

Appeal Decision

Site visit made on 13 September 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/Q9495/X/15/3140914

The Bothy, The Schoolhouse and The Buttery, Woodend, Ulpha, Broughton-in-Furness, Cumbria LA20 6DY

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Sandford against the decision of Lake District National Park Authority.
 - The application (Ref. 7/2015/4101), dated 29 September 2015, was refused in part by the Authority by notice dated 30 November 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use as three independent dwellings.
-

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Paul Sandford against Lake District National Park Authority. This application is the subject of a separate Decision.

Procedural matter

3. The Authority granted an LDC for the existing use but excluded, on the plan attached to the LDC, the land associated with each of the three dwellings. The land associated with each dwelling was shown on a plan submitted with the application, as required by Section 39(2) of The Development Management Procedure Order 2015. The application was, therefore, refused in part and the appeal against that part refusal is valid.

Reasons

4. Woodend is a hamlet of stone and slate buildings in a remote upland location. In 2006 an LDC was granted for the use of the main building at Woodend as two dwellings; these are Woodend Barn and Woodend Cottage. The Bothy and The Schoolhouse are detached buildings close to Woodend Barn, and The Buttery is attached to Woodend Barn, which was sub-divided to create the separate dwelling. The Authority granted the LDC, for the use of the buildings only, as independent dwellings, because 'The evidence provided indicates The Bothy, The Schoolhouse and The Buttery...have been used as domestic dwellings since September 2011 and...the use has continued without interruption, abandonment or intervening use since that time'.
-

5. The Authority has stated that "The plan attached to the certificate excluded the associated land as there was no evidence to show that it had been used as part of the planning unit for each of (the) dwellings for the last four years". The Authority's statement does not indicate what type of evidence they might expect to be submitted to show the use of curtilage land. Whilst evidence relating to the use of a dwelling is easy to obtain, if the use as a dwelling has occurred, evidence relating to use of associated land is not so easy to obtain. Such evidence, in fact, is generally obtained by visiting the land in question and the Authority has not contradicted the Appellant's assertion that "...no site visit was undertaken during consideration of the application".

6. It was noted at the appeal site visit that the curtilage land associated with each of the three dwellings is defined by walls and fences that have clearly been in place for the duration of the lawful use of the dwellings. The curtilages are laid out as garden land and are well established. There is sufficient precise and unambiguous visual evidence, gained at the site visit, to conclude that the land associated with each dwelling has been used as residential curtilage land for the same period, since September 2011, that the buildings have been in lawful use as independent dwellings.

7. For the reasons given above, and having taken all other matters into account, the Authority's refusal to grant an LDC in respect of use as three independent dwellings and including the use of associated land at The Bothy, The Schoolhouse and The Buttery, Woodend, Ulpha, Broughton-in-Furness, Cumbria was not well-founded and the appeal succeeds. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 29 September 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 evidence provided indicates The Bothy, The Schoolhouse and The Buttery, together with associated land, have been used as domestic dwellings since September 2011 and the use has continued without interruption, abandonment or intervening use since that time.

Signed

John Braithwaite

Inspector

Date: **18 November 2016**

Reference: APP/Q9495/X/15/3140914

First Schedule

Use as three independent dwellings

Second Schedule

Land at The Bothy, The Schoolhouse and The Buttery, Woodend, Ulpha,
Broughton-in-Furness, Cumbria LA20 6DY

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 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 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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:
18 November 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

**Land at The Bothy, The Schoolhouse and The Buttery, Woodend, Ulpha,
Broughton-in-Furness, Cumbria LA20 6DY**

Reference: APP/Q9495/X/15/3140914

Scale: not to scale

