

Appeal Decision

Site visit made on 24 November 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 11 January 2017

Appeal Ref: APP/T3725/X/16/3147317

Wyken Field, High Cross Lane, Rowington, Warwick CV35 7BE

- 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 David Griffin against the decision of Warwick District Council.
 - The application Ref W/15/1561, dated 15 September 2015, was refused by notice dated 2 December 2015.
 - The application was made under section 191(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 described as 'the use of the existing building on the site (a former field shelter) as a single dwelling house (Use Class C3(a)).'
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Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below.

Procedural Matters

2. The application form gives the site address as 'Shrewley' whereas it is described in the appeal form as 'Rowington'. Whilst I am satisfied that both refer to the appeal site, I have used that shown on the appeal form and in the Council's decision notice for the purposes of this Decision.

Preliminary Matters and Background

3. Following the submission of this appeal, an LDC application was made to the Council for the use of the site for residential purposes¹. On 1 August 2016, the Council granted an LDC for the use of the existing timber structure for residential purposes for a period in excess of 10 years in association with Wyken Field Market Garden.
4. In coming to its decision, the Council concluded that, on the balance of probability, the building has been occupied for residential purposes for at least 10 years. However, the Council maintains that the building does not have the physical attributes of a single dwelling house and that no reasonable person would identify it as such; consequently, it does not qualify for 'dwelling house' status.

¹ Application Ref W/16/0889 refers.

Main Issue

5. Against this background, the main issue is whether the building is a single dwelling house.

Reasons

6. Access to the building is via a gated access track which enters the western corner of the field, from which the approach is gained over grass via a worn pathway. I saw that parts of the field are being used for growing fruit and vegetables in association with the appellant's market garden business.
7. The building is of timber construction with a corrugated sheet roof. There are window openings and a door to one elevation. The roof, walls and floor are insulated. Inside is a single room; it has hot and cold running water, electricity via solar panels and a generator and heating provided by a wood burning stove. I saw that there is a sink, a portable gas stove (together with the wood burner) for cooking, an area for food preparation and food storage, a table and chairs at which to sit and eat, an extensive library and a place for hanging clothes.
8. The Council contends that the structure lacks the physical attributes and facilities of a dwelling house. In particular, it noted that the appellant slept on the floor. It is also evident that the building does not have a conventional toilet. Instead the appellant has chosen to have a composting toilet in the field away from the building.
9. By granting the LDC in 2016 the Council has accepted that the building has a lawful residential use. In addition, enforcement action may not be taken where there has been a breach of planning control consisting of a change of use of any building to use as a single dwelling house after the end of the period of four years from the date on which the operations were substantially completed².
10. I have been referred to the now revoked Circular 10/97 '*Enforcing Planning Control*' and several High Court decisions in relation to the criteria for determining use as a single dwelling house. Of particular note is the judgement in *Gravesham BC v Secretary of State & O'Brien [1984]*, which establishes the principle that the distinctive characteristics of a dwelling house is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
11. The building in the Gravesham case also had no bathroom or WC. The Judge held that the absence of a bathroom or inside toilet does not necessarily prevent the building which is used for residential purposes being a dwelling house.
12. The Council has drawn my attention to *Grendon v First Secretary of State and Cotswold District Council [2006]* in which it was held that the physical attributes of a building are relevant to the issue of whether dwelling house status is obtained.
13. It is clear from the judgements before me that the absence of one element or 'usual' characteristic of a dwelling does not mean that it is not one. Rather, it

² Section 171B(2) of the 1990 Act.

is necessary to have regard to the appropriate degree in each case to the physical state of the building, its characteristics and use.

14. Externally, the building does not take the appearance of a conventional dwelling. I note the Council's contention that it retains the appearance of a field shelter. However, a building can be used as a single dwelling house even though it may not look like a dwelling from the outside.
15. It is evident that the building is weather tight. It has been well insulated and the room is warm by virtue of the wood burner providing heating. Although there is no mains electricity, the solar panels and generator provide limited electricity enough for lighting. It has mains water supply which meets the needs of the appellant for the purposes of washing, cooking and drinking.
16. The cooking and food storage facilities, albeit modest, are adequate insofar as they enable the appellant to prepare food in the most simple and straightforward way as and when required. There is space for eating. Whilst I observed that there is a fridge / freezer kept in a separate building, it does not seem to me that the appellant is dependent on this for day-to-day living, albeit there is space to move it inside the appeal building should he wish to do so.
17. I note the judgement in the Gravesham case that the presence of a bed is not a pre-requisite of a 'dwelling'. In the appeal building, the room is not so small as to be unable to accommodate a bed, should the appellant wish it. That he chooses to sleep on the floor does not therefore alter my conclusion that the building provides for a place to sleep to suit the appellant's requirements.
18. Although there is no internal toilet or bathroom, the appellant chooses to use an outside composting toilet located elsewhere in the field, which he states accords with his principles of living in a sustainable manner with minimal impact on the environment.
19. I do not dispute that the building may not be akin to a modern dwelling in which most people would reside and that the living conditions are those which few would choose to endure. However, that is a value judgement. It includes many of the main elements and characteristics of a dwelling house, including facilities and space to sleep, cook and eat, and an area to which to retire. As a matter of fact and degree, the building allows for day-to-day private domestic existence and has been adapted for residential purposes containing the facilities associated with use as a dwelling house.
20. I consider that these facts differ significantly from the Grendon case cited by the Council, where the property did not have running water or a toilet, only a recent electricity connection and its southern end was open to the elements.

Conclusion

21. For these reasons, I conclude that the appellant has been occupying the building as a single dwelling house for a continuous period of more than 4 years prior to the date of the LDC application and so as to be immune from enforcement action.
22. The Council's decision to refuse to grant a LDC was not well-founded. The appeal should succeed and I will exercise accordingly the powers transferred to me under s195(2) of the 1990 Act as amended.

Melissa Hall

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 September 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building has been occupied as a single dwelling house for a continuous period of more than 4 years.

Signed

Melissa Hall

Inspector

Date **11 January 2017**

Reference: APP/T3725/X/16/3147317

First Schedule

The use of the existing building on the site (a former field shelter) as a single dwelling house (Use Class C3(a)).

Second Schedule

Wyken Field, High Cross Lane, Rowington, Warwick CV35 7BE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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 effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate. Date: 11.01.2017

By Melissa Hall

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Scale: NTS

