
Appeal Decision

Site visit made on 4 July 2017

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

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

Decision date: 7 July 2017

Appeal Ref: APP/Q3305/X/16/3161891

Willowbrook Stables, Standerwick, Somerset BA11 2PZ

- 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 Mr James Griggs against the decision of Mendip District Council.
 - The application Ref 2016/0335/CLE, dated 1 December 2015, was refused by notice dated 16 September 2016.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is: "Day room and garage building being used as dwelling" [Source: section 8 of the application form].
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Decision

1. The appeal is dismissed.

The approach to this type of appeal

2. The Planning Practice Guidance [‘the Guidance’] advises that the Applicant is responsible for providing sufficient information to support an application for an LDC. It says: *"In the case of applications for existing use, 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. However it also makes clear: *"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

3. The material date for the purpose of this appeal is 4-years prior to the date of the LDC application, which is 1 December 2011. On this basis the onus of proof falls on the Appellant to show that the use of the day room and garage building as a single dwelling began prior to the material date and continued.

Reasons

4. The submission made with the appeal comprises a 5-page written statement entitled *"Grounds of Appeal"*, together with attachments, including Nos 4a-c, which are expressly labelled as a *"File Copy"* of 3 statutory declarations. None of the copies of the statutory declarations with which I am provided are sworn. Whilst the grounds of appeal say that sworn copies were delivered by hand to the Council I have not been given copies of those versions as part of this

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

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

appeal³. Among other things, whilst all 3 statutory declarations refer to drawing No 'CLUG/1' none of the copies of the statutory declarations is annexed with a copy of that drawing. As I have noted there is an onus of proof on an Appellant and that extends to providing relevant documents to support the claims made. This means that I am only able to attach extremely limited weight to the unsworn copies of the statutory declarations with which I have been provided. My view as to weight is corroborated by the fact that they all refer to the "*Statutory Declarations Act 1835*" [sic] when there is no such Act⁴.

5. Notwithstanding the above I have considered the substantive content of the statutory declarations of Mr Griggs, Mrs Griggs and Mr Frisby. Mr Griggs says that he and his wife have lived in the property known as Willow Brook Stables⁵, said to be defined as the area edged red on drawing No 'CLUG/1', which has been submitted as a separate attachment, since 2006. This version of events is corroborated by his wife, in her statutory declaration, and to the extent that Mr Frisby describes Mr Griggs as a neighbour since 2006, the claim made by Mr Griggs is further corroborated by Mr Frisby's statutory declaration.
6. However this version of events appears to be contradicted by Mr Griggs own email to the Council dated 18 January 2008. There is no reason to doubt that the email was sent in response to a Planning Contravention Notice [PCN] that the Council sent to Mr Griggs at an address in Wiltshire, a point which, in itself, might suggest Mr Griggs was not living Somerset. The email is unambiguous in saying: "*...no person lives on the land*"⁶. It continues: "*...we were burgled whilst away from our home address in Chapmanslade*". There is no reason to doubt the address in Chapmanslade, Wiltshire is where the Council sent its PCN. The fact that this is a response to a PCN means it is appropriate to attach it significant weight because a false declaration in response to a PCN is a criminal offence⁷. Taken together this strongly suggests that the Appellant's version of events is less than probable. In the circumstances I entirely disagree with the claim in the grounds of appeal that the use of the Chapmanslade address is irrelevant.
7. Moreover, noting that the Appellant was given an opportunity to respond to this evidence at final comments stage but chose not to do so, I consider that the content of Mr Griggs email dated 18 January 2008 undermines the veracity of all 3 statutory declarations. This corroborates my view that they should be given extremely limited weight. So whilst I note that the Council says it has no evidence to contradict the claims in the statutory declarations as to the events between February and December 2009, I share its concerns as to the absence of any other evidence to substantiate the claims made in these circumstances.
8. Amongst other things, since it would appear from Mr Griggs email that he and his family's home was elsewhere in 2008 and his email does not mention a chalet being on the land at Willowbrook at that time⁸, there is no explanation for: i) where the chalet came from; ii) when Mr Griggs moved from Wiltshire to live in a chalet at Willowbrook; and iii) why, having carefully defined the term "*the property*", a sentence, which is common to all 3 statutory declarations,

³ Paragraph 1.6 of the Council's statement does not expressly say whether the copies of the statutory declarations to which it refers, which were doubtless before it when it made its decision, were sworn.

⁴ I anticipate that the references should be to the Statutory Declarations Act 1835, but this is imprecise and could undermine the statutory declarations, which are potentially important and far reaching legal documents.

⁵ This name, ie separate words Willow and Brook, is at slight variance with the address given on the application form, which I have correctly transcribed at the head of this decision, which is imprecise.

⁶ The title of the email includes the appeal site address and so, applying the balance of probability, this is the land to which Mr Griggs is referring in this quote.

⁷ See section 171D of the Act.

⁸ Despite the fact that the PCN allegation appears to have included reference to residential use.

refers to "*the site*", which is not a term that is defined or otherwise used. In reaching this view I note the planning permission [No 014879/003] granted on 15 May 2008. However this scheme appears to have been prospective rather than retrospective, there is no evidence as to when it was implemented and it permitted a mobile home and touring caravan, distinct from a "*chalet*"⁹.

9. Mr Griggs says in his statutory declaration that he and his wife have lived in the building marked yellow and green on drawing No 'CLUG/1' from December 2009 to the present day. This version of events is corroborated by his wife and Mr Frisby, in their respective statutory declarations. The first point is that no date is given in that month in any of the statutory declarations as to when the use is said to have commenced, which is imprecise. The date of 30 December 2009 is given in answer to question 10 of the application form, but this date is not corroborated by any evidence. For this reason I attach it extremely limited weight. The second point is that the term "*the present day*", which is common to all 3 statutory declarations, is not anywhere defined. There is a year of "*2015*" at the bottom of all 3 statutory declarations, but this is not a day. In this respect all 3 statutory declarations are both ambiguous and imprecise. Finally the grounds of appeal refer to the "*Griggs family*", which is ambiguous because it is unclear whether that is synonymous with Mr & Mrs Griggs.
10. There appears to be a number of sources of evidence to contradict this version of events. First is the fact that a planning application [No 2011/1084] was made in May 2011 for, amongst other things, the "*conversion of unauthorised building to 2 number day rooms*". I consider it more likely than not that a Planning Officer from the Council would have inspected the site and building to be converted prior to the grant of planning permission on 21 September 2011. Given the terms of the fourth condition, which says the dayroom "*...shall not be used as a separate dwellinghouse*", I find it improbable that such a condition would have been imposed if the building in question was in use as a separate dwelling house. It is appropriate to attach this factor moderate weight.
11. Second, the Council's enforcement records indicate that an Enforcement Officer met Mr & Mrs Griggs at the property, as defined, in February 2012 and appears to have established that although the dayroom had been temporarily used by a relation for sleeping that use had ceased. There is no reference to the garage, but this relation's occupation does not sit easily with the Appellant's claim to have occupied the building[s] continuously. Amongst other things it was agreed during my site inspection that the building has only one bedroom¹⁰. It has not been explained as to how a relation and Mr & Mrs Griggs slept in the building when there is only one bedroom. Moreover the Officer's response to the complainant says: "*I have visited the site and met with the owners and inspected the buildings and mobile home and found them to be being used in compliance with the most recent planning permission*". That can only be a reference to 2011/1084, including condition 4 that precludes use of the dayroom as a separate dwellinghouse. I attach this factor moderate weight.
12. Third is the Inspector's decision [Ref: APP/Q3305/A/12/2181430] dated 27 June 2013 following her inspection on 17 May 2013. Paragraph 3 of the decision records: "*The site is currently occupied by the appellant and her family*

⁹ I acknowledge that section 2 of the grounds of appeal describe it as a mobile home but that is not the term used in the statutory declarations. Since the grounds of appeal appear to have been written by the Appellant's Agent and are unsworn I attach them extremely limited weight in this appeal.

¹⁰ The completed table as part of the LDC application form says that the existing house is a 2-bed dwelling but in the light of the Appellant's agreement during the course of my site inspection, which was witnessed by the Planning Officer, this part of the application form appears to be incorrect which, in itself, is a source of imprecision.

on one pitch and her father and his family on the other pitch". It appears to be agreed that the reference to "*her father*" is to the Appellant. It is clear that the Inspector did visit on that day and this quote is plain on its face. I have no reason to doubt that was the Inspector's understanding based on her site visit. Again it is appropriate to attach this factor moderate weight.

13. In reaching this view I acknowledge that the Council says Mr Griggs showed the Inspector and the Planning Officer around the property, as defined, but that is not explicit from the decision and as I have no statutory declaration from the Planning Officer I attach that claim extremely limited weight. Conversely the grounds of appeal assert that this visit did not involve entering any of the buildings, but as it is unclear whether the Agent was in attendance on 17 May 2013 and the claim is not sworn I attach it extremely limited weight too.
14. On the main issue I conclude that the Appellant has failed to show on the balance of probability that the use of the day room and garage building as a single dwelling house began prior to the material date and has continued.

Other matters

15. During my site inspection I was shown the mobile home that lies to the rear of the day room and garage building. In common with the building, and indeed the rest of the plot, it was immaculate. However there is no reason to think that it is not available for residential occupation. Amongst other facilities the mobile home includes a kitchen/sitting area, a bathroom, a double bedroom and a second smaller bedroom within which there was a fold up bed. I express no view on whether it was actually being lived in, but there is no doubt that it is capable of being lived in. Amongst other things I remarked on the vacuum cleaner that had been left in the passage that links the kitchen/sitting area and the bedrooms and bathroom. In other words, the mobile home appeared to have been used for some purpose in the recent past and did not, by way of contrast, merely appear to be stored on the site. At no stage has it been explained what use has been made of the mobile home since the material date.
16. Noting my rationale for attaching extremely limited weight to Mr Frisby's statutory declaration, I consider that the terminology he uses in paragraph 6 thereof to say that he has "*regularly visited*" is imprecise. By way of analogy I might regularly visit my friend at his home once a year but I could not be certain whether he was continuously residing there for the remaining 364 days. I am not making a pedantic point. It is part of a wider criticism of the lax drafting that is evident throughout these unsworn and inadequate declarations.

Conclusion

17. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC for the use of the day room and garage building at Willowbrook Stables, Standerwick as a dwelling, 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