



Appeal Decision

Site visit made on 23 April 2024

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2024

Appeal Ref: APP/M9496/X/23/3331185

Highfield Farm, Cherry Blossom Farm, Middleton Lane, Stoney Middleton, Derbyshire S32 4UB

- 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 Thomas & Fiona Armstrong against the decision of Peak District National Park Authority.
 - The application ref NP/DDD/0423/0394, dated 10 April 2023, was refused by notice dated 18 July 2023.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is described as construction of dwelling house without the benefit of planning permission. Continuous use of the dwelling house and curtilage for a period exceeding 10 years.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Main Issue

2. The main issue is whether the Council's refusal to grant a LDC was well founded.

Reasons

3. The appeal site consists of a detached dwelling set in its own gardens and accessed off a private driveway. There is associated agricultural land being some 7.5 hectares and is shown on the accompanying LDC application site plan as 'blue land'.
4. Outline planning permission was granted 6 March 1984¹ for the erection of an agricultural bungalow. It was subject to conditions, including condition No.3 which stated, *'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(1) of the Town & Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person'*.
5. An application for reserved matters was granted on 18 December 1984², which stipulated the same condition (condition No.3) above, and that development shall be carried out in accordance with the plan *'Drawing No. D.ST. 500/1A received 13 November, 1984'*, it was also accompanied by layout plan D.365 dated 10 January 1984 showing the siting of the dwelling. On 8 October 1987 the Council by letter

¹ NP/WED/184/33

² NP/WED/784/312

granted minor amendments to the approved plans relating to elevational changes, and further requested changes to the eaves detail by replacing an overhanging soffit with a fascia board.

6. The appellant's claim is that the dwelling on the appeal site has not been built in accordance with the approved plans and hence there is no planning permission in place therefore the dwelling is not bound by the conditions. Secondly, is that if there is still a planning permission in place for the dwelling on the site, even accounting for discrepancies when assessed against approved plans it has remained in use as a dwelling.
7. The LDC grounds are sought on the basis that the use began more than 10 years before the date of the application; the building works were substantially completed more than four years before the date of this application and the use as a single dwelling house began more than four years before the date of this application.
8. The evidence suggests that when the dwelling was built, it was occupied by a person until they passed away in 2007. In 1984 the land and the dwelling were in the same ownership as 'Highfields Farmhouse' and 'Highfields Barns' under the title of 'Highfields Farm'. Since that time, it has been sold in separate lots and there is no longer a functional or ownership connection between the dwelling, the listed farmhouse, the barns, or the current agricultural business known as Highfields Farm. Therefore, the dwellinghouse is now known as 'Cherry Blossom Farm' and it has done since the current occupiers have lived at the property since purchasing in 2020. There is, however, no evidence to demonstrate that there has been a continuous breach of the conditions.
9. Under s191(2) of the Act, it sets out 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 that the dwelling was erected or is occupied in contravention of any enforcement notice.
10. Section 191(2) of the Act also 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 1984 permission, that permission must prevent enforcement action being taken against the dwelling. It would thus be lawful, albeit not necessarily for the reasons the appellant has claimed.
11. It must therefore be determined whether the dwelling was erected pursuant to the 1984 permissions, and if it was not, whether it is unauthorised but lawful because of the time for enforcement action has expired.

Construction of the dwellinghouse

12. The main parties do not dispute that in terms of the siting of the dwellinghouse, it has not been built in the exact position which is shown on the approved plans. However, the Council allege that the differences are not material.
13. In coming to a view as to whether what has been erected on the land amounts to the implementation of planning permission, case law has established that this involves looking at what has been done as a whole and is a matter of fact and degree on the individual circumstances of the case. It is also necessary to consider the significance of differences and the similarities between what has been done

- and what was approved. The degree of compliance with the plans is relevant, as is the degree to which the works are substantially usable in the permitted building³.
14. The aerial images 'Fig.1-4' provide timelines from 1999 up to 2017 and are useful in that they depict the siting and the extent of the curtilage of the dwelling. The appellants have provided additional plans to those of the original permission including a topographical survey and site plan showing an overlay. These include differences as to what had been granted on 'plan D365' and what the current situation is on the ground. I have no evidence before me that the dwelling does not comply with the approved plans in terms of the elevations shown on the plan.
 15. However, having reviewed these, they show that the dwelling is not sited and was not built in the correct position from the original plans. They show that it is rotated and is positioned closer to the west and nearer to the highway. The resultant differences being the northeast corner of the dwelling sited some 11metres (m) to the west, the southeast corner sited 8.4m to the west, the southwest corner sited some 10m to the west and the northwest corner being sited some 12m to the west. There is also no track to the western side of the boundary and no farm building as on the plans or required by condition 2 of the reserved matters consent.
 16. In addition, there are discrepancies between the site boundaries 'red edges' for the outline and reserved matters. They are both inconsistent with each other. The outline plan shows a crossed hatched area and the reserved matters site boundary is substantially larger in the 'red edge' extending and incorporating the wider agricultural land.
 17. I saw at the site visit the dwellinghouse is sited within its own curtilage with domestic paraphernalia and clearly bounded by stone walls in comparison to the original reserved matter plan showing a larger site incorporating the whole of the farmland / holding. In my view the changes I saw to the position to the west and that it is set further forward towards the highway of Middleton Lane were of a significant change to the 1984 consent and the plans.
 18. The Council have referred to a 'track', and I agree with the appellants they have misinterpreted the terminology used from then appellant's own evidence. In my view the original reference to 'track' relates to the unbuilt part of the access drive labelled as 'new drive' on plan D.365. This showed an access point with a driveway from Middleton Lane to the building labelled on the plan as 'farm building'. However, given that the dwelling is sited in a different position, significantly encroaching where the new access was shown and closer to the west boundary there is/would have been none or very little opportunity for that to serve as a driveway or access to any building in the fields to the south. Nonetheless, the matter of whether a 'farm building' has ever existed over time is not in dispute prior to any occupation, and there is no evidence of this before me.
 19. I note the Council have directed towards the 'Wheatcroft principles'⁴, however a more recent judgment⁵ refined those principles because it conflated two tests, which must be considered separately (1) a substantive test and (2) a procedural test. The substantive test involves looking at a "substantial difference" or a "fundamental change" to the application. If so, and it would ultimately result in a

³ *Commercial Land Ltd v SSTLR & Kensington & Chelsea RBC* [2002] EWHC 1264 Admin, [2003] JPL 358

⁴ *Bernard Wheatcroft Ltd v SSE* [JPL P37 182]

⁵ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

“different application”, then it is unlikely than the amendment could be considered, and it is possible that a series of small, incremental proposed amendments to a scheme could result in a “substantial difference” or a “fundamental change”. The procedural test is whether the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved (in the appeal) and, if so, whether such unfairness could be cured, for example by re-consultation.

20. Moreover, in the case of a LDC application planning merits are not a consideration even if it is located within a sensitive landscape area. The PPG⁶ sets out that a local planning authority is entitled to canvass evidence before determination of a LDC application, and if it were the case the appellant given an opportunity to comment. Furthermore, although there is no statutory duty to consult third parties⁷ it may, however, be reasonable to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application.
21. Nevertheless, in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
22. The Council seemingly acknowledge that they knew where the footings were, from the fact that no further visits are recorded, but state that the fact the footings may have been built in a different position was obviously not worth of further enquiry.
23. Taking account of all the examination of the documents and other submitted evidence the dwelling is sited in a fundamentally different position resulting in significant change. I have had regard to the plot itself on which the dwelling stands is the land to which the 1984 permission relates, albeit it is significantly smaller to the land shown on the reserved matters 1984. However, I do not accept that these changes to the siting of the dwelling including that variations of between some 11-12m to the west and it’s change in orientation/ rotation is not a material variation or that physical characteristics of the site should be discounted as being material.
24. Therefore, on the balance of probability, the dwelling was built substantially different and has resulted in a fundamentally and significant change to which the 1984 permissions do not relate. Accordingly, I can only find that the dwellinghouse the subject of the appeal was not erected pursuant to the 1984 permissions.

Whether the dwelling has become lawful

25. Section 171B(1) of the Act states that 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 appellants to demonstrate, on the balance of probability, that the dwelling was substantially completed on or before 10 April 2019, 4 years before the date of the LDC application.

⁶ Planning Practice Guidance: Paragraph: 006 Reference ID: 17c-006-20140306, Revision date: 06 03 2014

⁷ PPG: Paragraph: 008 Reference ID: 17c-008-20140306, Revision date: 06 03 2014

26. The appellant has provided several documents I have had regard to, including Appendix 6 showing the Council's 'P file record' where at section 3 'commencement confirmed' it is dated as 22 September 1982. Section 4 'completion confirmed' remains blank. A letter dated 2 September 1988 has been provided at Appendix 13 from the National Farmers Union, which states that the owner has proceeded to erect an agricultural dwelling which is almost completed. Appendix 14 relates to Council tax records and confirms that this came into effect from 1 April 2013.
27. There are also undisputed aerial images taken (fig. 1-4) in 1999, 2005, 2010 and 2017 each showing the existence of the dwelling at that time. The images show that the building is fully roofed, and the surrounding grounds are fully landscaped with some parked vehicles, which would suggest and strongly indicate substantial completion.
28. In addition, I have also had regard to the Statutory Declarations dated 6 April 2023 which are provided from occupiers of the nearby property 'The Mistral' at Appendix 17. These confirm they have lived at their property since 2001 and are familiar with the appeal site. They confirm that the property now known as Cherry Blossom Farm has been continuously occupied as a dwelling and land as shown within the red line on Plan 1 has been used as domestic curtilage since at least 2001. They confirm that periods of vacancy have only been in relation to transfer of ownership or change of tenant and have not exceeded 3 months in duration. The Council also accept in their evidence that it has been in continuous occupation since around 2001.
29. Therefore, and on the balance of probability the erection of the dwelling was substantially completed before 10 April 2019 and so is lawful.

Other Matters

30. I have also had regard to the various case law cited, appeal decisions which have been presented to me by the main parties, however the Council has not provided full details of these appeals decisions they cite. Although I accept there maybe similarities to this case in those decisions, I have dealt with the appeal on the basis of facts of the case, evidence presented before me and site observations.

Conclusion

31. 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 Land at Highfield Farm, Cherry Blossom Farm, Middleton Lane, Stoney Middleton, Derbyshire S32 4UB was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

K A Taylor

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 April 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 dwellinghouse was not built in accordance with the planning permissions ref: NP/WED/184/33 and NP/WED/784/312. It was substantially completed and had existed for more than four years at the time of the LDC application. As such no enforcement action may be taken in respect of the dwellinghouse and the conditions imposed on the original permissions do not apply.

Signed

K A Taylor
Inspector

Date: 21st June 2024

Reference: APP/M9496/X/23/3331185

First Schedule

Construction of dwelling house without the benefit of planning permission.
Continuous use of the dwelling house and curtilage for a period exceeding 10 years.

Second Schedule

Land at Highfield Farm, Cherry Blossom Farm, Middleton Lane, Stoney Middleton,
Derbyshire S32 4UB

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: 21st June 2024

by **K A Taylor MSC URP MRTPI**

Land at: Highfield Farm, Cherry Blossom Farm, Middleton Lane, Stoney Middleton, Derbyshire S32 4UB

Reference: APP/M9496/X/23/3331185

Scale: Not to Scale

