



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2024

Appeal Ref: APP/E2001/X/23/3332144

Whitehaven, Wood Gate, Millington, East Riding of Yorkshire YO42 1TZ

- 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 Personal Reps Frank Willis Decd. against the decision of East Riding of Yorkshire Council.
 - The application ref 23/01762/CLE, dated 10 June 2023, was refused by notice dated 27 October 2023.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which an LDC is sought is the dwelling house known as Whitehaven, Woodgate, Millington, York.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing operation which is found to be lawful.

Preliminary Matters

2. The name of the applicant given on the application form and on the Council's decision notice is "Willis". I understand this was Frank Willis, since deceased, and that the appeal was validly made by his personal representatives.
3. While the application form stated that the application was made in respect of an existing use within Use Class C3 (dwellinghouses) it has been confirmed that the development in question is the erection of a dwelling. The footprint of that dwelling is edged in red on the submitted location and site plan.
4. With the agreement of the parties, a site visit was not undertaken.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well founded. The responsibility for providing sufficient information to support an LDC application or appeal primarily rests with an applicant or appellant. However, if no other evidence contradicts or otherwise makes their version of events less than probable, and provided their evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.

Reasons

6. The Council refused to issue an LDC because it considers the dwelling was erected pursuant to planning permission Q.3429, granted on 3 August 1982 ("the 1982 permission"), and is therefore subject to its conditions. Those

conditions include one that restricts the occupation of the dwelling¹ but there is no evidence of any breach of that condition before me.

7. Under section 191(2) of the Act a use or operation is lawful at any time if (a) no enforcement action may then be taken in respect of it; and (b) it does not contravene any of the requirements of any enforcement notice then in force. There is no evidence to suggest the dwelling was erected or is occupied in contravention of any enforcement notice.
8. Section 191(2) identifies that no enforcement action may be taken if a use or operation "did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason." If the Council is right that the dwelling was erected pursuant to the 1982 permission, that permission must prevent enforcement action being taken against the dwelling. It would thus be lawful, albeit not for the reason put forward by the appellant.
9. It must therefore be determined whether the dwelling was erected pursuant to the 1982 permission and, if it was not, whether it is unauthorised but lawful because the time for enforcement action has expired.

Whether the dwelling was erected pursuant to the 1982 permission

10. Although copies of the approved floor plans and elevations have not been provided, I have been given no reason to doubt that the design of the dwelling accords with the 1982 permission. However, it was not built in the position shown on the approved plans, but some 19 m further away from Wood Gate. The appellant considers it was thus built entirely outside the application site, in what had been open countryside.
11. The Council accepts the dwelling is "at least partially outside" the land to which the 1982 permission relates, but also states the development is on the same parcel of land that was the subject of the application. In any event, it does not consider the 19 m variation in siting to constitute non-compliance with the 1982 permission to an extent sufficiently material to render the dwelling unauthorised.
12. The approved location and block plans are on a single drawing, presented as document FW3 in this appeal. Neither is to a specified scale. Document FW3 appears to have been produced from a black and white copy of the application drawing, with the thick line around the site on the location plan coloured red afterwards, but there is no dispute that it is correct. The requirements then in place for planning applications included "a plan sufficient to identify the land to which [the application] relates."² The thick line on the location plan satisfies that requirement and it therefore defines the application site.
13. The parties' differing interpretations may stem from a contradiction between the approved location and block plans. The site defined by the location plan is shallower than the plot shown on the block plan, which shows the proposed layout. Notwithstanding this discrepancy, there is no evidence that the dwelling was built in the position shown on either approved plan. A new document,

¹ (2) 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 290 of the Town and Country Planning Act 1971, or in forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).

² Article 5(1) of The Town and Country Planning General Development Order 1977 (as amended).

FW4, shows the footprint of the dwelling as built and the red line taken from document FW3. A simple overlay of the 2 documents demonstrates that the location plan within FW3 and document FW4 are to the same scale and that the red lines are consistent.

14. From examination of these documents and other submitted evidence it is clear that the dwelling stands within a plot that differs from the land to which the 1982 permission relates, as defined by the approved location plan. On the balance of probability, the dwelling was built on land to which the 1982 permission does not relate.
15. I have had regard to the fact that much of the plot on which the dwelling stands is land to which the 1982 permission relates. However, I do not accept that the change in the siting of the dwelling by some 19 m, moving it onto land to which that permission does not relate, is not a material variation. Neither can I accept that the 1982 permission may be construed as having permitted the erection of a dwelling away from the land in respect of which that permission was to operate. Accordingly, I can only find that the dwelling the subject of this appeal was not erected pursuant to the 1982 permission.

Whether the dwelling has become lawful

16. Under section 171B(1) of the Act, no enforcement action may be taken in respect of unauthorised building operations after the end of the period of 4 years beginning with the date on which those operations were substantially completed. It is therefore necessary for the appellant to demonstrate, on the balance of probability, that the dwelling was substantially completed on or before 10 June 2019, 4 years before the date of the application.
17. An undisputed aerial image taken in 2003 (document FW5) confirms the existence of the dwelling at that time. The building is fully roofed, and the surrounding grounds are fully landscaped in the image, strongly indicating substantial completion. In addition, Council Tax records confirm occupation of the dwelling for 10 years preceding the application. Therefore, and on the balance of probability, the erection of the dwelling was substantially completed before 10 June 2019 and so is lawful.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the dwellinghouse known as Whitehaven, Woodgate, Millington, York was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Mark Harbottle

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 June 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling was erected without planning permission and was substantially completed not later than 10 June 2019.

Signed

Mark Harbottle

Inspector

Date: 05 April 2024

Reference: APP/E2001/X/23/3332144

First Schedule

The erection of the dwelling house known as Whitehaven, Woodgate, Millington, York.

Second Schedule

Land at Whitehaven, Wood Gate, Millington, East Riding of Yorkshire YO42 1TZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 05 April 2024

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Land at: Whitehaven, Wood Gate, Millington, East Riding of Yorkshire YO42 1TZ

Reference: APP/E2001/X/23/3332144

Scale: Not to Scale

