
Appeal Decision

Site visit made on 18 October 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 24 November 2016

Appeal Ref: APP/U2235/X/16/3149677

Land at Stede Row, Stede Hill, Harrietsham, Maidstone, Kent ME17 1NR

- 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 Laurie Honybun against the decision of Maidstone Borough Council.
- The application ref no 15/507160/LDCEX, dated 26 August 2015, was refused by notice dated 26 February 2016.
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The existing use for which a LDC is sought is described on the application form in the following words: 'I have been living in the stable and carrying out forestry work i.e. coppicing, logging'.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The commentary in the final bullet point of the above heading is the closest to a description of the existing use for which a LDC is sought to be found in the application form. It is not adequate for the purposes of either application or appeal and, this being so, I have been obliged to make a number of deductions in determining precisely what the Appellant wishes me to endorse as lawful, drawing on all the material before me.
 2. I note that the address of the site is given at section 3 of the application form as 'Stable' and that sections 7 and 8 refer to 'living in the stable'. It is therefore reasonable to assume that a LDC is sought for the use of that particular building, which at the time of the application was located on the southern part of the Appellant's land, as a single dwellinghouse. Accordingly, this is the primary focus of my decision.
 3. However, I am mindful that the judgment in *Panton and Farmer v SSETR and Vale of White Horse DC* [1999] JPL 461 indicated that an Inspector is obliged to issue a LDC for any use of the planning unit which the evidence shows is lawful and to modify or substitute the descriptions of the use and the land to which it relates if necessary. I have therefore considered the additional question of whether the buildings the Appellant refers to as 'the sheds' might benefit from a LDC of some kind. As this arises directly from the submissions before me there is no prejudice to the interests of any party in doing so.
 4. The Appellant has expressed dissatisfaction with the manner in which the Council and some of its officers have handled his case. However, this is not a
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matter for me and, if necessary, falls to be pursued by other means separate from appeal process. It has not therefore informed my decision.

Site History

5. The Appellant's account of the site's history is somewhat piecemeal, being spread across several short, separate statements. Some of these were sent direct to the Planning Inspectorate, whilst others take the form of written communications with the Council. Collating them, the following timeline emerges. Mr Honybun first moved onto the land in September 2009, from which point he resided in a caravan stationed on the northern part of the site. He then erected the buildings referred to as 'the sheds' in June 2010, also on the northern part of the site.
6. Mr Honybun ceased living in the caravan in March 2011 and transferred it to the southern part of his land where, thereafter, it functioned as a workshop and store. He moved into the sheds at this time and began working on the construction of a 'stable' on the southern part of the site. It seems that he then moved the sheds to the southern part of the site in March 2012 and continued living in them for a month or so in their new location until the 'stable' was finished¹.
7. The Appellant's son joined him on the site in or around April/May 2012 and commenced living in the sheds, at which point Mr Honybun moved into the stable. Both remained resident on site (the Appellant living in the stable and his son in the sheds) until September 2015, the LDC application having been made the previous month.

Reasoning

8. In seeking a LDC, the onus of proof is firmly on the Appellant to demonstrate on the balance of probabilities that residential use of the subject property was lawful at the date on which the application was made to the Council by reason of the passage of time. The judgment in *Gabbitas v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason not to grant a LDC, provided the Appellant's evidence alone is sufficiently precise and unambiguous.
9. The Council provides little contradictory evidence of its own or from others, instead relying primarily on perceived inconsistencies within the Appellant's own statements. Although mention is made of the buildings in question not being visible in aerial photographs, this is perhaps unsurprising on such a heavily wooded site where dense foliage might well obscure any view from above. In any event, the photographs in question are not before me. Nor have I attached weight to speculation concerning the Appellant's reasons for submitting an application in 2015 (since withdrawn) seeking a LDC for use of the land as a residential caravan site.

¹ This account of the site's history is the most accurate that I am able to piece together from the Appellant's various statements. However, these are ambiguous in some respects, such that there remains a degree of uncertainty as to whether, or when, the 'sheds' were relocated from their original position. Additionally, the Appellant's use of the terms 'shed' or 'sheds' seems to encompass the 'stable' on occasion, which also appears to be referred to sometimes as 'the barn'. This has added an extra layer of confusion.

10. My focus is therefore, necessarily, on the degree of imprecision and ambiguity apparent within the Appellant's submissions. The Appellant contends that he and his son have 'dwelled at this property not in the caravan' for over four years and that his moving 'from one shed to the other makes no difference'. However, this argument fails in several respects. There is no suggestion that any of the residential accommodation occupied since the original caravan was vacated did not amount to a 'building' for the purposes of the 1990 Act as amended.
11. This being so, each building falls to be considered separately as a potential lawful 'dwellinghouse'. There is no provision in planning law for the residential occupancy of two separate buildings on the same plot of land to be considered in tandem so as to secure the lawfulness of residential use of the site as a whole by reason of continuous occupancy of one or the other, rather than both simultaneously, over four years.
12. Even if it had been demonstrated in this case that the 'sheds' and 'stable' were not buildings but mobile units that were simply stationed on site and amounted to a 'use of land', in the manner of residential caravans occupying the same plot, then the relevant period for taking enforcement action would be ten years rather than four, in accordance with section 171B(3) of the 1990 Act as amended. Lawfulness in this regard would thus be precluded by the fact that, on Mr Honybun's own account, he only moved onto the site in 2009.
13. I must therefore focus on the 'stable' and the 'sheds' separately. The Appellant claims residential occupancy of the former from April/May 2012 only, less than four years before the time of the LDC application was made. This precludes lawfulness of the use of that building as a dwellinghouse even in the terms most favourable to the Appellant, namely under section 171B(2) whereby the *change of use* of a building [my italicised emphasis] to use as a single dwellinghouse is subject to a four year time bar on enforcement action. However, notwithstanding this, it seems that the 'stable' was never subject to a change of use.
14. Rather, on the Appellant's own evidence it was erected and used from the outset as a dwellinghouse and, despite being referred to as the 'stable', has never been used to accommodate animals. I am mindful that in the case of *Lawson Builders Ltd v SSCLG & Wakefield MBC* [2013] EWHC 3368 (Admin) the Court concluded unequivocally that, '... if a dwelling house is erected unlawfully and used as a dwelling house from the outset, as in the present case, the unlawful use can still properly be the subject of enforcement action within ten years, even if the building itself, as a structure, becomes immune from enforcement action after four years'. This remains the current, up-to-date position in law and effectively precludes the granting of a LDC in relation to the 'stable', either for the structure itself or its residential use.
15. Therefore, having regard to *Panton & Farmer*, I turn to consider the 'sheds'. On the evidence before me it seems more likely than not that these were originally erected at the northern end of the site, initially used for non-residential purposes, then subjected to a change of use to a dwellinghouse when the Appellant moved into them residentially. The four year time limits pursuant to sections 171B(1) and (2) would therefore have applied to the structure and use respectively, the former applying from the point of substantial completion.

16. One of the Appellant's statements refers to the sheds having been moved from the northern part of the site to the southern part in 2012. Other statements suggest that residential occupancy in their new location was by the Appellant for a month or so and, thereafter, by his son until 2015. Should that have been the case then the sheds stood for two years in their original position, from 2010 to 2012, with residential occupation for one year, from 2011 to 2012. They were then demolished and re-erected in a different location where, on the Appellant's account, they stood for three years until 2015 and were occupied residentially by Mr Honybun or his son for the same period.
17. In such circumstances the demolition and re-erection of the buildings must be regarded in planning law as the removal of one building and the creation of a new, different building elsewhere on the site, irrespective of the fact that the latter made use of the same components and was put to the same use. The ongoing accrual of immunity from enforcement action in the original location through the passage of time would not survive the act of demolition and transferral so as to be carried over to the new location. Instead, the four year clock for both the original structure and its residential use would have stopped ticking at that point, such that neither would have secured immunity pursuant to sections 171B(1) and (2).
18. The four year clock pursuant to section 171B(1) would then have started ticking again once the sheds had been substantially completed in their new location, but would only have reached the three year mark by the time of the LDC application in 2015. Additionally, the clock would start ticking afresh in relation to the residential use of the sheds once this commenced in their new location but, in accordance with *Lawson*, would have to run for ten years before immunity from enforcement action against dwellinghouse use could be secured, clearly an impossibility in this case. This sequence of events thus precludes the granting of a LDC for the sheds themselves or their residential use.
19. Nonetheless, the degree of ambiguity in the Appellant's statements persuades me that, for the sake of completeness, I should also consider the possibility that he had meant to convey a version of events whereby the sheds were not demolished and relocated but remained in one position from 2010 to 2015, with continuous residential occupancy from March 2011 to September 2015 following a material change of use of the buildings. Should Mr Honybun have been able to demonstrate this on the balance of probabilities, then a basis for granting a LDC in relation to the sheds would have been provided.
20. However, the account provided by the Appellant is far from sufficient to meet any burden of proof in that regard. To secure lawfulness, he would need to demonstrate on the balance of probabilities not only that substantial completion and change of use to residential occupancy occurred more than four years before the time of the LDC application, but also that the sheds had been in their original position and occupied *continuously* for self-contained residential purposes for that period.
21. Case law arising from the Court of Appeal judgement in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886 clarifies that, in essence, there is a difference between an established dwellinghouse, when an occupier does not have to be continuously or even regularly present in order for it to remain in lawful use as a dwellinghouse, and situations where there is no established use, as in this scenario. In the latter circumstances, the correct approach is to

ask whether there was any period during the relevant four years when the building was not physically occupied, even though available for occupation, when the Council could not have taken enforcement action against the use. It is also necessary to make a finding as to whether any periods of non-occupation were *de minimis* or not.

22. To this end the Appellant does not provide reliable, substantiated evidence. Although a number of statutory declarations dating from August 2015 have been submitted, these are too vague and ambiguous to assist his case. They all comprise the same standard pro forma, complete with typing error, on which their signatories have filled in the gaps. All say that Mr Honybun has lived in a building in a particular location on the southern part of the site (pinpointed by a plan), then go on to say separately that he has lived at 'this address' continuously since 2009 or 2010.
23. It remains unclear whether the term 'this address' is intended to refer to the site as a whole (in which case the declarations do not support the Appellant's case for the reasons I have already explained) or just to the building identified on the plan (in which case they contradict Mr Honybun's account elsewhere of having moved from the sheds to the stable in 2012). Further confusion arises from the failure of any of these declarations to refer to the Appellant's son, whose occupancy of the sheds is essential to any case for their lawfulness as a dwellinghouse.
24. The Appellant's assertion that he has paid Council Tax on the site since 2009 does not assist. Firstly, the only Council Tax documentation I have seen dates from 2010 and 2015 and covers a total period of only 19 months. Secondly, that documentation refers to the 'caravan at Stede Row' rather than to any individual dwellinghouse on the site. Thirdly, even continuous Council Tax payments would not necessarily equate to continuous occupancy, particularly as the Appellant is known from his own evidence to have had access to a property in Maidstone where his partner resides.
25. Finally, the Appellant's own photographs, purported to date from 2011 and 2012 but of unsubstantiated origin, are of little assistance. One is so unclear as to be meaningless. The other shows a timber shed on the northern part of the site, but at such distance that it is impossible to discern its size or appearance, let alone what it was used for. I therefore find that the Appellant's evidence fails to meet the tests of non-ambiguity and precision set out in *Gabbitas* by some considerable margin.
26. This leads me to conclude on the balance of probabilities that, at the time of the LDC application, neither the stable nor the sheds had been substantially completed in the locations then occupied for more than four years, let alone used continuously as a self-contained dwellinghouse for a period sufficient to secure immunity from enforcement action. This being so, there is no scope for granting any type of LDC in this case².

² Had I found otherwise and granted a LDC pursuant to this appeal in relation to the site as it stood at the time of the application, it would still be pertinent to the future of the land that the Appellant has since 'collapsed' the buildings. Indeed, at the time of my visit no building was left standing, although a shipping container used for domestic storage, the components of timber structures and the scrapped shell of a caravan remained. The judgment in *Iddenden v SSE* [1972] 1 WLR 1433 has long made it clear that a lawful use cannot survive the destruction of the buildings and installations necessary for it to be carried on.

Conclusion

27. For the reasons given above I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

28. The appeal is dismissed.

Alan Woolnough

INSPECTOR