The Planning Inspectorate

Appeal Decisions

Site visits made on 11 and 22 June 2012

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 July 2012

Appeal A: APP/V3310/C/12/2168366
Appeal B: APP/V3310/C/12/2168367
Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Tom Rolfe (2168366) & Ms D Parkin (2168367) against an Enforcement Notice (EN) issued by Sedgemoor District Council.
- The Council's reference is E/45/00122.
- The notice was issued on 15 December 2011.
- The breach of planning control alleged in the notice is, in short, failure to comply with condition No 4 of a planning permission Ref: 45/99/00008 granted on Appeal (Ref: APP/V3310/A/00/1036445/P2) on 19 May 2000.
- The development to which the permission relates is a detached agricultural dwelling house (200 sq m gross floor area) and associated garage/workshop to form a part of Quantock Poultry Farm. The condition in question is No (iv) which states that: The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants. The notice alleges that the condition has not been complied with in that the dwelling is being occupied by persons who are not solely or mainly employed or, being no longer employed, were last employed in the locality in agriculture as defined.
- The requirements of the notice are: Cease the occupation of the dwelling by persons other than those solely or mainly working in the locality in agriculture or forestry, or a widow or widower of such a person and any resident dependants.
- The period for compliance with the requirements is 12 months.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(b) and (d) only. Although a fee was paid within the specified period on Appeal A for the application for planning permission deemed to have been made under section 177(5) of the Act as amended, the Appellant has confirmed that he does not wish this to be considered.

Summary of Decision: The appeals are allowed and the EN is quashed as set out in the Formal Decisions section below.

Appeal Ref: APP/V3310/X/11/2165101
Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Tom Rolfe against the decision of Sedgemoor District Council.
- The application Ref: 45/11/00021/DRT, dated 15 July 2011, was refused by notice dated 10 November 2011.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is an agricultural workers dwelling.

Summary of Decision: The appeal is allowed and a LDC is issued in the terms set out in the Formal Decisions section below.

Application for Costs

1. An application for a partial award of costs made by Sedgemoor District Council against Mr Tom Rolfe and Ms D Parkin is the subject of a separate Decision.

Procedural Matters

2. Under section 7 of the original form submitted to the Council for the LDC application it is indicated that the certificate is sought for an existing use. However, the Appellant's case is that the dwelling and the garage were not built in accordance with outline planning permission Ref: 45/99/00008 (reserved matters, Ref: 45/01/00007, were approved on 27 June 2001). Both buildings have existed for more than four years meaning that they are now immune from enforcement action and are now lawful. On this basis the requirement of condition (iv) of the outline permission, which is to occupy the dwelling only for agricultural or forestry purposes, does not apply. It seems to me that the LDC should therefore have been submitted as "an existing operation" under S191(1)(b) of the 1990 Act. I shall treat the application as having been made in this way.

3. Furthermore, the LDC application has been described as "an agricultural workers dwelling". However, given the nub of the Appellant's case, what the LDC should really be for is "a dwelling and associated garage" thus removing the reference to agricultural workers. I shall consider the appeal accordingly.

4. These are minor matters that do not affect the cases of either party.

The LDC Appeal

Main Issue

5. The Appellant has referred to differences between what has been built and the approved planning drawings. These differences are relied on to show that, in effect, planning permission, Ref: 45/99/00008, was not implemented. As such the house and garage were unauthorised development, they have now gained immunity from enforcement action, are now lawful, and thus not encumbered by the agricultural occupancy condition. This is the main issue.

Material Differences

6. Circular 11/95 *The Use of Conditions in Planning Permissions* refers at paragraph 29 to how an otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Reference is made to the Court of Appeal judgement *Handoll and Others v Warner Goodman and Streat and Others (1995)* which overturned a prior Divisional Court judgment.

7. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition. The footnote to paragraph 29 states, in part, that *"The apparent consequences of the Court of Appeal's judgement in the Handoll case are that (1) where the operational development*

is carried out in a way which differs materially from approved plans, it amounts to development without planning permission; and (2) any conditions imposed on the planning permission for those operations are unenforceable because the particular planning permission has not been implemented. Authorities should ensure, in any case where planning permission has been granted for the carrying out of operations subject to conditions, that the operations do not materially differ from the approved plans".

8. The 'test' to be applied is whether any differences between what has been built and approved are material or not. This is a subjective judgement based on a fact and degree assessment dependant on the individual circumstances of the case. I shall look at the differences in this case against this background.

9. The approved and the built footprints for the house do not match. The house is further over to the southwest than it should be such that the front of the house only just overlaps with where the rear wall should have been. This is a wholesale shift over of the house. The Council say that had the original developer requested to re-site the house it would have been dealt with as a minor amendment to the approved drawings. However, this did not happen and I also disagree with this approach. The house is, as a matter of fact and degree, in a materially different place from where it was approved and that should have been subject to a fresh planning application.

10. The consequence of the above is that despite some minor alterations to the house design, such as to eaves and ridge heights that were sought and approved in 2001, and compliance with other conditions such as landscaping details, the house was not built in accordance with the approved plans. The development applied for included a garage. As the development being carried out was done in one operation and the house was materially in the wrong place, this meant that the whole scheme was development without planning permission. The relevant planning permission was not implemented. The Council could have taken enforcement action any time up to four years from when the development was substantially completed in 2002. That was not done and the development is now immune from enforcement action.

11. The development carried out is therefore free from the encumbrance of condition (iv) of planning permission Ref: 45/99/00008 which required the house to be occupied only by a person solely or mainly working, or last working, in the locality in agriculture or forestry. Other scheme differences brought to my attention by the Appellant are not significant.

12. The Council has referred to the case of *Commercial Land v Secretary of State for Transport, Local Government and the Regions and the Royal Borough of Kensington and Chelsea 2003*. This involved an LDC appeal regarding whether a planning permission granted in 1983 for the erection of a sixth floor on a five floor block of flats had been lawfully implemented or not. The Inspector dismissed the appeal on the basis that the walls erected on the roof differed from the approved plans and as such had not implemented the permission. One reason why that decision was quashed was that the Inspector was obliged to consider not only the differences between the works and the plan, but also the significance of the differences, such as similarities and the degree of compliance with the plans, which he had failed to do. I see that I have applied myself to the significance of the differences in this appeal and found that the house position is materially different. I am not in conflict with the approach of the *Commercial Land* case which is also consistent with the *Handoll* judgement.

13. The judgement of *Kerrier DC v Secretary of State for the Environment 1980* is noted. However, the circumstances of the *Kerrier* case are different from the current appeal. It was found in *Kerrier* that the planning permission had been implemented for the purpose of an agricultural occupancy condition, even though it was also agreed that the dwelling had been built without planning permission. In this appeal there is disagreement about whether the planning permission was implemented or not. *Kerrier* also predates the more recent *Handoll* judgement and advice in Circular 11/95. The *Kerrier* case has little weight. With regard *J Tooney Motors Ltd and Intacab Ltd v Secretary of State for the Environment and Basildon DC (Court of Appeal) 1982,* this also predates *Handoll* and the circumstances of the case are distinguishable from the development subject of the current appeal. The *Tooney* case has little weight.

14. In view of the above, having regard to all other matters raised, the LDC appeal succeeds and I am obliged to issue a LDC for a dwelling and associated garage.

EN Appeals – Ground (b)

15. An appeal on this ground is that the breach of control alleged in the EN has not occurred as a matter of fact. The alleged breach in this case is non-compliance with an agricultural occupancy condition. However, in view of my findings above, the condition pertained to development that has not been carried out. Therefore, as a matter of fact, there has been no breach of the condition. Consequently the ground (b) appeals must succeed and the EN should be quashed. The ground (d) appeals do not therefore fall to be considered.

Formal Decisions

APP/V3310/C/12/2168366 & APP/V3310/C/12/2168367

16. The appeals succeed and it is directed that the EN should be quashed.

APP/V3310/X/11/2165101

17. It is directed that the original application description should be deleted and replaced with "a dwelling and associated garage". Subject to this modification, the appeal is allowed and attached to this decision is a LDC describing the existing operations which I consider to be lawful.

Gareth Symons

INSPECTOR

The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 15 July 2011 the operations described in the First Schedule hereto, hatched in black, in respect of the land specified in the Second Schedule hereto, edged in black, on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling and associated garage were not built in accordance with planning permission Ref: 45/99/00008 and they 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 them.

Gareth Symons

INSPECTOR

Date: 24 July 2012
Reference: APP/V3310/X/11/2165101

First Schedule

Dwelling and associated garage

Second Schedule

Land at Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 July 2012

by Gareth Symons BSc(Hons) DipTP MRTPI

Land at: Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR

Reference: APP/V3310/X/11/2165101

Scale: Do not scale.