



Appeal Decision

Site visit made on 10 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 12 January 2017

Appeal Ref: APP/J1860/X/16/3156930 - Land at OS7321 6504, Kingswood, Standford Bridge, Worcestershire WR6 6RJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] 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 Mrs Barbara Mumford against the decision of Malvern Hills District Council.
 - The application [Ref 15/01616/CLE], dated 13 November 2015, was refused by notice dated 11 July 2016.
 - The application was made under section 191(1)(a) of the Act.
 - The development for which an LDC was sought is: "Holiday chalet".
-

Decision

1. The appeal is dismissed.

Procedural matters

2. Section 7 of the application form indicates that the LDC is being sought on the basis of an existing use and says the use is within use class "C3", which is use as a dwellinghouse. Section 10 of the application form says that the use began on "31/01/1934". Section 9 of the application form asks: *"Please state why a LDC should be granted"*, to which the answer: *"Holiday chalet has been in use since 1934"* is given. Whilst the cross in the box in section 9 appears to signal that the application was made on the basis that use began more than 10 years before the date of application, it is clear from the application form in the round and all other material before me that the Appellant's primary contention is that she seeks confirmation that use of the building as a dwellinghouse commenced in 1934. This dictates my approach to the main issue in this appeal.
3. Section 57(1) of the Act provides that planning permission is required for the carrying out of any development of land, but subsection 7 says this has effect subject to Schedule 4, which makes special provision about the use of land on 1 July 1948 ["the appointed day"]. If the use commenced before the appointed day it is lawful if it has continued without abandonment or extinguishment.
4. There has been reference to Circular 10/97, but this is no longer extant and has been revoked and replaced by the Planning Practice Guidance ["the Guidance"]. However I hope it is fair to say that the relevant evidential tests have not changed in substance. The Guidance advises that the applicant is responsible for providing sufficient information to support an application for a LDC. It says: *"...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify*

the grant of a certificate on the balance of probability”¹ [my emphasis]. The Guidance also says: “Without sufficient or precise information, a local planning authority may be justified in refusing a certificate”². Those sentiments apply equally to an Inspector at appeal stage.

Main issue

5. The onus of proof falls on the Appellant to show on the balance of probability that the use of the building as a dwellinghouse subsisted on the appointed day and has continued without abandonment or extinguishment.

Reasons

6. The Appellant’s statutory declaration dated 3 July 2015 says that she was born in 1951 and it must follow that she has no personal knowledge of what took place on the appointed day. I appreciate that the contents of her statutory declaration might be informed by what she has been told and/or established from other sources. However to the extent that it purports to set down as fact what transpired in the 1930s I am only able to attach it very limited weight. To the extent the “General Notes” say in 1940 her father would stay: “*a few nights at a time*”, I take the same view, underlined by the fact the notes are unsworn.
7. The Appellant’s statutory declaration says that soon after the land was bought by her grandfather in 1933 he erected a wooden chalet: “*...and furnished it with a bed, table, tram seats and a washstand, to enable them to stay overnight*”. First I am unclear who “them” are because up to that point the only reference in the statutory declaration is to her grandfather. However the main point I take from this statement, even if I accept it at face value, is that there is no reference to, amongst other things, a kitchen, bathroom or water supply.
8. The statutory declaration of Ann Seddon dated 12 May 2015 says that she was born on 10 July 1939 in Sutton Coldfield and it must follow that she has no knowledge of the use of the land in January 1934. She asserts that she and her family would stay in the chalet overnight to escape wartime bombing. I do not wish to cast doubt on that statement as a matter of fact, but Ann Seddon would have been very young when wartime bombing was taking place; perhaps at most 3 years old. I certainly have no recollections of when I was that age. I accept that such extraordinary events might have left more vivid memories, but I still have to question whether this aspect of her statement derives from her own recollection or what she was told, when she was older, had happened.
9. Ann Seddon’s statutory declaration says: “*The chalet contained a double bed, two reversible tram seats, a gateleg table, a wash stand, a cane fly swatter, some blackened saucepans that were used for cooking over an open fire, crockery and cutlery and for some reason a turtle shell*” [my emphasis]. No date is given as to when the chalet is said to have had these features and so it is ambiguous whether it had these facilities on the appointed day. However, of those who have given sworn testimony, Ann Seddon is the only person who could have had first-hand experience of the facilities within the building on or around the appointed day. For this reason I attach this list considerable weight.
10. Taking account of my inspection of the building, which revealed no fireplace and no chimney, it would appear that if cooking took place on an open fire that

¹ Source of quote: paragraph ID: 17c-006-20140306.

² Source of quote: paragraph ID: 17c-005-20140306.

it must have been conducted outside of the building. Whilst I acknowledge that Ann Seddon's statutory declaration says that upon arrival the first job was to get a fire going, the objective was to: "...*make a cup of tea*", distinct from, by way of example, heating the building. There is nothing to lead me to find there was a fireplace in the building. Although the "*General Notes*" refer to a "*small stove*" and the Appellant's email dated 4 February 2016 refers to "*a small gas cooker*", the fact that Ann Seddon's statutory declaration sets out such a detailed list, including a cane fly swatter, but does not identify a stove or a cooker leads me to attach extremely limited weight to the Appellant's unsworn statements to this effect given that she was born after the appointed day. I find no clear evidence of a source of heat or a method of cooking in the building on the appointed day. The Appellant's submission in this regard is imprecise and directly conflicts with the statutory declaration of Ann Seddon.

11. The site plan shows the chalet edged red and the rest of the land edged blue. It follows that the LDC is sought only for the use of the building and that is borne out by the reference to "C3" on the application form. I acknowledge that the concept of the planning unit is relevant here, but the area edged blue is a substantial, broadly rectangular, area, indicated to be 105 m [or 342 ft] in one direction and around half that distance in the other direction. It extends to around 1.28 acres³ and is part of a more extensive area of woodland. My site inspection revealed a big difference in topography within the area edged blue.
12. There is no evidence that would lead me to conclude that the area of woodland forms the curtilage of the building or that there is some smaller area of land that exclusively serves the building in some necessary or useful manner. Thus I consider that, on the balance of probability, cooking over an open fire took place outside the building within an area of land that was unrelated to the building. The land might well have been in the same ownership, but this does not lead me to conclude that it comprised the curtilage of the building.
13. Ann Seddon's statutory declaration says her grandfather found water near the gate but says he died before a well was sunk and there is no evidence that a well has ever been sunk. My inspection confirmed that there is no well on the land now. In this respect the statement of Mike Page is material and whilst it is not sworn I attach it moderate weight. It says: "*The Chalet was thus extremely self-sufficient with the exception of water which was obtained from Mr Jones the local farmer who in return was allowed to graze his sheep on the land*".
14. Mr Page's statement is highly material for 2 reasons. Firstly it confirms that there was no water supply and it follows that there was no conventional toilet. Indeed it is noticeable that none of the evidence before me broaches this topic. At one level I can understand why, but in an application of this nature, where the onus of proof falls on the Appellant to show that the use of the building subsisted on the appointed day, it is unfortunately necessary to do so.
15. The second significant point is that this is evidence that the land, despite the fact that it is now woodland, was in agricultural use for the grazing of livestock. This confirms that the land cannot be considered to have been the curtilage of the building. Instead the building appears to have sat within an area of pastoral land that was used for the grazing of livestock, albeit that on occasions an open fire was lit when the building was occupied. If the use for fires was material

³ As stated in the assent dated 25 February 1941.

- that might mean, at its highest, that the land might have been in a mixed use.
16. The reference to use class C3 on the application form confirms that the Appellant considers that this is a dwellinghouse, albeit one that is said to have been used by persons on holiday. Whether escaping wartime bombing would quite fall into the category of a holiday is a moot point. Leaving that aside, the term dwellinghouse is not defined in the Act, but case law has held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day private domestic existence.
 17. As a matter of fact and degree the evidence does not show that the chalet had these facilities: there is no evidence before me that on the appointed day the building had the attributes of a dwellinghouse. Amongst other things it had no kitchen, no means of cooking, no water supply, no bathroom and no means of heating. Although I have no reason to doubt, based on the sworn testimony, that the building has been used for the purpose of sleeping overnight, this does not lead me to find that it was a dwellinghouse. Instead the use to which the building has been put appears to have been akin to camping or some other form of crude residential use that was short of being use as a dwellinghouse.
 18. On the main issue I conclude that the Appellant has not discharged the onus of proof to demonstrate on the balance of probability that the building was in use as a dwellinghouse on the appointed day.

Other matters

19. In reaching this conclusion I have taken account of all the submitted evidence. The statutory declaration of Ann Seddon says that she moved to the south of England in 1965 and whilst she visited the chalet when she was in the area to visit friends, her friends moved to Devon before 1990. The strong impression is that Ann Seddon has not even visited the chalet since: "...*the late 1980's*".
20. The statutory declaration of Michael Page, apart from exhibiting a letter from Mr & Mrs Carmichael and the statutory declaration of Ann Seddon, essentially deals with the history of the property in terms of land registry, conveyance and the assent dated 25 February 1941. However these documents shed no light on the use of the building. Mr Page's statutory declaration merely says that his "*Grandfather made frequent visits to the chalet*", which I have no reason to dispute but it does not demonstrate that it was used as a dwelling. The same comment applies to Mr Page's claim to have visited the property for the last 60 years. Although paragraph 10 of his statutory declaration relates to the proposed use by family and friends, this statement has no bearing on this type of appeal and any LDC could not be restricted in this manner, e.g. by condition.
21. The Appellant's statutory declaration says she has been visiting the chalet for over 60 years, but says that her father passed away in 1988 and admits visits to the property became less frequent. It continues: "...*the property was not abandoned as my brother would visit to maintain the chalet*". However Mr Page's statutory declaration makes no claim that he has ever stayed overnight in the building and visits to maintain the building might not be the same thing. Although Mr Page's notes [for his solicitor] say the family would visit in the 1950s, 1960s and 1970s and would: "...*set up home for the day or longer*" there is no elaboration. In any event this claim is not sworn and because it is not repeated in his statutory declaration I attach it limited weight.

22. The letter from Mr & Mrs Carmichael says they have lived in the area since 1982 and refers to people having visited the building particularly during the summers and: "*sometimes staying for a few days*". The letter is not sworn and it is unclear how they knew that people were staying in the chalet as opposed to elsewhere on the land. The Appellant's notes say in: "...recent years... [we] have used our motorhome as accommodation...". An email to the Council dated 8 June 2016 also says she has taken her: "*mobile home to the site*" and it is unclear if this is the same vehicle. On this basis even the Appellant does not appear to claim that she has stayed overnight in the building in recent years.
23. Mr & Mrs Carmichael's letter refers to having visited the building after snow and/or stormy weather to ensure that it remains secure and has not been vandalised. However, whilst I have no reason to doubt these claims, they do not assist in demonstrating the use of the building. Indeed the very fact that a friend and neighbour had to regularly inspect the building tends to confirm that it has not been used for long periods each year. Although their letter refers to an office that obtained a retrospective planning permission and to a building being permitted as a swimming pool, this has no bearing on my consideration of this appeal, which is not concerned with the merits of the development. In the same vein the Appellant has referred to the construction of a lambing shed, a car park and a mobile home, but none of this is relevant to this application.
24. Mr Carmichael appears to have written a separate letter, dated 24 February 2014, which says "*They would visit quite frequently, spending long weekends*". The sentence before that refers to Barbara and Michael, the sentence after to Barbara and Monty, and so it is ambiguous who 'they' are and it is unclear whether 'they' stayed in the building, the motorhome or a mobile home. The letter also says he sought to persuade Barbara and Michael in the late 1990s to make "*The Shack*" a little more habitable with "*enhanced facilities*". I assume that 'The Shack' is the building subject of this appeal. This might suggest that enhanced facilities were added to the building within perhaps the last 20 years.
25. At the date of my site inspection the building had: a potty toilet, a washbasin, a generator, 2 small gas burners, a large water bottle, a table and 4 chairs, a bed, a step ladder and 2 mirrors. These features might afford to those who use the building the facilities required for day to day private domestic existence, although the absence of a water supply remains a material consideration. However Mr Carmichael's letter might suggest that some of these features have been added to the building recently. Even if that might be wrong, the evidence is ambiguous as to when all of these facilities were established.
26. Section 171B (2) of the Act says: "*Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*". So whilst the reason for refusal refers to 10-years, albeit perhaps reflective of the manner in which the application was submitted, I consider that period to be incorrect. On the appointed day the evidence suggests that the building was in use for something less than a dwellinghouse. Accordingly it is conceivable that there might have been a change of use to a dwellinghouse at a later date.
27. However, whilst I have considered the possibility, it is evident from a number of points that I have discussed that this application has not been advanced on

this basis. Amongst other things it appears to be common ground that any use of the chalet has not been continuous at any stage. For reasons that are set out in the legal opinion that is exhibited to the Council's statement, in order to establish use as a dwellinghouse for the purpose of section 171B (2) of the Act, the use would need to be continuous during the relevant 4-year period. So, without prejudice to the Appellant's ability to make a fresh application, the evidence before me does not justify the grant of an LDC on this basis either.

28. I have taken account of the email from the Planning Officer dated 4 February 2016 which says: "...*this use could be lawful*". However that is not a definitive conclusion and is inconsistent with the ultimate decision of the Council. In any event the Appellant's replies to that email confirm, amongst other things, that: i) there are no services connected to the property; ii) water, cooking fuel and lighting were taken to the property; and iii) the "*holiday use*" claimed was from the mid 1930's until the 1980's. Those answers in themselves might well have led the Council to a contrary view. Accordingly, whilst I can understand why the Appellant's hopes were raised by the unguarded terms of the email neither it, nor the unhappy account of how the application was dealt with⁴, lead me to find that the Council's ultimate decision is wrong. Amongst other things whilst the Officer's report is said to have omissions and inaccuracies, I have focussed on the primary documents rather than that report in view of those concerns.

Conclusion

29. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC for a holiday chalet was well founded. The appeal fails and I shall exercise the powers transferred to me in section 195(3) of the Act.

Pete Drew
INSPECTOR

⁴ As set out in the grounds of appeal, with reference to a number of emails between the main parties.