



Appeal Decision

Site visit made on 17 October 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 2 November 2023

Appeal Ref: APP/W1145/X/22/3312845

Barn at Boldford, St Giles on the Heath, Launceston, PL15 9SL

- 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 and Mrs Higgin against the decision of Torridge District Council.
 - The application ref 1/0266/2022/CPL, dated 10 March 2022, was refused by notice dated 1 June 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate of lawful use or development is sought is conversion to self-contained holiday unit.
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Decision

1. The appeal is dismissed.

Background

2. On 6 July 2016, the Council granted planning permission ("the 2016 Permission")¹ for the conversion of the barn to a holiday let. This grant was subject to a number of conditions, none of which required any action to be taken prior to commencement of development. The first specified that the development must be begun within three years of the date of the permission, and the second that it be carried out in accordance with the approved plans.
3. The Appellants purchased the property in September 2021, believing the 2016 Permission to have been implemented. In February 2022 Storm Eunice caused a great deal of damage to the fabric of the barn, including the loss of the roof: I understand that other parts were removed to prevent them from causing a safety hazard.

Analysis

4. S.56(2) of the 1990 Act states that "development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out." The relevant subsection of s.56(4) defines "material operation" as "the laying of any underground main or pipe to the foundations, or part of the foundations, of a building..."
5. The Council's Building Control Surveyor has confirmed that radon sumps were installed by the previous owner on 21 June 2019: that is, within three years of the date of the permission. The Appellants contend that this was a material operation, such that development began within the specified time limit. The Council disagrees, on the basis that the works were not genuinely undertaken

¹ Ref 1/0473/2016/FUL dated 6 July 2016

- to carry out the development, rather than simply to preserve the permission; that they did not relate to the Planning Permission as they were not shown on the approved plans; and that the works were in any event *de minimis*.
6. The Council's concern that the works were not genuinely undertaken to carry out the development stems, I suspect, from the courts previously having insisted that works must not be carried out simply to keep a permission alive.² However, more recent caselaw³ has established that the appropriate test under s.56 is objective, rather than subjective, and that the intention of the person carrying out the operations is irrelevant. The *East Dunbartonshire* judgment confirms that the objective test would be satisfied by firstly considering whether the work had been done in accordance with the relevant planning permission, and secondly whether it was more than *de minimis*.
 7. The approved plans do not show any radon sumps. However, a survey of the general structural condition of the barn, and its suitability for conversion to residential accommodation, was (as required by the Council) submitted with the application. This notes that the property is situated in an area where the National Radiological Protection Board recommends remedial action against radon gas. Section 4 of the Condition Survey states "It would... be advisable to incorporate some remedial measures against Radon gas entry into the building, by means of a radon sump beneath the floor slab."
 8. As the Appellant's agent rightly points out, it is not unusual for details of matters such as pipework, trenches and cabling to be omitted from the drawings submitted with a planning application, being matters normally addressed under Building Regulations. The Council's Building Control Surveyor has confirmed that radon sumps were installed "in accordance with the approved Building Regulation plans". His advice to the Appellants was that "Radon sumps are always required as a matter of course in your area when carrying out a conversion due to the high radon potential."
 9. In the light of this evidence that installation of the radon sumps was necessary to make what had formerly been an agricultural building suitable for human habitation, I am satisfied that the works formed part of the residential conversion permitted by the 2016 Permission. Put another way, they were not just *some* development, but part and parcel of *the* development for which permission had been granted. In my judgment the installation of the radon sumps and ventilation pipes was, as a matter of fact and degree, a material operation (in the sense of being more than "*de minimis*", or a "*mere token*") within the meaning of s.56 of the 1990 Act.
 10. I therefore conclude that development was begun on 21 June 2019, within the specified time limit. However, the LDC applied for here is not to certify that the development was lawfully begun, but that the proposed "conversion to self-contained holiday unit" would be lawful, as at the date of the LDC application.⁴ It is therefore necessary to assess whether the permitted conversion could have been carried out at that date.
 11. The development permitted by the 2016 Permission was not simply the creation of a holiday unit, but the "*Conversion* [my emphasis] of barn to

² *Malvern Hills DC v SSE* [1982] JPL 439; *Thayer v SSE* [1992] JPL 264

³ *East Dunbartonshire Council v SSS & Mactaggart Mickel Ltd* [1999] 1 PLR 53, followed in *Riordan Communications Ltd v South Bucks DC* [2000] JPL 594

⁴ S.192(2) of the 1990 Act.

holiday let". The wording is important, because it presupposes the existence of a barn in a fit state to be converted to – rather than rebuilt as – holiday accommodation. The Development Plan contains policies permissive of the conversion of traditional buildings, provided that they are structurally sound.

12. The Condition Survey submitted for the 2016 Permission provided assurance that at that time, such was the case here. It concluded that "The barn is in essence considered to [be] demonstrably sound and capable of conversion into residential accommodation, albeit careful and sympathetic repair of the main walls together with new floors, roof structures and coverings will be necessary." It also noted that "The proposal seeks to retain ... as much of the existing structure as possible. Areas of concrete block walling will require some remedial measures to strengthen their form and adequately tie into sections of traditional stone and cob walling to provide a homogenous unit... Some sections of cob walling require specific attention, and whilst not extensive, I would advise for such works to be carried out under the guidance of a structural engineer using traditional methods of repair...". A copy of the plan provided at Appendix B of the Condition Survey, albeit without the handwritten annotations showing where "stitch repairs" to the cob and block walls would be needed, is included in the Schedule of Plans approved by the 2016 Permission.
13. The situation by the date of the LDC application was very different. All that remained of the original barn was the lean-to section on the side adjoining the road, and part of the cob and blockwork wall which formed the eastern end elevation. The unsuitability of these minimal remains for "conversion" is reflected in the Council's decision on an application made in June 2022⁵. The proposal - which included the same plans and reports as had been submitted for the 2016 Permission – was considered by the Council to amount to a re-build rather than a conversion, and I share that view. The works needed to create the holiday unit depicted in the approved plans would require the complete reconstruction of three of the barn's external walls, and substantial repairs to the fourth. This is a markedly different proposition to strengthening and repairing existing walls while retaining their traditional material, and goes far beyond what might reasonably be considered a "conversion".
14. In summary, I find that the proposed development cannot now be lawfully carried out – despite having been lawfully begun – because there is simply not enough left of the original building for the conversion permitted by the 2016 Permission to take place. Constructing the proposed self-contained holiday unit would involve substantively re-building the former barn, and so would be development falling outside the terms of the 2016 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 the proposed conversion to a self-contained holiday unit 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.

Jessica Graham

INSPECTOR

⁵ Ref. 1/0671/2022/FUL