

DELEGATED DECISION REPORT

SMD/2023/0569
Valid 27/11/2023

HOLLY DALE FARM
DOUSE LANE
BRADNOP

**APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE
FOR AN EXISTING USE OF
THE CONVERSION OF
AGRICULTURAL BUILDING TO
CREATE TWO DWELLINGS.**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Whether immune from enforcement
- Whether lawful existing use
- Whether lawful existing operational development

DESCRIPTION OF SITE

At the time of a 2017 application under Class Q Holly Dale Farm comprised a commanding farm house together with separate substantial and sturdy stone built barns accommodating shippens, loose boxes and hay lofts. The farm had only recently ceased as a dairy farm and been sold.

This Certificate application concerns the stone barns now known as Parlour Barn and Pasture Barn rear of the farm house after having been converted to two dwellings.

DET/2017/0015 consented to the Conversion of agricultural building into three residential dwellings at Holly Dale Farm, Douse Lane, Bradnop – approved drawings HDB 01, 03B and 05 A.

The development has not taken place in full accordance with the approved plans having created two dwellings not three and differing consequently in the physical details of the conversion work. There is also a sizeable area of curtilage to the rear which significantly exceeds that which would have been, and was, allowed under the Class Q permission.

PROPOSAL

That the development should be regarded as lawful based on evidence submitted which sets out to show the converted barns having been occupied as two dwellings

for in excess of 4 years. A statement and submitted supporting documents run to 165 pages. The submitted supporting documents are listed as:

- Application Forms;
- Location Plan (Drawing Number: HDBC 01);
- Floorplans as built (Drawing Number: HDBC 02);
- Elevations as built (Drawing Number: HDBC 03);
- Class Q Decision Notice and Approved Drawings (Appendix 1);
- S P Energy Assessment March & June 2019 (Appendix 2);
- Pastures Holiday Let Bookings July 2019 – March 2020 (Appendix 3);
- Parlour Holiday Let Bookings July 2019 – March 2020 (Appendix 4);
- Bank Statement to show rent paid by occupier March 2020 – June 2020 (Appendix 5); and
- Holiday Let Booking, Client Information for Parlour Barn July 2020 – September 2024 (Appendix 6);
- Holiday Let Booking, Client Information for Pastures Barn July 2020 – September 2024 (Appendix 7);
- Statutory Declarations from the Applicants/Owners (Appendix 8);
- Legal Opinion (Appendix 9);
- Energy Bills for Parlour Barn August 2019 – May 2023 (Appendix 10); and
- Energy Bills for Pastures Barn August 2019 – June 2023 (Appendix 11);

At paragraph 1.4 it is stated: *“the land and the buildings within the area edged red on Drawing Number: HDBC 01 were not built in accordance with the Class Q prior approval (DET/2017/0015) where the dwellinghouses were completed and occupied from July 2019, a period in excess of 4 years. Therefore, in line with Section 191 of the Town and Country Planning Act (as amended) 1990, the period of time that Staffordshire Moorlands District Council may commence enforcement action against the Development has expired. It is therefore respectfully requested that a lawful development certificate is issued confirming that the development is now lawful.”*

The LPA has sought further clarification in two matters of detail which has been provided by the agent by e-mail dated 2nd February 2024.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

No policy considerations as the determination is contingent on legal fact – whether on the balance of probabilities based on everything that is known the development as existing should be regarded as lawful.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

DET/2017/0015 – Conversion of agricultural building into three residential dwellings – approved

CONSULTATIONS

Publicity

Publicity / Consultation – none, as the determination is based on matter of legal evidence.

OFFICER COMMENTS

Principle of Development

Relevant to this application a local planning authority can grant a certificate confirming that:

- (a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990;

Section 171 B deals with time limits and relevant to this assessment is 171 B (2):

Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

The LPA has given close consideration to the fact that s.171 B (2) refers very specifically to “the change of use of any building to use as a single dwellinghouse” (underline added) and, given that this case concerns the use of this building as two dwellings, has sought to confirm the legal position. Matters turn in part on ‘building’ being defined in the planning Act (1990) s.336 as including “any part of a building”. In other words, with this case two parts of a building have each been converted into a single dwelling (two separate dwellings). This has begged the question whether in fact two certificate applications are required rather than simply the one. This point however is addressed in the applicant’s submissions in particular at Appendix 9 to the Planning Statement – Legal Opinion from Howes Percival. See para. 10 re Van Dyck v SoS (1993) 66 P and CR 61 – the four year immunity was found to apply even where the building in question had been subdivided into multiple flats – each was nevertheless considered individually to be single dwelling house. See also para 13 re Moore v SoS. Here, outbuildings had been converted into ten self-contained units of residential accommodation.

The LPA has also been concerned to ensure that the certificate can apply to land and not strictly a ‘building’ alone. The agent avers that the primary breach of planning control in their case is the creation of the dwellings. Inevitably these buildings come with curtilage to enable them to be accessed and to function. In an additional submission the agent has cited Caldwell v SoS (2023) where it can be seen that associated land integral to and part and parcel of the primary development – the dwelling – was to be considered not as entirely separate from the residential use. The case helpfully reviews a series of earlier authorities and the concluding paragraphs 32 to 39 readily facilitate an acceptance that the inclusion of land with

the building(s) now used as a dwelling(s) need not be regarded as a separate matter. Fact and degree could still be a consideration and in the current case the land-take is quite extensive but the fact of the matter is that it does all seem to have been laid out as part and parcel of the development of the dwellings from the outset.

The applicant's submission

The applicant contends that, not having carried out the development in accordance with the Class Q application as approved, the development is not constrained by the Class Q consent but is lawful for having been in use as two dwellings for a period exceeding 4 years. (Statement para. 2.4). Different parts of the evidence submitted for the claim run from different start dates with the earliest being from March 2019 but the overall claim is submitted as being from July 2019 – see para 5.2 of the supporting statement: *“The appended evidence provided with the Statement demonstrates that the change of use of the dwellings occurred without the benefit of planning permission and have been occupied for a period exceeding 4 years from July 2019 to the present day.”*

Much of the evidence of usage is as holiday accommodation which the application statement points out is equivalent to a C3 dwelling house use: *“A dwellinghouse is a C3 use that can also be lawfully used as self-contained holiday accommodation without a material change of use occurring.”*

It is asserted in the application (para 2.5) that: *“The conversion to dwellings was completed and occupied from July 2019, and as such evidence has been provided from this time, to show that they have been in-situ unlawfully, for a continuous period in excess of 4 years.”*

At para 4.1 it is asserted: *“The dwellings have been used as self-contained holiday lets either side of the COVID-19 pandemic where they were occupied permanently as dwellings during the pandemic”.*

The various documents submitted do appear to demonstrate the period of usage as claimed. Less certain is the extent to which completion and usage of the extensive rear (westerly) garden land / parking is confirmed from Nov 2019.

Publicly available air photos and LPA site photos from June 2017 show the previous farm buildings present still at the 2017 date. By the next available 2020 air photos the old buildings have gone and the new layout seems to be present. The statutory declaration however refers to the red edge as now put forward. In the absence of evidence to the contrary it is appropriate for the LPA to accept the statutory declaration as confirmation on the balance of probabilities that the curtilage was indeed laid out as of Nov 2019.

Key Evidence

The development as now existing is not in accordance with the Class Q consent due to being for two dwellings, not three; due to the additional land incorporated into the

curtilage which would not have been allowable under, and was not part of, the Class Q consent and due to various elevation detail differences – chiefly in the north elevation – see ‘elevations as proposed’ 2017 and current drawing HDBC 03.

Comparative extracts of the plan layout positions as submitted and approved under the 2017 Class Q and as now claimed are shown in figures 1 and 2 respectively. Figure 1 is from DET/2017/0015 ‘location and block plan’. Figure 2 is from HDBC 01 of the current application.

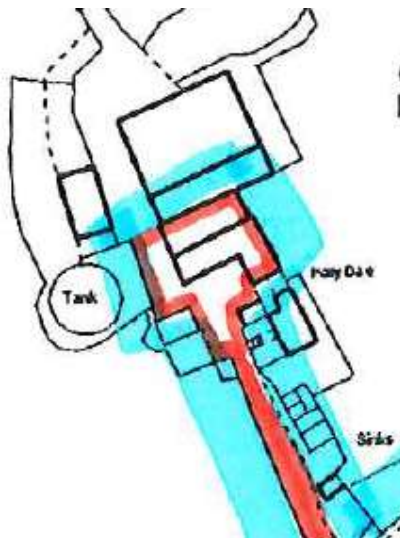


Fig.1

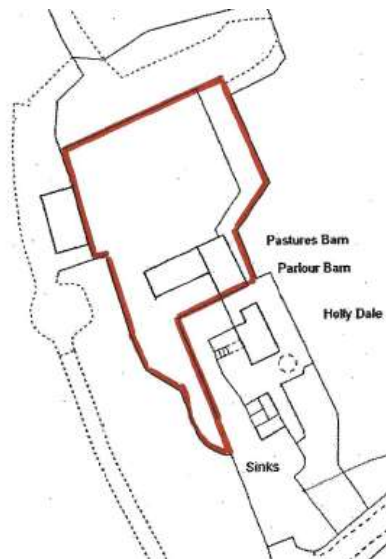


Fig.2

Electrical Installation Certificates are presented dated 9th March 2019 which it is claimed show the development substantially complete at that date.

Bank Statements or phone banking app snap shots showing rent payments from March 2020 to June 2020 with the property occupied as a dwelling house. It is understood that these cover a period when holiday letting did not occur and short term lets were in place.

Energy bills have been provided from August 2019 to May 2023 for Parlour Barn (Appendix 10), and from August 2019 to June 2023 for Pastures Barn (Appendix 11).

Bookings information for the holiday let usage is presented at Appendix 3 and Appendix 4 of the planning statement, the first booking being from 3rd July 2019 for both Pastures Barn (Appendix 3) and Parlour Barn (Appendix 4).

Red Edge extent

The land in the red edge differs markedly from the Class Q approval in two chief respects (a) the route of the access drive which is now shown diverting off to the west side of the original drive rather than following the more direct line of the original and (b) the increased extent of land included as curtilage at the rear (northerly)

aspect. The publicly available air photo images reproduced below at Fig. 3 and Fig. 4 show the site in May 2020 and April 2021 respectively.

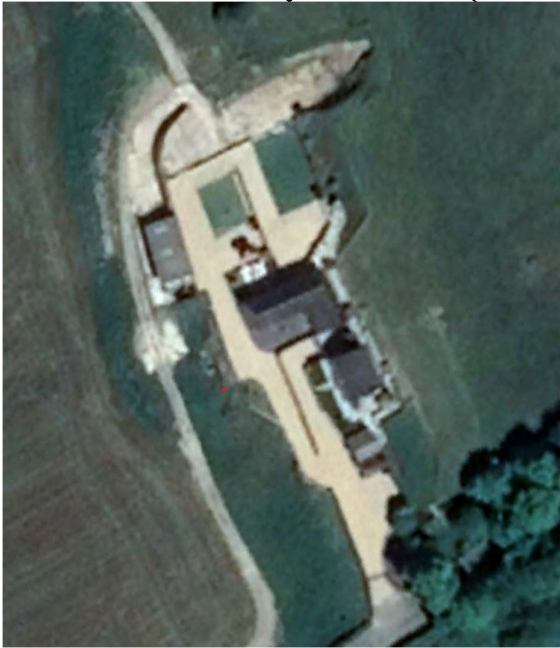


Fig. 3 dd 28.05.2020

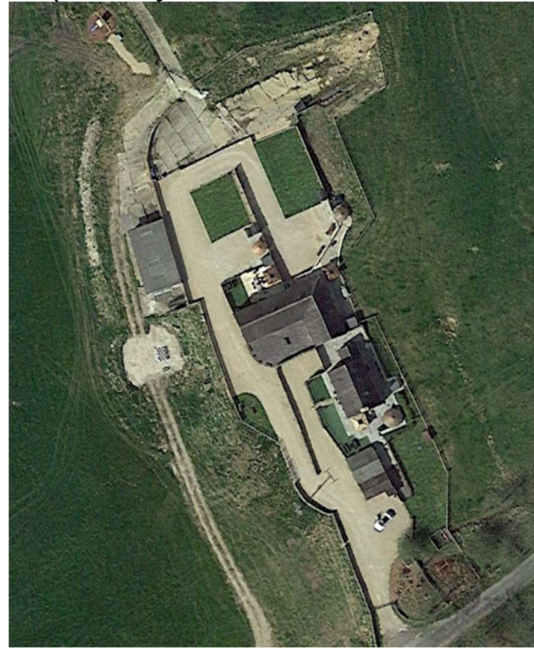


Fig. 4 dd 23.04.2021

Highway Safety

SCC Highways were consulted at the validation stage of this application and have responded with a recommendation to attach conditions. If however the development is lawful in any event, it will not be possible to make that conclusion subject to the attachment of conditions of this type.

CONCLUSION / PLANNING BALANCE

A series of mutually corroborating evidence sources have been presented which taken together serve to demonstrate very comprehensively that on the balance of probabilities residential usage has taken place for in excess of four years as of the 13th November 2023 being the date of submission. NB LPA validation date 27th November 2023 for red edge to be extended to link to the public highway.

The fact that substantial parts of the residential use have been in the form of holiday lettings rather than continuous residential occupancy is no bar to the claim of C3 planning use – as indeed is comprehensively set out at Appendix 9 in the legal opinion submitted from Howes Percival.

If there is a 'gap' in the evidence it is only that we have no outright confirmation of the site having been laid out as claimed as early as July 2019 as the first available air photo is dated May 2020 (Fig.3 above). The LPA is entitled however to rely on the statutory declaration and the signed exhibit GCJC1 as providing sufficient evidence on the balance of probabilities, in the absence of any counter evidence

being known to the LPA, that the site has indeed been laid out and in use as claimed for the period of at least four years.

The LPA has reviewed the scope to address more than a single dwelling in the one certificate and finds this approach well supported by the references in the submissions from Howe and Percival.

By reference in particular to the High Court decision of Mrs Justice Lieven in *Caldwell v SoS* (2023) the LPA can also be satisfied that there is not necessarily a need to consider the associated land use separately – where a 10 year immunity would otherwise be applied. Although paragraph 171 B (2) specifically and only refers to a ‘building’, provided that the associated change in land use can be accepted as being part and parcel of the principal development – the change of use of the building – the four year time limit stemming from the principal change – the change of use to dwelling(s) should be accepted as encompassing both the building and its necessary lands.

OFFICER RECOMMENDATION : **That a certificate of lawfulness of existing use be granted**

Case Officer: Arne Swithenbank

Recommendation Date: 26.01.2024 revised 08.02.2024

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council