



Appeal Decision

Site visit made on 7 November 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11/12/2023

Appeal Ref: APP/N2739/X/23/3316496

Paddock Lodge, Airfield Lane, Acaster, Selby, North Yorkshire YO23 2PW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Armstrong and Mr J Hilton Cox against the decision of Selby District Council.
 - The application ref 2022/0972/CPE, dated 10 August 2022, was refused by notice dated 16 December 2022.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which an LDC is sought is creation of a dwelling.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs made by North Yorkshire Council, the successor authority to Selby District Council, against Mr S Armstrong and Mr J Hilton Cox is the subject of a separate Decision.

Preliminary Matter

3. The Local Highway Authority, the Ainsty (2008) Internal Drainage Board and Appleton Roebuck and Acaster Selby Parish Council made representations in respect of the application now subject of this appeal. However, none of those representations address whether the development is lawful, and some appear to have been made in the belief that an application for planning permission had been made. I therefore cannot afford weight to those representations.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded.
5. Section 171B(1) of the Act states that, where there has been a breach of planning control consisting of unauthorised building, engineering, mining or other operations, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed. The appellants contend this does not refer to a building being substantially completed. However, I am satisfied that "building, engineering, mining or other operations" include the building operations described as the creation of a dwelling in the application.
6. Under section 191(2) of the Act any operation that has been carried out is lawful if no enforcement action may be taken in respect of it and it does not

contravene any requirement of an enforcement notice then in force. The construction, or creation, of the dwelling is an operation in this sense.

7. The dwelling is the subject of an enforcement notice issued on 9 December 2021, which requires it to be demolished. However, an application for an LDC for an existing operation must be determined according to whether that operation was lawful on the date the application was validly made. That date was 10 August 2022, when appeals against the enforcement notice had been made but were undetermined. The notice was therefore not “then in force”; it only came into force when the appeals were subsequently dismissed.
8. The appellants’ evidence should therefore demonstrate, on the balance of probability, that the dwelling was substantially completed on or before 10 August 2022 (“the Relevant Date”), 4 years before the date of the application.

Reasons

9. The appellants contend the dwelling was sealed and weather tight, with roof and windows installed, as of 24 November 2017, the date given for a submitted photograph. The Council questions this date and I note that its veracity was doubted in other appeals¹. However, that doubt was by implication because other photographic evidence had been misdated. That other evidence has not been presented in this appeal and when the photograph before me is viewed in isolation, I see no reason not to accept it was taken on 24 November 2017, as stated. Nevertheless, most of the building is hidden behind another dwelling, Laurel Lodge, so the photograph cannot, of itself, demonstrate substantial completion. Nevertheless, an aerial photograph dated 24 May 2018 shows that the dwelling had a complete roof by then.
10. The appellants have provided copies of invoices issued to and by their building contractor. The earliest 2, from September 2017, confirm delivery of a portable toilet and site cabin to the contractor at ‘Land next door to Ebor Trucks, Brockett Industrial Estate, The Airfield, York YO23 2PT’, which would appear to be the appeal site and/or Laurel Lodge.
11. The same delivery address appears on other invoices issued to the contractor for roofing materials including tiles, and for bricks, cement, sand, fencing components and crushed stone between October and December 2017. However, the delivery address on other invoices from that period, for drainage pipes, gully covers, trusses and purlins, is the contractor’s premises, over 10 miles from the appeal site. That evidence is therefore imprecise as to whether those items were used in the construction of the dwelling.
12. A letter from the contractor confirms it was their standard practice to invoice clients 6 to 8 weeks after completing the relevant work. Extracts from bank statements confirm that payments were made to the contractor in November and December 2017, although they do not state what work had been done, or whether it related to the appeal building.
13. The contractor’s invoice dated 8 January 2018 states, “Work carried out on barn conversion: both plots secure and weather tight, roofs complete, main bathroom fitted and most of kitchen and aga installed.” Some of those works must relate to another building because there is no bathroom or kitchen in the appeal premises.

¹ APP/N2739/C/22/3290690 and 3290691, dismissed 15 September 2022.

14. The appellants state that a fireplace, oak timbers, an underfloor heating system with top screed and an electric consumer unit had been installed by 24 November 2017. I saw these features during my site visit, when I also observed there were no internal partition walls, that floors lacked a final surface, and that the inner surfaces of the main walls were unfinished. Furthermore, no cooking, washing or toilet facilities had been installed.
15. The outstanding works that would be necessary to achieve a dwelling fit for habitation may not, of themselves, be development requiring planning permission. While that is correct, the courts have determined that regard should be had to the totality of the operations which were originally contemplated, not just those that constitute development.² There can be little doubt that constructing internal partition walls, surfacing floors and walls, and installing cooking, washing and toilet facilities in the dwelling were originally contemplated. While the appellants state that a building could be substantially completed if only internal plastering or internal or external painting remain to be done, the outstanding works in this case are far more substantial.
16. The appellants' evidence is not sufficiently precise and unambiguous to demonstrate that the dwelling was substantially completed on or before the Relevant Date. In contrast, I have seen that a dwelling fit for habitation did not exist over a year later. Significant further works, not least the construction of internal partition walls, would be necessary before the building could be occupied residentially. Accordingly, the dwelling cannot have been substantially completed on or before the Relevant Date.

Conclusion

17. For these reasons I conclude, on the evidence now available, that the Council's refusal to issue an LDC was well founded. The appeal fails accordingly.

Mark Harbottle BSc MRTPI

INSPECTOR

² *Sage v SSETR & Maidstone BC* [2003] UKHL 22; [2003] JPL 1299.