
Appeal Decision

Site visit made on 25 October 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 2 December 2016

Appeal Ref: APP/Y9507/X/16/3144078

Newbrook Farmhouse, Manor Road, Upper Beeding, West Sussex BN44 3TJ

- 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 Simon Stringer against the decision of the South Downs National Park Authority.
- The application ref no SDNP/15/02003/LDE, dated 25 March 2015, was refused by notice dated 11 August 2015.
- 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 as: 'Residential use of converted building'.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The description of the use for which a LDC is sought, as stated on the original application form and summarised in the above heading, is somewhat vague. The term 'residential use' is open to wide interpretation. Taken at face value it could refer simply to residential use of an outbuilding for purposes incidental to the enjoyment of the principal dwellinghouse as such. Alternatively, it could be intended to describe use of the building as a separate, self-contained dwellinghouse independent of the main property.
2. However, I am mindful that incidental use of an outbuilding as living accommodation within an established residential curtilage is unlikely in itself to amount to development in the first place. Moreover, I note that the supporting statement that accompanied the application refers to the conversion of the former stable to 'an independent living unit' in which the Appellant's daughter, Chantal Stringer, is said to have 'lived independently and uninterrupted' since 2010.
3. Additionally, the Appellant's perception that permitted development rights to extend the subject building had accrued following four years' continuous residential occupancy implies strongly that he perceives it as an independent dwelling¹. I therefore find it reasonable to assume that, notwithstanding the

¹ Permitted development rights to extend a dwellinghouse with the benefit of deemed planning permission would have been conveyed by Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2005 as amended but would only have applied if the dwelling was, in itself, lawful (Article 3(5) of the Order refers). Such lawfulness could, in certain circumstances be accrued through four years' continuous use. Although the 1995 Order has since been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, which came into force on 15 April 2015, it remains the relevant legislation for the purposes of my decision, given that construction of the extension to which permitted development rights are said to have applied commenced in 2014.

imprecision of the application form, the use for which a LDC is sought is in fact that of a self-contained dwellinghouse. I have determined the appeal on that basis and am satisfied that no prejudice to the interests of any party arises in doing so.

Reasoning

4. In seeking a LDC the onus of proof is firmly on the Appellant to demonstrate on the balance of probabilities that, by the date of the application to the local planning authority, use of the building as a self-contained dwellinghouse was immune from enforcement action by reason of the passage of time. The judgment in *Gabbittas 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.
5. The subject building is located within the domestic garden of Newbrook Farmhouse. It is single storey and presently comprises a bed-sitting room, dining room, kitchen and bathroom, plus a small external deck. It is common ground between the main parties that the bed-sitting room occupies an extension, construction of which commenced in August 2014. The scaled drawings submitted with the application suggest that this increased the floorspace and volume of the building by about 58%². On the evidence before me, access can only be gained via the main site entrance serving the farmhouse and then crossing the property's extensive lawn on foot.
6. The Appellant asserts that the building was originally used as stables to accommodate his daughters' pet donkeys. I have seen nothing to suggest that it was instead constructed with potential use as a dwelling in mind and used residentially from the point of initial completion³. I therefore accept on the balance of probabilities that, if it is indeed a self-contained dwelling, then it has become so as a result of a material change of use that would be subject to the time limit on enforcement action specified in section 171B(2) of the 1990 Act as amended.
7. This being so, the period over which the Appellant is required to demonstrate continuous use as a dwellinghouse is four years prior to the time of the LDC application (hereinafter referred to as 'the relevant period'), which would usually mean that the material date for the purposes of my determination would be 25 March 2011. However, matters are rendered more complex in this case by the fact that the unit to which the appeal relates was extended within the last four years.
8. My assessment must relate to the building as a whole, and I am mindful that even now the extension is only a little over two years old and could only have been lawful in itself by March 2015 if the use of the original, smaller building had, by the time that construction commenced, already become a lawful dwellinghouse through the passage of time. Only then would it have benefitted from permitted development rights that might have enabled the extension to

² I find this figure to be more accurate than the estimate of approximately 75% provided by a neighbouring resident, Mr Emsley, or the Appellant's suggestion that 'the extension is closer to a 50% increase'.

³ In the case of *Lawson Builders Ltd v SSCLG & Wakefield MBC* [2013] EWHC 3368 (Admin) the Court held that if a building was constructed and used as a dwelling from the outset, the time limit on taking enforcement action against the use of the building (as distinct from the structure itself) is ten years rather than four.

have been built with the benefit of deemed planning permission so as to form part of a dwellinghouse.

9. This being so, if I am to grant a LDC I must be sure on the balance of probabilities that the building as originally converted had been in continuous use as a self-contained dwellinghouse for four years or more by the end of July 2014. This results in a very tight time frame for the purposes of accruing lawfulness, the Appellant having stated that his daughter had used the building continuously as living accommodation only since 6 July 2010, with the end of that month effectively being the material date in this instance.
10. In demonstrating his case, the Appellant relies solely on a number of statements provided by a diverse selection of people. These include contractors who worked on various aspects of the conversion in 2010, regular visitors to Newbrook Farmhouse and Miss Stringer herself and her mother. It is a matter of concern that in preparing its appeal statement the local planning authority has disregarded the fact that, although supporting letters submitted with the application were all unsworn, statutory declarations have been provided at the appeal stage.
11. These necessarily carry greater weight than unsworn statements. However, the Appellant's apparent understanding that such declarations, however brief, should be sufficient to meet the burden of proof is misplaced. In practice, I find the extreme brevity of these declarations to raise more questions than they answer. For example, Miss Stringer herself confirms in her declaration that she has lived continuously' in the subject building since July 2010 and that the property is 'completely independent' from the main dwelling. However, she does not state that it has been completely independent for the whole of that time.
12. Nor does she confirm that it has been her sole place of residence since 2010 to the extent that she has not been reliant on facilities within the farmhouse during that period. It is pertinent that the relevant test in law of a dwellinghouse is not only whether the building affords those who use it the facilities required for day to day private domestic existence⁴, but also how it has been used in practice⁵. Her mother's declaration is similarly brief and vague, as are those made by visitors to the farmhouse.
13. Moreover, it remains unclear to me how visitors to the main property might be in a position to vouch reliably for Miss Stringer's continuous independent residency in the outbuilding for the whole of the relevant period. None mentions ever visiting the building on the far side of the garden, indicates when they first or last visited the farmhouse or specifies the frequency of their visits. I do not suggest for a minute that these individuals have deliberately perjured themselves. Nonetheless, I am left to speculate whether their understanding is based on their own reliable first-hand observations or is merely based on the accounts of others. In this regard I am mindful that several declarations are worded almost identically, suggesting that they were perhaps drafted by someone other than the signatories.

⁴ This was established as the distinctive character of a dwellinghouse by the judgment in *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

⁵ The judgment in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886 established that even though a building might be fitted out for residential use the question to address was whether it had been actually used as a dwelling for a continuous period, apart from *de minimis* breaks.

14. Further questions arise when considering the close family relationship between the occupiers of the farmhouse and the outbuilding and the restricted nature of accommodation within the latter, particularly before it was extended. Indeed, it is not clear to me how it was even possible to use the building as a completely self-contained dwelling before it was enlarged in 2014, no pre-extension floor plan having been provided. It strikes me that the accommodation must then have been so cramped that whilst it would have afforded Miss Stringer some privacy, including a place to sleep, it is unlikely that she would have chosen to forego the relative comfort of her parents' house, to which she would have had ready access, for much of the time.
15. In the absence of cogent evidence to the contrary, it seems more likely that until at least late 2014 the building functioned in a manner akin to an annexe to the farmhouse. I do not doubt that it was used residentially by Miss Stringer, as claimed in the declarations before me, at least to an extent. However, I am not persuaded that such use was so independent as to amount to a self-contained dwelling throughout the relevant period, irrespective of whether all basic facilities necessary for such purposes had somehow been squeezed in. In summary, I find that the gaps in the evidence provided on the Appellant's behalf raise too many unanswered questions for the tests of precision and unambiguity inherent in *Gabbitas* to be met.
16. My concerns in that regard are underpinned by the observations of a neighbour, Mr Emsley, whose comments dated 8 May 2015 have been forwarded by the local planning authority. Tellingly, he reports that he has 'seen evidence of the building being used for residence, *initially on an irregular basis*, but later regularly' [my italicised emphasis]. I appreciate that Mr Emsley's statement is not sworn and that the Appellant refutes what he has to say. This leads me to attribute limited weight to it. Nonetheless, his perception does add a contradictory element to the evidence base before me and tallies with the conclusion I have reached by other means.
17. I conclude overall on the balance of probabilities that the Appellant has failed to meet the burden of proof. I therefore find, in the absence of cogent evidence to the contrary, that the use of the subject building as a single dwellinghouse was not lawful at the time of the application and that, accordingly, a LDC should not be granted.

Conclusion

18. 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

19. The appeal is dismissed.

Alan Woolnough

INSPECTOR