



Appeal Decision

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5/04/2024

Appeal Ref: APP/N4720/X/23/3334374

Low Farm Barn, High Street, Clifford, Wetherby LS23 6HJ

- 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 Ms Carolyn Lord, Clarion Solicitors, against the decision of Leeds City Council.
 - The application ref 23/04461/CLE, dated 19 July 2023, was refused by notice dated 24 October 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is: Residential use - garden land to the east and within the domestic curtilage of Low Farm Barn.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the use set out above is taken from the application form. The Council's decision notice gave an alternative description, but it is not clear if that had been agreed with the applicant.
3. With the agreement of the parties, a site visit was not undertaken.

Main Issue

4. 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.
5. The Council's reasons for refusing to issue an LDC may be summarised in 2 parts. First, that there is no planning permission for the use of the land as domestic garden. Second, that use of the land as domestic garden has not become lawful because there has been no material change of use from the land's previous agricultural or equestrian use as a paddock.
6. The appellant only challenges the first part in this appeal, contending that there is planning permission for the use of the land as domestic garden. The appeal will therefore turn on that point, which needs to be demonstrated on the balance of probability.

Reasons

7. The appeal site, edged red on drawing 4074 041, is part of a grassed area on the corner of High Street and Cinder Lane, next to Low Farm Barn and Owl Cottage. A planning permission granted in 2018¹ ("the 2018 permission") and in varied form in 2019² ("the 2019 permission") relates to the grassed area and the land now occupied by Low Farm Barn and Owl Cottage.
8. The detailed description of development in the decision notice granting the 2018 permission was:

Demolition of existing garage, proposed two storey/single storey dwelling, new double garage and separate single garage to existing dwelling, creation of garden area, associated parking and landscape works.

The design and access statement (DAS) accompanying the application had summarised this as "the proposed development of a single dwelling."

9. The 2019 permission moved the new dwelling slightly further from Low Farm Barn but no other changes to the scheme are apparent. While the description does not repeat the detail set out above, it is evident that, apart from the repositioning, the development is the same. I understand the 2019 permission has been implemented, with the new dwelling being Owl Cottage. For clarity, I shall refer to the new dwelling permitted by each permission as Owl Cottage.
10. Low Farm Barn and Owl Cottage abut the boundary of the Leeds Green Belt, with the adjacent grassed area, which includes the appeal site, within the Green Belt. The Green Belt is not germane to the question of lawfulness but references to it will assist in the examination of relevant facts below.
11. The DAS accompanying the application for the 2018 permission had described the grassed area as "an extensive grassed paddock area" and it is annotated "Side Garden (Paddock)" on approved drawing MH01/03B. Part of it can be seen in image 1.1 of the DAS, which shows a gap to the immediate south of Low Farm Barn allowing access from its front garden. The DAS added that the grassed paddock area was then used as garden space by the owner and had been subject to weddings, barbeques, and garden parties over the years.
12. The DAS indicated that the proposal before the Council included the formation of a new hedge between Owl Cottage and Cinder Lane, although this does not feature on any of the drawings listed in the decision. The DAS stated the hedge was intended to allow a defined garden space to be formed for Owl Cottage. It also confirmed "there are other areas within the site for more domestic paraphernalia such as washing lines which can be conditioned by the council should the application be approved."
13. I have not been provided with a copy of a DAS relating to the 2019 permission. However, I have no reason to believe that the statements made in the DAS relating to the 2018 permission did not continue to apply.
14. The appellant states that the approved elevations and layout of Owl Cottage show doors opening onto the immediately adjacent eastern section. My reading of the approved drawings from each permission confirms this.

¹ 18/05763/FU granted 5 November 2018.

² 19/02789/FU granted 15 July 2019.

15. While I have not been provided with copies of any correspondence, it seems that the use of the grassed area as domestic garden was considered prior to the grant of the 2018 permission. The DAS confirms that the appellant had sought pre-application advice:

Following receipt of the pre-application response further comments were sought from the council regarding the use of the paddock as garden area for the new dwelling. As the existing owner has used the paddock for various activities over the years this has provided a justification for the owners of the new dwelling to do the same. The correspondence is contained within this submission. At the council's discretion a condition can be applied to the permission restricting the use of washing lines and other temporary structures in the paddock.

16. The matter was discussed again during the processing of the application for the 2018 permission, with the officer report noting:

The proposal has been amended and the proposed private amenity space is no longer located within the Green Belt. The proposed dwelling will not have a negative impact upon the Green Belt as it does not project further than the existing dwelling and the private amenity space is not located within the Green Belt.

17. Neither planning permission included a condition restricting use of the grassed area. Nevertheless, it seems clear that the Council did not believe in 2018 or 2019 that it was granting planning permission for domestic garden use of that land in connection with Owl Cottage.
18. The courts have identified the legal principles for interpreting planning permissions, including where reference may be made to other documents. These were summarised in the *Ashford* case³. The first principle is that a permission that is clear, unambiguous, and valid on its face should be interpreted by reference to that permission itself, including any conditions and the express reasons for those conditions. I shall concentrate on the 2019 permission, the one that was implemented, except where it is necessary to refer to the 2018 permission for context.
19. There is no dispute that the 2018 and 2019 decision notices are clear and unambiguous in what they permit, as listed in the description of development. Condition 1 of the 2018 permission and condition 2 of the 2019 permission have the effect of incorporating the drawings listed within them in the permissions, clarifying the design and siting of the various elements.
20. The appellant considers the words 'creation of garden area' meant the proposed formation of a defined garden area for Owl Cottage within the grassed area, as indicated in the DAS. However, the approved drawings listed in condition 1 of the 2018 permission and condition 2 of the 2019 permission do not show any defined garden area for Owl Cottage within the grassed area. Those drawings do, however, include a new rear garden for that dwelling on other land. In any event, this appeal is concerned with land claimed as garden to Low Farm Barn, not Owl Cottage.

³ *R (oao Shepway DC) v Ashford BC* [1998] EWHC Admin 488; JPL 1073.

21. The officer report that informed the decision to grant the 2018 permission reflects this, confirming that the application had been amended by moving a proposed private amenity space out of the Green Belt. This can only mean it had been moved away from the grassed area that includes the appeal site. The decision notice confirms that revision B of the proposed block plan/layout plan MH01/03 was received over a month after the application had been accepted, and later than the other approved drawings. It therefore seems probable that it superseded an earlier version, and that the DAS described the proposal prior to that amendment, not least as it lists an unrevised drawing MH01/03. There is no evidence that the DAS was updated to reflect any changes the submission of drawing MH01/03B had made to the application.
22. The approved drawings listed in the 2019 permission include a further revision, MH01/03D, described as Site Location Plan/Red Line/OS Plan, but it made no change in terms of the proposed creation of a garden area.
23. It is clear from the drawings approved in 2018 and 2019 that Owl Cottage and its garden area annotated "Rear Garden" would be wholly within the then existing residential curtilage of Low Farm Barn. In all likelihood, drawing MH01/03B amended the application for the 2018 permission by removing the proposed garden area for Owl Cottage from the grassed area. It seems that, following that amendment, the proposal did not include any change of use, but the division of land already in residential use, annotated "Rear Garden" on the existing site plan within drawing MH01/03B. While the appellant believes that 'creation of garden area' is not operational development, it is not clear what else it could be in that context. In my experience, a planning application or decision may describe what the applicant has done or wishes to do, regardless of whether everything so described requires planning permission.
24. The appellant identifies that condition 9 of the 2018 permission and condition 5 of the 2019 permission both begin with the words 'prior to the commencement of the use hereby permitted.' As this point was only made in final comments, the Council has not been able to respond. However, the wording does not specify what 'the use hereby permitted' was, and it would be unusual for the wording of a condition, rather than the description of development, to define what is permitted. In my experience, generic conditions may be used without being adapted to suit the circumstances of the development in question. In any event, the conditions in question concern provision of on-site car and cycle parking, electric vehicle charging points, turning and waste bin storage facilities, which were all required for Owl Cottage. No functional connection between those facilities and the creation of any garden area has been provided.
25. It is important to note that this appeal does not relate to the part of the grassed area that was described in the DAS. The DAS stated unambiguously, in paragraph 2.4, that "The only work involving the eastern element of the site is the formation of a new 2.0 metre high hedge between the proposed dwelling and the site boundary to the east to enable the formation of a defined garden space for the proposed dwelling." A reasonable reader can only conclude that the DAS is silent about any existing or proposed garden of Low Farm Barn.
26. Nevertheless, paragraph 2.4 of the DAS could be interpreted as indicating an intention to form the defined garden space for Owl Cottage from part of an existing garden belonging to Low Farm Barn. Even if that were correct, it could only demonstrate, as the description of development has it, 'creation of garden

area' for what is now Owl Cottage, not on land subject of this appeal. However, the evidence of the amendment of the application for the 2018 permission, set out in the officer report, and the content of revised drawing MH01/03B are significant. They indicate that, even if the application had originally proposed a change of use to create a garden for Owl Cottage within the grassed area, that part of the proposal was abandoned with the amendment.

27. The only evidence that the applications for the 2018 and 2019 permissions may have included a garden area on the land subject of this appeal is an annotation on drawing MH01/03B reading "Side Garden (Paddock)". Nevertheless, the word 'paddock' introduces ambiguity as to the precise use of the land and whether it was the garden area in the description of development.
28. As stated in the DAS, the applicant considered that part of the site was already a garden area belonging to Low Farm Barn. However, he gave the answer 'No' to the question 'Has the work or change of use already started?' on the application form for the 2018 permission. That contradicts the claim that the permission had included the garden area the subject of this appeal.
29. The description of the proposal on the same form does not include 'creation of garden area', and I note the appellant's assertion that this was added to the description by the Council. This reveals an inconsistency between what the applicant applied for and what he described in his DAS, adding to the ambiguity as to what the 2018 and 2019 permissions permitted.
30. The annotation on drawing MH01/03D, listed in condition 2 of the 2019 permission, is on one part of that drawing, the proposed block plan at 1:500 scale, but not on the proposed site plan at 1:200 scale. While that may simply be because the 1:200 plan is cropped, the exclusion of the annotation from that plan would make little sense if it concerned an integral part of what was proposed. This adds to the ambiguity as to what the 2019 permission included.
31. It has therefore not been demonstrated, on the balance of probability, that the 2018 or the 2019 permission, the latter having been implemented, permitted the creation of a garden area, whether proposed or already carried out, on the appeal site.

Conclusion

32. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of residential use - garden land to the east and within the domestic curtilage of Low Farm Barn was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Mark Harbottle

INSPECTOR