



Appeal Decision

Hearing Held on 11 July 2017

Site visit made on 11 July 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 17 July 2017

Appeal Ref: APP/Q1153/X/17/3167854

Coach House, 3 Watts Road, Tavistock, PL19 8LF

- 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 B Gurney against the decision of West Devon Borough Council.
 - The application Ref 3089/15/CLE, dated 23 December 2015, was refused by notice dated 2 March 2016.
 - The application was made under section 191(1)(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 the use of a former outbuilding/coach house as an independent dwelling.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Preliminary matters

2. An application for costs was made by the Council against the appellant and this is the subject of a separate decision.
3. For the avoidance of doubt, I should explain that the planning merits of the use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
4. The question of lawfulness is to be considered at the date of the application.
5. The main parties submitted signed Statements of Common Ground (SOCG) and an Agreed Legal Position at the hearing.

The Site and Relevant Planning History

6. The appeal site is to the rear of 3 Watts Road which is a large semi-detached house that has been converted into flats. The converted Coach House has the appearance of a separate dwelling set within its own curtilage separated by a

boundary wall and gate from the main building. It has a shared vehicular access to the side of No 3.

7. The full planning history is set out in the SoCG. The most relevant to this appeal is permission 7119/2005/TAV for the conversion of the coach house to form ancillary residential accommodation subject to various conditions including condition 2 restricting occupation ancillary to the residential use of the dwelling known as Flat 2 in the main building. The premises were converted but on 3 March 2006, the Council's enforcement officer notified the appellant that the conversion was unauthorised as it had not been converted in accordance with the approved plans.
8. There were a number of applications refused and appeals dismissed for the change of use of the Coach House to one dwelling and the removal of condition 2. Two applications were refused for a certificate of lawfulness for the use of the Coach House as a separate dwelling, the second of which contained additional evidence and is the subject of this appeal.

Reasons

9. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.
10. Notwithstanding the planning history of the site and the understanding of the main parties and neighbouring residents that Condition 2 restricting occupancy remained enforceable, the Council and the appellant, having reviewed the legal position, agree that as the coach house was not converted in accordance with the plans approved under permission 7119/2005/TAV, the use of the premises is unauthorised. They further agree that conditions attached to that permission are of no effect. I agree with this interpretation of the validity of the permission and its conditions.
11. The parties also agree that the first use of the premises in February 2006 was as a self-contained unit of accommodation not used ancillary to Flat 2. The Coach House was let separately to Flat 2 to McCabe between 18 February and 17 August 2006. However, the difference between the parties is whether there has been use of the premises as a separate dwelling for a continuous period of four years between February 2006 and 24 December 2015.
12. The appellant must show a continuous use for at least 4 years and at the start of the material period the use has to be 'affirmatively established'¹. It is necessary to establish whether there was any period in the 4 years when the building was not physically occupied, even though available for occupation, when the Council could not have taken enforcement action against the use². It is also necessary to determine whether any periods of non-occupation were *de minimis*. Examples of acts of furtherance of the breach during periods of non-occupation are advertising the availability of the premises for occupation and refurbishment in preparation for occupation³.
13. The Council's case is based on the appellant not having produced documentary evidence to establish the use of the premises for four periods: (a) 17 August – 12 October 2006; (b) December 2009 – June 2010; (c) October 2012 –

¹ Swale BC v FSS & Lee [2005] EWCA Civ 1568[2006] JPL

² Thurrock BC v SSETR & Holding (CA) [2002] J 1080

³ Basingstoke and Deane BC v SSCLG & Stockdale [2009] EWHC 1012(Admin)

November 2012; and, (d) November 2012 – 24 December 2015⁴. These dates were amended from those originally understood by the Council in view of the submission of documents 3 and 4 at the start of the hearing. For periods (b) and (d), the appellant states that the premises were used by himself, family and friends.

14. In respect of the first vacant period between 17 August 2006 and 12 October 2006, from Appendix EJFP6 of the appellant's statement, it is evident that the property was being marketed and the Council acknowledge that had they been on the site they would have observed unoccupied premises but had they been aware that it was being marketed it would have been possible to take enforcement action.
15. Mr M Gilmore resided in the Coach House from 3 November 2008 and sub-let the flat but vacated the premises on 2 December 2009 (Document 3). The premises remained vacant until June 2010, although it is the date of 18 February 2010 which is significant in respect of establishing four years continuous use. Document 5 is a copy of an email from Sarah Heaps to Kate Williams of GB Property Lettings dated 2 November 2009 which attaches a signed copy of the letting terms and conditions in connection with the re-marketing of Flat 2 and the Coach House.
16. The Council at the hearing considered that it would be reasonable to assume that GB Lettings tried to let the premises for the period from 2 December 2009 to 18 February 2010 taking into account the Christmas period and difficulties associated with letting an unusual property comprising a Flat and a Coach House. The Council acknowledged that had they been provided with Document 5 at the time of the application for the LDC or with the appeal documentation they would have reached a different view having been satisfied on the balance of probabilities that an LDC should have been issued.
17. In the light of established case law and the new evidence submitted in Documents 3, 4 and 5, I am satisfied that the use has continued for a period of four years commencing on 18 February 2006 and is consequently immune from enforcement action.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the Coach House as a separate dwelling in excess of four years was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

P N Jarratt

Inspector

⁴ Table of occupation , pp 5,6, LPA Statement

<https://www.gov.uk/planning-inspectorate>

APPEARANCES

FOR THE APPELLANT:

Ed Persse MRTPI, EJFP Planning
Barry Gurney, appellant
Sarah Heaps, appellant's partner

FOR THE LOCAL PLANNING AUTHORITY:

Graham Gover, Solicitor
Anna Henderson-Smith MRTPI
Matt Jones MRTPI

INTERESTED PERSONS:

Jeff Moody, District Councillor
Anke Grosse, local resident
Mrs F M Hodgson, local resident
Alain Hodgson, local resident

DOCUMENTS

- 1 Signed Statement of Common Ground
- 2 Signed Statement of Agreed Legal Position
- 3 Letter dated 8 May 2017 from M Gilmore to the Borough Council confirming occupation of the Coach House and Flat 2 from 3 November 2008 to 2 December 2009 (appellant)
- 4 Undated letter from C McGowan to B Gurney giving notice to terminate the tenancy agreement on 21 October 2012 and copy of response of 5 November 2012 (appellant)
- 5 Email dated 2 November 2009 from Sarah Heaps to GB Property Lettings (appellant)
- 6 Agreed plan indicating curtilage of the Coach House



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 December 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the Coach House as a separate dwelling in excess of four years has been demonstrated on the balance of probability and is immune from enforcement action through the passage of time.

Signed

P N Jarratt

Inspector

Date 17 July 2017

Reference: APP/Q1153/X/17/3167854

First Schedule

The use of a former outbuilding/coach house as an independent dwelling.

Second Schedule

Land at Coach House, 3 Watts Road, Tavistock, PL19 8LF

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 17 July 2017

by **P N Jarratt BA DipTP MRTPI**

Land at: Coach House, 3 Watts Road, Tavistock, PL19 8LF

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Scale: not to scale

