



Appeal Decision

Site visit made on 12 November 2024

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 7 January 2025

Appeal Ref: APP/Y2430/X/23/3331342

Linden Lodge, Holwell Lane, Scalford, Leicestershire, LE14 4DJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Darren Morris and Mrs Sarah Morris against the decision of Melton Borough Council.
 - The application ref 23/00435/CL, dated 6 May 2023, was refused by notice dated 22 September 2023.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is erection of a dwelling with no agricultural occupancy restrictions.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition or limitation which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. In this case that turns on whether the dwelling known as Linden Lodge, Holwell Lane, Scalford, Leicestershire LE14 4DJ is so far removed from the agricultural dwelling approved under planning permissions 85/0431/6/919 and 85/0601/6/919 that it represents an unlawful operation, and that the agricultural occupancy condition does not apply.

Reasons

3. The application relates to a detached bungalow within a spacious plot of land situated in an area of open countryside. In 1985 planning permission was granted for a dwelling under outline planning permission reference 85/0431/6/919 and reserved matters approval reference 85/0601/6/919. The outline planning permission includes condition 3 which states that:

"The occupation of the dwelling shall be limited to a person employed or last employed locally in agriculture as defined in Section 290(1) 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)."

4. The appellant submits that the dwelling was constructed outside the site plan attached to the approved planning permissions and that the design of the property is significantly different from the approved plans. It is also argued

that the residential curtilage extends beyond that which was originally approved. Therefore, the appellant's case is that as a result of the differences the development is a breach of planning control.

5. There is no dispute that the dwelling has been substantially completed for more than four years. However, based on analysing reserved matters approved plans and a site location plan submitted with a recent planning application the Council's evidence is that the dwelling is built wholly within the red edge site boundary approved under the 1985 planning permissions and there is actually an overlap between the approved dwelling and the dwelling which has been built. The *Handoll* case¹ related to circumstances where a dwelling the subject of an agricultural occupancy condition was sited 90 feet from its permitted location. The planning permission had not been implemented and the building was immune from enforcement action and free of conditions.
6. Linden Lodge has not been built in its approved location and the evidence from a Chartered Surveyor shows a discrepancy in the location of the building which has been built approximately 16 metres to the North West of the approved location. This evidence is based on an analysis of a current digital extract of Ordnance Survey data against the approved drawing reference 85/0601/6/919 and aerial photography. I find the appellant's evidence to be more reliable because it is based on analysis of a range of up to date digital data rather than relying on a location plan recently submitted with an application. The difference in location cannot be described as being a "slight change" as the Council does, but in my judgement it is materially different in planning terms.
7. The overall planning unit is larger than approved and, significantly, the building has been constructed partly outside the original red line site plan and therefore beyond the scope of the original planning permissions in breach of condition 8 of outline planning permission reference 85/0431/6/919. The overall shape of the curtilage is also different to the approved plan. Taken together, these are material differences in relation to the approved planning permissions.
8. The elevational differences to openings, windows and doors are alterations which could have been dealt with as non-material amendments and some are alterations that could have been carried out under permitted development regulations. Therefore, I do not consider the elevational details to be materially different to those originally approved.
9. The appellant has also submitted evidence that conditions precedent were never discharged pursuant to the outline planning permission. It is my understanding that facing brick details were approved on 14 January 1986 under reserved matters application 85/0601/6/19, but there is no evidence of other conditions having been discharged before the development commenced. I have taken account of the Council's evidence regarding the planning history of the site, including the aim of removing the agricultural occupancy condition and the fact that planning permission for a dwelling in this location was only forthcoming due to the new dairy unit on site at the time and the need for there to be an agricultural dwelling. I have also taken account of correspondence in July 1986 from the County Council Property Department detailing that the dwelling the subject of planning permissions 85/0431/6/919

¹ *Handoll & Suddick v Warner & Goodman & Street & East Lindsay DC* [1995] JPL 930 (CoA)

and 85/0601/6/919 had been substantially completed. However, none of that additional evidence confirms that the building in question was built in accordance with the approved plans and permissions.

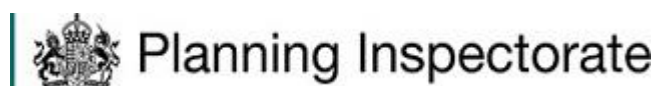
10. Consequently, I find that, following the comparison of the approved plans with what has actually been built on site, as a consequence of it being in a materially different location, comprising a larger and different shaped planning unit, the dwelling known as Linden Lodge has been constructed outside the scope of the approved planning permissions.

Conclusion

11. For the reasons given above I conclude that, on the evidence now available the dwelling known as Linden Lodge, Howell Lane, Scalford, Leicestershire LE14 4DJ is so far removed from the agricultural dwelling approved under planning permissions 85/0431/6/919 and 85/0601/6/919 that it represents an unlawful operation, and that the agricultural occupancy condition does not apply. Therefore, the Council's decision was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

A A Phillips

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 6 May 2023 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, 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(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building is so far removed from the agricultural dwelling approved under planning permissions 85/0431/6/919 and 85/0601/6/919 that it represents an unlawful operation, and that the agricultural occupancy condition does not apply.

Signed

A A Phillips

INSPECTOR

Date: 7 January 2025

Reference: APP/Y2430/X/23/3331342

First Schedule

Erection of a dwelling with no agricultural occupancy restrictions.

Second Schedule

Linden Lodge, Holwell Lane, Scalford, Leicestershire, LE14 4DJ

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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: 7 January 2025

by A A Phillips

Land at: Linden Lodge, Holwell Lane, Salford, Leicestershire LE14 4DJ

Reference: APP/Y2430/X/23/3331342

Scale: Not to Scale

