



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/W1850/X/22/3307001

Lower Ledicot Farm, Ledicot Lane, Shobdon HR6 9NX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 and Mrs A and G Roberts against the decision of Herefordshire Council (the LPA).
 - The application Ref 214069, dated 2 November 2021, was refused in part by notice dated 15 March 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 certificate of lawful use or development is sought is a dwellinghouse, driveway and access.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 25th September 2023.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Given the nature of the appeal and the issues raised, it is considered that it can proceed solely on the written evidence provided and a site visit is not necessary.

Applications for Costs

3. An application for costs was made by Mr and Mrs A and G Roberts against Herefordshire Council. This application is the subject of a separate Decision.
4. An application for costs was made by Herefordshire Council against Mr and Mrs A and G Roberts. This application is the subject of a separate Decision.

Preliminary Matters

5. The application form indicates that the application was made on the basis that an LDC should be granted for an existing lawful use of the land. However, it is clear from the application an LDC is sought for operational development. I have determined the appeal on the same basis.
6. The application form describes the development as:

"The subject property comprising a 5 bedroom detached house and garage was built soon after planning consent was obtained in 1969, however at some point the Authority has lost all maps, plans and drawings relating to planning code 203409 necessitating new maps and plans being submitted to verify the form bulk appearance and positioning of the dwelling upon the land as built."

7. The planning statement which accompanied the LDC application states:

"The application submitted herewith is for the issuance of a certificate of lawful development certificate in recognition that the dwelling at Lower Ledicot Farm was built in accordance with the drawings supplied with this application without reference being made to planning Code 27427".

8. The planning statement goes on to say that the appellants requests the LPA grant the LDC for the following reason:

"The development comprising the dwelling, garage, and vehicular access at Ledicot Farm, (identified on the plan edged red on the plan attached to this certificate and shown on plans 509/01) were substantially completed more than four years prior to the date of this application."

9. The LDC sought to confirm, therefore, that the dwelling as built is lawful. The appellants' case is that the dwelling is not that for which planning permission was granted in 1969 but a different act of development carried out without planning permission and substantially completed more than four years before the date of the LDC application. Thus, the appellants' case is that the dwelling is lawful under S191(2) of the Act because the time for taking enforcement action had expired.

10. The LPA subsequently granted an LDC on 15 March 2022. The development for which an LDC was granted was described as:

"Application for a Certificate of Lawful Development (Existing) to certify that the dwellinghouse, driveway and access built at Lower Ledicot Farm more than 4 years prior to the date of this application are now lawful in entirety and are thereby immune from enforcement action."

11. The appellants submitted an appeal against "the refusal on an LDC" on 14 September 2022. The description given on the appeal form is:

"To certify that the dwellinghouse, driveway and access built at Lower Ledicot Farm were lawful more than 4 years prior to application date."

12. S195(1) of the Act affords the ability to appeal where an LDC application is refused or refused in part, or there is a failure to give notice of a decision within a prescribed period. The Act does not provide for an appeal against the grant of an LDC and thus an appeal against a grant of an LDC would not be valid.

13. Nonetheless, S195(4) of the Act states that a refusal of an application in part includes where there has been a modification or substitution of the description of the LDC application.

14. The description of the development in the approved LDC reflects that for which the LDC was sought, that being to establish that the dwelling as built was lawful. However, the LPA's reason for issuing the LDC differs from the case the appellants put forward. The LPA granted the LDC on the basis it considered the

development as built was lawful under S191(2) because it constituted the development for which planning permission was granted in 1969.

15. It seems to me that one must read the LPA's notification of its decision in the round. Whilst the First Schedule of the notice gives a description which reflects the basis on which the LDC was sought, the LPA's reason nevertheless sets out that the LDC was granted on the basis that the dwelling exists pursuant to the terms of planning permission 27427 dated 4 August 1969. Thus, reading the decision as a whole, it seems to me that the LPA determined the LDC application on the basis of a modification of the description, that being, "a dwellinghouse, driveway and access built at Lower Ledicot Farm in accordance with the terms of planning permission ref 27427." That sits in contrast to the description put forward by the appellants which is, essentially, "a dwellinghouse, driveway and access built at Lower Ledicot Farm not in accordance with the terms of planning permission ref 27427".
16. As a result, I am satisfied that the LPA's notification of its decision included a modification of the description of the LDC application such that the application was actually refused in part rather than granted. The appeal is therefore valid.

Main Issue

17. The main issue is whether the LPA's decision to refuse in part to grant an LDC for a dwellinghouse, driveway and access built at Lower Ledicot Farm not in accordance with the terms of planning permission reference 27427 was well-founded.

Reasons

18. S191(2) of the 1990 Act sets out that operations are lawful at any time if 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) or they do not constitute a contravention of any enforcement notice then in force.
19. S171B(1) of the Act states that, where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially complete.
20. For the dwellinghouse, driveway and access which has been built to be lawful on the basis that it is not the development for which planning permission was granted, the development must have been substantially completed on or before 2 November 2017. There is no dispute between the parties that is the case. On the evidence before me, I see no reason to come to an alternative conclusion.
21. Nonetheless, the LDC is sought for a dwellinghouse, driveway and access built at Lower Ledicot Farm not in accordance with the terms of planning permission reference 27427. The question then in establishing lawfulness in this case, is whether or not the development which has been constructed amounts to the development for which planning permission was granted in 1969.

22. Planning permission was granted for the erection of an agricultural workers dwelling on the Land on 4 August 1969¹. The permission was subject to four conditions including one which restricts the occupancy of the dwelling to agricultural workers. A dwelling was subsequently erected on the Land. The appellants say a dwelling was substantially completed in 1970. In 1983, following storm damage to the dwelling, an application was made seeking to rebuild the dwelling with the addition of bay windows and two new gables. Planning permission was granted on 30 March 1983².
23. Case law has established that, in interpreting a planning permission to decide if it includes the development in question, if a permission clearly incorporates the application and plan and there is something which is not clear, then that application and plan may be used as aids for interpretation to define the scope of what is permitted³.
24. Both parties indicate that, at the time of the making of the LDC application, the plans relating to the 1969 permission had been lost. The fact that one was consequently unable to ascertain whether what has been built amounts to the 1969 permission was originally the basis for the appellant's case.
25. Nevertheless, in their appeal submissions, the appellants have provided what are said to be the plans which formed part of the 1969 application and permission. The LPA does not dispute that is the case.
26. During consideration of the 1983 application, the LPA wrote to the appellants to inform them that the 1969 permission was subject to an agricultural occupancy condition and that the condition would still apply. The appellants responded to say it was understood that the restrictive condition would still apply, indeed referring to the dwelling as the farmhouse.
27. The appellants did not dispute the LPA's inference that the dwelling had been built pursuant to the 1969 permission, albeit there is no tacit acceptance from the appellants to that effect. Nevertheless, the LPA says the existing plans which formed part of the 1983 permission, showed a dwelling which is essentially that which existed on the Land at the time of the LDC application subject of this appeal, notwithstanding subsequent additions of a car port and garage. The LPA also say now, that whilst there are some deviations between what is built now, what was shown as existing in 1983 and what was approved in 1969, it is essentially the same dwelling.
28. Thus, it is necessary to ascertain whether what was substantially completed in 1970 was a different dwelling to that approved in 1969, or whether the differences between the dwelling now and in the 1969 permission are as a result of subsequent alterations and extension to the property.
29. I have compared the plans from 1969, first to those shown as existing in 1983. There are some notable differences between the two. Firstly, in the 1969 plans, the garage to the side is shown as a single storey garage, separated from the side wall of the main living space by an alleyway and attached at its rear to the utility room. In contrast, the existing plans from 1983 show that a first floor has been erected above the garage to add an additional two bedrooms and the garage incorporated into the ground floor of the property, essentially as an

¹ LPA Ref: 27427

² LPA Ref: 83/86

³ *Slough Estates v Slough BC (No 2)* [1970] 2WLR 1187

integral garage. Secondly, a dining room has been added to the rear of the property between the side wall of the sun lounge and what is shown as the dining room on the 1969 plans. Beyond that, there are some very minor differences in fenestration, with the windows in the side of the lounge shown as circular high level windows in 1969 and rectangular high level windows in 1983.

30. Nonetheless, the footprint, scale, design and appearance of the dwelling as existed in 1983 appears to broadly accord with the plans accompanying the 1969 permission. In terms of the additions of the first floor above the garage, it is noted that the zig-zag outline of the original external wall around the utility room, kitchen, WC and office/study appears to have been retained as per the 1969 plans as internal walls but with the same thickness of the external walls shown originally. This points towards the first-floor bedroom extension and garage remodelling as being subsequent additions. Had the additional bedrooms at first floor and the integral garage been original features of the house when it was first built, one would have expected the arrangement of the walls to reflect that.
31. In terms of the dining room addition to the rear, it is noted that the external wall of the sun lounge has been retained with the double doors through. Again, had the dining room been part of the original substantially completed building, it is difficult to see why an external wall would have been constructed between it and the sun lounge, particular since that wall does not appear from the plans to be load bearing. One would expect to see a slimmer internal wall similar to that between the hall and the dining room. Moreover, the 1983 existing plans show a dashed line in the larger dining room. It seems to me that this denotes where a previous external wall was removed and the structure reenforced. Had the gap been original, it is unlikely to have been shown on the plan at all as a wall would not have existed.
32. Ultimately, these conclusions are supported by the appellant's statutory declaration where it is said, "we moved into Lower Ledicot Farmhouse when it was substantially completed in July 1970 at which time it was approved as a three-bedroom dwelling with garage attached under 27427." The appellants go on to say, "after moving in, we continued to build two extra bedrooms over the garage".
33. The appellants' appeal statement further adds that they recall that, "after moving into the dwelling July 1970, they decided to build two extra bedrooms above the garage". Even setting aside the fact that the appellants consider the building to have been substantially complete when they moved in, the fact they occupied the building before building the two extra bedrooms points towards the dwelling having been substantially complete in accordance with the 1969 permission first.
34. The appellants submissions attempt to reconcile this by saying that substantial completion is not final completion and that whilst they may have moved into the property at substantial completion stage, it was not until the later additions were done that the building was finally complete. However, case law has held that substantial completion means that the development has reached the stage at which no further planning permission would be required for any of the works being done to it. Thus, had the property must have been substantially complete as the 3 bedroom dwelling when the appellants moved in in 1970, as the further additions which were carried out would clearly have required planning

permission. It cannot, therefore, be said that the first floor extension and ground floor rear extension resulted in the substantial completion of the dwelling. The evidence points to the contrary, that the building was substantially complete before those extensions were carried out.

35. Overall, it seems to me that the differences which the appellants say demonstrate the dwelling as it is now was not the 1969 dwelling, were actually additions subsequent to the substantial completion of the dwelling in 1970 in accordance with the 1969 permission. A comparison between the existing plans in 1983 and the approved plans in 1969 shows, on the balance of probabilities, the same dwelling.
36. Thereafter, I have compared what is shown on the plans submitted now to those from 1983 and 1969. There are some differences between the dwelling as it exists now to the existing plans from 1983. Most notably, a car port and detached garage have been constructed to the side of the property whilst a conservatory has been erected to the rear. Nonetheless, the written submissions suggests that these were later additions, built after the granting of the 1983 permission. Setting aside those additions, the footprint and external appearance of the dwelling as exists now is broadly the same as that which the 1983 plans showed as existing at the time.
37. The front of the property as existed in 1983 is essentially the same as that shown on the existing plans now, albeit there are some minor differences. Firstly, a double height bay window has been added to the front of the living room and bedroom above. Secondly, the front wall of the garage has been brought forward flush with the adjacent office room and gables have been constructed at first floor level, replacing the dormer windows which are shown on the existing plans in 1983. However, all of those alterations were approved as part of the 1983 permission, thus it is probable that the 1983 permission was implemented to construct additions to the original property. Thereafter, the appearance of the front elevation as it is now differs only through the subsequent replacement of the garage door with a window and the installation of an external door.
38. Turning to the side and rear of the property, again there are very few minor differences between what existed in 1983 and what exists now. There is only one window in the side elevation of the living room where the existing plan in 1983 showed two., whilst a large window in the sun lounge is now a smaller window. In addition, there is a new window in each of the side elevations where previously none existed. Again, however, all of these are alterations are shown on the approved 1983 plans.
39. Beyond that, there are no longer double doors on the side of what is now the snug where double doors previously existed on the 1983 existing plans. Nonetheless, these are very minor alterations, which could have been done over time to facilitate internal remodelling.
40. Turning to where the dwelling is sited on the Land. It is difficult to compare between 1983 and 1969, as no existing or proposed site plan has been provided from 1983. However, whilst it is difficult to assess with particular accuracy given the scale of the 1969 plan, a comparison of the site plan provided now, to that from 1969, shows the dwelling broadly in the same location on the Land. Indeed, I am satisfied that the siting of the dwelling as

built now does not deviate from that approved in 1969 such that it takes the dwelling as built outside the parameters of the 1969 permission.

41. As a result, if one compares the dwelling as built to that shown on the approved plans from 1969 and then follows that through with what appears on the evidence to have been later additions, coupled with the extensions and alterations approved by the 1983 permission, the dwelling as existed at the date of the LDC application is essentially that which was granted planning permission in 1969. Any differences which are unaccounted for by the later alterations and extensions aforementioned are *de minimis* and do not result in a material deviation from what was originally approved.
42. Consequently, it seems to me, on the balance of probabilities, that the dwelling which existed on the Land at the date the LDC application was made is the dwelling which was granted planning permission in 1969 under application reference 27427.

Conclusion

43. For the reasons given above I conclude that the Council's refusal in part to grant a certificate of lawful use or development in respect of a dwellinghouse, driveway and access built at Lower Ledicot Farm not in accordance with the terms of planning permission ref 27427 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.

J Whitfield

INSPECTOR