



Appeal Decision

Site visit made on 10 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: 17 July 2017

Appeal Ref: APP/J9497/X/17/3166422

The Apple Sheds, Bovey Tracey TQ13 9LL

- 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 Kristofer Allerfeldt against the decision of Dartmoor National Park Authority [hereinafter "the NPA"].
- The application Ref 0572/16, dated 19 October 2016, was refused by notice dated 14 December 2016.
- The application was made under section 191(1)(a) of the Act.
- The use for which an LDC is sought is: "The building, its curtilage and associated access are used for workshops (B2) and storage and distribution (B8) with access at all hours of the day" [Source: section 8 of the application form].

Decision

1. The appeal is dismissed.

Procedural matters

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.
3. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [“the 2015 Order”] governs LDC applications. Article 39 (2) of the 2015 Order says: *"An application to which paragraph (1) applies must be accompanied by—(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North"*. The only plan explicitly submitted with the application, and this appeal, that obviously fulfils these criteria is the "Promap" that is found at Appendix 1 to the statutory declaration of Kristofer Allerfeldt dated 17 October 2016³.
4. The NPA's decision notice refers, in the second schedule thereto, to an area: *"...shown edged red on the plan appended to this Certificate"*. On the papers

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

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

³ For completeness the same plan is found at Appendix 1 to the statutory declaration of Kristofer Allerfeldt dated 15 April 2016 and whilst that is before me it might not have been resubmitted with the application that is the subject of this appeal, hence why I believe that what I say above is technically correct.

there was no explanation for where this plan had come from, although the base plan might be a version of the "*Promap*". However at the site inspection the Appellant's Agent confirmed that she had submitted this plan to the NPA and that the area edged red was considered to be indicative of the curtilage of the building. I hope it is fair to say that it was agreed at the site inspection that the area edged red is not defined on the ground by a physical boundary. The area edged red was used at the time of my site inspection for, amongst other things, car parking, the siting of a container within which wood was stored, the stationing of an old shredder or chipper and various piles of lengths of wood.

5. A building, singular for this purpose, is labelled "*The Apple Sheds*" on the base map of both plans and the vehicular access between the building and the road is evident. There is no other annotation on either plan that has been submitted as part of the application, such as an area identified "A" or "B", although it was indicated during my inspection that the former, "A", is that part of "*The Apple Sheds*" nearest the road. I propose to deal with the appeal on this basis.
6. The final sentence in section H of the appeal form contains a: "...request that Dartmoor National Park Authority repay all reasonable costs incurred by my client in having submitted this appeal". Whilst I have considered whether this is sufficient to constitute an application for costs, noting that the Guidance makes clear that parties in appeals normally meet their own expenses⁴, in the absence of any reasons having been given I do not propose to treat this as being an application for costs. Even if I am wrong and this was intended to be an application for costs in the absence of reasons it is inevitable that any such application would have failed.

Main issue

7. The material date for the purpose of this appeal is 10-years prior to the date of the LDC application⁵, which is 19 October 2006. The onus of proof falls on the Appellant to show the use began prior to the material date and has continued.

Reasons

8. In my view, even before I turn to consider the NPA's specific concerns, there are a number of reasons why this appeal must fail. The Guidance is clear that a submission of this nature needs to be precise and unambiguous, and yet the plans that appear to have accompanied it, as described above, do not meet these tests. It is entirely unclear why an area edged red is shown on what is acknowledged to be an application plan, which is not identified on the plan that is appended to the statutory declaration. No written justification has been given for the extent of the area edged red at any stage. The existence of different areas on the respective application plans inevitably leads to ambiguity.
9. The statutory declaration refers to "*the building and its curtilage*" but does not explicitly identify the building by reference to an area identified on either plan. The logic appears to be that there is only one building identified on the base plan within the areas edged blue/red on the respective plans. However I consider there is scope for ambiguity given the reference to "*The Apple Sheds*" [plural] and the reference to areas "A" and "B" in the statutory declaration.
10. My concerns are even greater with regard to the building's curtilage, especially when the extent of the curtilage is not clearly defined on the ground by a means of enclosure. The statutory declaration makes no reference to an area

⁴ Paragraph ID: 16-028-20140306.

⁵ Not the date on which it is considered by the NPA, as per Memorandum at Appendix 10 to the NPA's statement.

edged red and, as I have said, I was unclear on my reading of the papers that the plan on which an area is edged red was even a submitted plan⁶. On its face the strong inference appears to be that the curtilage is the area edged blue on the plan attached to the statutory declaration. Paragraph 1 identifies the "*subject property*" using that term and paragraph 3 does not distinguish between "*the property, the building and its curtilage*". Paragraph 4 merely asserts what the "*building curtilage has been used for*", but if that area is not that shown edged blue on the plan at Appendix 1 to the statutory declaration then it is unclear to which area Mr Allerfeldt refers. In an LDC application of this nature it would be inappropriate for me to make assumptions about what Mr Allerfeldt understood by the term curtilage in his statutory declaration.

11. Focussing on the concerns of the NPA, it originally⁷ flagged concerns about whether this was one building or multiple buildings. However that application⁸ is not the subject of this appeal. In response to the application subject of this appeal it says it now appears the building [singular] is at times "*informally*"⁹ divided into two. However at the time of my site inspection I was only able to gain access to unit "B" because unit "A" was locked and so this suggests that these areas are physically separate, albeit served off a communal access.
12. In functional terms, whilst the Appellant's brother appears to have occupied both units up to July 2012 for timber cutting and distribution, said to be within use classes B2 and B8, after that date unit "B" appears to have been used for a functionally different use as a carpenter and joiner, said to be in use class B2. The statutory declaration is clear that the Appellant's brother used "*the entire building*" which, in context, must be taken to mean areas "A" and "B". On this basis it would appear that physical and functional separation took place on a date in or after July 2012, which is plainly after the material date as defined.
13. Whilst the statutory declaration describes the period of use by the Appellant's brother as "*a short period*" the table embedded in the statutory declaration would suggest it was for almost 3-years from September 2009 – July 2012. In the context of the 10-year period with which an application of this nature is concerned, this not an inconsequential period of time. Although a change in the planning unit is not conclusive of their having been a material change in the use of the land, the fact that the building appears to have been physically subdivided into separate units well after the material date would appear to be material to any claim as to lawfulness. The Appellant's submission in relation to this matter is insufficiently precise and, amongst other things, I consider it is ambiguous what he means when he says the building is "*informally*" divided. If they are separate lockable units then they appear to be physically separate.
14. In terms of the actual use of units "A" and "B", whilst the present occupiers have been classified to be within use classes B2 and B8, the pattern over the preceding 10-year period has varied. By way of example in November 2014 the use of unit "A" is said to be exclusively B8, but the use of unit "B" is said to be exclusively B2. There are also various references to retailing. By way of example paragraph 3 of the statutory declaration says the entire building was used: "*for planking and storing local timber which he [the Appellant's brother] then sold from the site*"; the term "*the site*" is nowhere defined. It is said that

⁶ There appears to be no reference to it on the application form and I have not seen a covering letter.

⁷ Memorandum at Appendix 6 to the NPA's statement.

⁸ No 0272/16.

⁹ Original emphasis, see Memorandum at Appendix 10 to the NPA's statement, which in turn is taken from the statutory declaration dated 17 October 2016.

the current occupiers of unit "B" have an activity comprising "*on-site retail*" of timber and logs, but retail is not obviously ancillary to carpentry¹⁰. Indeed carpentry might be within use class B1 depending on, among other things, the extent to which the machinery might cause noise and disturbance¹¹.

15. For these reasons the onus of proof has not been discharged to show that "*The Apple Sheds*" have been used continuously for B2 and B8 uses since the material date. There has been no analysis to show why the uses that are claimed to have taken place within the respective areas of the single building that is evident on the base map of both submitted plans have been classified in this way. It has not been explained why any retail use that might have taken place is not material or is claimed, as appears to be implicit, to be an ancillary use. The statutory declaration is thus materially deficient and imprecise.
16. The NPA is also concerned about gaps between occupiers. It appears to be admitted that the entire building was unoccupied from July to September 2009, and that in respect of unit "B" this is part of a longer gap of approximately 8 months. The NPA fairly acknowledges that breaks in occupation might not stop the clock, but it says that the Applicant has not explained these gaps. I consider this problem has not been addressed at appeal stage. Whilst there might be an explanation, such as gaps between tenancies whilst marketing was taking place, the statutory declaration is silent in this respect. The NPA has referred to 4 instances where it says Inspectors¹² have found periods of less than 8 months was sufficient to break the continuity of the use. In this case the absence of any explanation for any of the gaps is reason to find that the use of "*The Apple Sheds*" has not been shown to be continuous.
17. In terms of the alleged use of the building's curtilage, this is also said to be within B2 and B8. Paragraph 4 of the statutory declaration says it has been used for: "*storage of timber and machinery and as an outdoor work space*". As I have already noted there was some evidence of some external storage, including within a container, at the time of my inspection. However the area edged red on the submitted plan is a large area and does not appear to all be in use by virtue of the fact that it contains a number of trees and bushes. The area also appears to be used for vehicle parking, which might properly be said to be ancillary to the use of "*The Apple Sheds*", but that is not referred to in the statutory declaration. Noting my earlier concern about the lack of definition of curtilage in the statutory declaration, even if I were to assume this should be read as relating to the area edged red on the submitted plan I would not be prepared to endorse the use of such a large area on the basis of one sentence. Among other things, noting the Appellant lives away from the site, it is unclear how he would have day to day knowledge of the extent to which such a large external area has been actively used for work space rather than mere storage.
18. The final element of the application, and now this appeal, is "*access at all hours of the day*". However there is no evidence, whether in the statutory declaration or otherwise, to support this contention. I acknowledge that there is no gate or barrier to prevent access at any time but that cannot be equated to it being shown that the land has been positively used in this manner. Moreover whilst it might be inferred that the land has been used at all hours of the day, the two

¹⁰ The name of the company is given as Black Dog Carpentry.

¹¹ This point was made in the Memorandum at Appendix 6 to the NPA's statement, but applies equally in relation to the application that is the subject of this appeal.

¹² At paragraph j. in section 5 of its statement, specifically points ii-v, inclusive. Whilst it might have been helpful for appeal references to be cited or copies of the appeal decisions to be produced, this evidence is not challenged.

are not necessarily the same thing. There is no information before me as to when the use of "*The Apple Sheds*" has taken place, either in terms of days of the week or by reference to the 24-hour clock. For these reasons I find that this element of the alleged use has simply not been made out.

19. I have no reason to doubt the Appellant's integrity and there is no reason in principle to require corroborative evidence, whether from tenants, other family members or neighbours. The absence of a paper trail by virtue of tenancies having been concluded by a series of gentleman's agreements is not fatal, although presumably there must be some basis for the dates given, whether by reason of rent receipts, tax records or otherwise. I have noted, and have no reason to doubt, the file note that appears to have been prepared following the meeting with the NPA on 27 September 2016¹³. I have also taken account of the letter dated 6 April 1965 from Messrs Rendells that comprises a valuation of land including "...an apple packing house" which adopting the balance of probability, noting the area of the site and its location "...fronting the Haytor Road", does relate to the appeal site. However none of this outweighs the concerns that I have identified with the submission subject of this appeal.
20. On the main issue I conclude that the Appellant has failed to show on the balance of probability that the use of the land for B2 and B8 use began prior to the material date and has continued.

Conclusion

21. For the above reasons, having regard to all other matters raised, I am satisfied that the NPA's refusal to grant an LDC for the use of the building at "*The Apple Sheds*", its curtilage and associated access for workshops (B2) and storage and distribution (B8) with access at all hours of the day, 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

¹³ I do however take issue with the claim that it is pedantic to take issue with whether it is one building or multiple units, for the reasons that I have articulated previously.