, however, an undisputed difference between what has been approved and what was built in terms of the precise positioning of the dwellinghouse. The dwellinghouse has been built closer to the road than shown on the approved drawings and slightly further to the side (i.e., away from the neighbouring barn). While this change is noted, I do not find, as a matter of fact and degree, that a deviation of just a few metres is in itself a material change to the approved plans, particularly when considered against the extent of the similarities and compliance with the approved plans in respect of the rest of the built house. When looked at as a whole, I therefore conclude that the dwellinghouse has been built in accordance with the approved plans and, to this extent, it is lawful.
11. In reaching the above conclusion, I have taken into account the appellants comment about the dimensions shown on the approved plans and a view expressed that this showed the importance that was attached to the position of the dwellinghouse and the building line. I have also considered the information provided by the appellant in respect of neighbouring planning permission 06/01847/FUL (including conditions) and the comment made that the LPA strictly controls the position of dwellinghouses in this area. However, these matters do not alter or outweigh my finding that when the development is looked at as a whole, and, as a matter of fact and degree, it was carried out in accordance with approved plans.

Compliance with the landscaping condition

12. Condition 1d of planning permission B/TP/78/1389 states that '*before development is commenced the approval of the District Planning Authority shall be obtained in respect of the following matters (reserved matters) in respect of a landscaping scheme for the site*'. There is no dispute between the parties that while landscaping details were subsequently approved by the LPA, this did not take place prior to the commencement of development on the site. The appellant makes the claim that as this condition was breached, it means that planning permission B/TP/78/1389 is not in force and hence the occupancy condition does not bite.
13. I do not doubt that when planning application B/TP/78/1389 was determined by the LPA, the landscaping of the site would have an important effect on the appearance of the site as a whole, as well as to its surroundings. Nevertheless, landscaping of the site would not have been essential before the start of development taking place on the site. In other words, the evidence does not support a claim that this was a matter of such critical significance that it actually needed to be addressed prior to the commencement of development. The sort of critical significant matter that may be deemed to be a condition precedent, on a case-by-case basis, could, for example, be something like compliance with a pre-commencement contaminated land or land levels condition. In my judgment, and, in this case, I do not find that the landscaping condition goes to the heart of the planning permission. It is not, therefore, a condition precedent.
14. While it is acknowledged that there has been a breach of the landscaping planning condition in so far that the position of the dwellinghouse means that it is not possible to fully comply with the landscaping details that were approved by the LPA, this is a different matter to that of deciding whether such a condition goes to the heart of the planning permission.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of retention of a dwelling (C3) and occupation without compliance of an agricultural occupancy condition on land at Tenacres, Little Staughton Road, Colmworth, Bedford, MK44 2LB 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.

D Hartley

INSPECTOR