The Planning Inspectorate

Appeal Decision

Site visit made on 24 July 2017

by D H Brier BA MA MRTPI

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

Decision date: 14 August 2017

Appeal Ref: APP/D2510/X/17/3166638
Lower Stables, Keddington Grange, Grange Lane, Keddington, Louth Lincolnshire LN11 7HF

- 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 R Subberwal against the decision of East Lindsey District Council.
- The application Ref N/02/00911/16, dated 25 April 2016, was refused by notice dated 7 July 2016.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is 3 dwellings.

Decision

1. The appeal is dismissed.

Background

2. The appeal concerns a detached building that stands to the north of Keddington Grange. Planning permission was granted for change of use and alteration to existing stables /grooms quarters to provide dwelling in connection with mail order business in January 1988. Condition 2 restricted the occupancy of the dwelling to, "*in connection with the existing dwelling*". A subsequent planning permission permitted the occupancy of the dwelling without complying with the tied occupancy condition[1].

The LDC Application

3. According to Part 7 of the LDC application form, the certificate was sought for an existing use. The description of the use in section 8 refers to the appeal property having comprised 3 individual homes for over 15 years and that "*the three homes still exist*". The notice of refusal refers to two plans, a block plan and an "*as existed in 1994*" plan. The latter shows an "*end flat used for guests*" in the southern part of the building, while the northern part, beyond a storage area, is annotated "*two storey – upper storey 1 flat - lower storey 1 flat*". A projection in the north-east part of the building is labelled "*bike shed single storey*".

[1] Reference 439/94 - no indication of the date of this permission has been given.

4. A further plan submitted with appeal documents is headed "*in 2016*". This also shows the "*end flat used for guests*", but the northern part of the building, including where the "*bike shed*" was shown on the "*as existed in 1994*" plan, is now indicated as being sub-divided into individual flats, numbered 1 to 4. This is how the accommodation was configured when I inspected the site. I also noted that the "*bike shed single storey*" shown on the "*as existed in 1994*" plan is now a 2 storey structure. On the "*in 2016*" plan, it is labelled "*flat 4*".

5. Mindful of the provisions of section 191(1)(a) of the 1990 Act, which refers expressly to the "*existing use of buildings*", and having read that the appellant was engaged in the works which appear to have led to the present manner in which the living accommodation in the building is arranged in 2015-2016[2], I invited the parties to comment further on these matters. I have taken their respective responses into account.

6. The appellant has confirmed that the "*in 2016"* configuration of the building was the layout that was in place at the time of the LDC application. I accept that the accommodation labelled 'end flat' still remains as indicated on the "*as existed in 1994*" plan, but the part of the building where the 2 other flats are shown on that plan has now been subdivided into 3 flats. It may be the case that there are still 3 dwellings in the building, in that the living accommodation has been subsumed into the current arrangement, but the evidence points to this only having come about relatively recently.

7. I acknowledge that the Act is silent insofar as the layout of dwellings is concerned, but, as I see it, that is not the point. Having regard to what I have been advised, at the time the LDC application was made there were 4 flats in the northern part of the building. Moreover, where the 2 flats shown on the "*as existed in 1994*" plan were located, there are now 3 flats. To my mind, the works said to have taken place in 2015-2016 marked a new chapter in the history of the site. Even if the northern part of the building still contains living accommodation, the addition of a further flat here, plus the formation of flat 4, means that the accommodation is materially different from that said to have been in existence in 1994.

8. Besides the changed configuration of the living accommodation shown on the "*in 2016*" plan as compared with the "*as existed in 1994 plan*", the Council's contention that the northern part of the building is effectively brand new has not been challenged. Nor has a Building Inspector's note dated 3 June 2015[3] which refers to the 4 units and records that they "*have been rebuilt on the footprint of previous outbuilding/flats*." Indeed, an email from the appellant dated 20 July 2014 headed 'Keddington Stables'[4] refers to the collapse of the walls "*which led to the current more extensive rebuild process*". All this raises the distinct possibility that if the northern part of the building was demolished and replaced by 'new build' units, seemingly less than 4 years before the date of the LDC application, any use right that may have accrued here would have been extinguished.

9. In the light of the foregoing, I am not satisfied that it has been shown that the particular use for which the LDC was sought was in existence at the time the application was made. Accordingly, therefore, having regard to the provisions

[2] Appellant's Statement of Case paragraph 5.
[3] Appendix 11 to the Council's Statement.
[4] Ibid, appendix 12.

of section 191(1) (a), the appeal as a whole cannot succeed. However, mindful that the 'end flat' appears not to have been affected by the "*in 2016*" arrangement, and should my conclusion regarding section 191(1) (a) prove to be wrong, I will proceed to examine the merits of the rest of the appellant's case.

The Appeal

10. Setting aside my concern about section 191(1) (a), in order for the appeal to succeed it has to be shown that the use in question commenced more than 4 years before the date of the LDC application, that is 25 April 2012, and has continued actively throughout the subsequent 4 year period. The test for the evidence is the balance of probability, and the Courts have held that in a case such as this, the onus on proving it lies with the appellant.

11. In essence, the appeal is made on the premise that the 3 flats indicated on the "*as existed in 1994*" plan were present when the appellant's father bought the property in 1994-1995, and have been in continuous occupation. In support of this, accompanying the appellant's Statement of Case are a number of documents. These are: 2 tenancy agreements dated 4 June 2010 and 29 June 2010 which refer respectively to the 'Lower Stables, Keddington Grange', and the 'Upper Stables'; Council Tax bills for the same for 2015/2016, both dated 16 March 2015, another for the 'End Flat' for 2014/2015, dated 17 March 2015, and a further one for 2016/2017 dated 30 December 2016 which gives the address as 'Frey, Keddington Grange'; information from the Council Tax valuation list; a sales and marketing brochure for Keddington Grange; a valuation report dated 4 May 2011; and email correspondence between the appellant and a Mr C Jensen.

12. Further documents, said to have been submitted with the LDC application, are appended to the Council's statement. These are: 5 electricity bills referring to readings taken between 22 December 2005 and 16 December 2008; and a Council Tax Bill for the 'Lower' Stable for the period 1 April 2007 to 31 March 2008, dated 14 July 2008.

13. I have read that the sales particulars relate to the purchase of Keddington Grange in 1994-1995. Lot 2 refers to "*Secondary residence (formerly old stable block)..*". Exactly what is meant by this is not elaborated upon, but the reference to 'residence' is perhaps not surprising given the planning permission for a dwelling granted in 1987. There is nothing, however, in the sales particulars that points to the existence of 3 separate dwellings.

14. Moving forward, the electricity bill of December 2005 is addressed to 'The Occupier, The Stables' and has a handwritten annotation 'downstairs'. No indication of when this notation was added has been given, but although it might hint at other living accommodation elsewhere in the building, there is nothing in the document that shows this was the case. The second bill, dated 21 March 2006 is addressed to the appellant at 'Flat 1 NDP' – it contains no express mention of the appeal building. The next one, dated 8 July 2008, is addressed to Flat 2, Keddington Grange, whereas another, dated 14 July 2008 is again addressed to 'Flat 1 NDP'. The fifth bill, dated 18 December 2008 is addressed to the appellant at 'Lower Stables', as is the Council Tax bill for 2007-2008.

15. The different terminology in these documents makes it difficult to tell just which parts, if any, of the appeal building they refer to. And while the 2 bills from July 2008 suggest that there may have been more than one flat in the stable building, it is far from clear from these documents just what accommodation it contained.

16. The 2 tenancy agreements from 2010 are, on the face of it, consistent with the appellant's case. However, they only appear to refer to 2 units of accommodation and do not necessarily show that the accommodation referred to was actually occupied. Furthermore, as the agreements only cover 6 month periods, they offer little in the way of assistance insofar as the continuity of use is concerned.

17. In his email dated 8 July 2016 in response to one from the appellant on the same day referring to the 'Upper Stables', Mr Jensen states that he believed he moved into the property in around March 2010 and left in July 2013. I am mindful that Mr Jensen's name appears on one of the 2010 tenancy agreements, but as the appellant refers to him having been there "*for a while, and then left, and then came back*", this raises the possibility that the use may have been intermittent as opposed to continuous.

18. As the 2016 bill for the 'Lower Stables' contains an item "*50% Long Term Empty Premium 1.04.2015 to 31 03.2016*", this suggests that the use may not have been taking place here for an appreciable period. Moreover, while the Council Tax valuation list records that the 'end flat' was in Council Tax Band A, the word "*Deleted*" appears against the Upper and Lower Flats.

19. The valuation report of May 2011 describes the accommodation in the stable building in some detail. It refers to the building having been converted "*in accordance with the planning consent dated 7 January 1988 and 28 April 1994 to provide a dwelling*". It also notes that the stable conversion was sub-divided without planning permission into a ground and first floor flat. However, no indication of when this might have taken place is given. And, although reference is made to shorthold tenancies, no indication as to whether the flats were actually occupied at the time is given. In addition despite the detailed nature of the report, it contains no mention whatsoever of the 'end flat'. The earliest document appertaining to this is the Council Tax bill of March 2015.

20. Some of the documentary evidence is consistent with the appellant's claim. But, while it points to the existence of 2 flats before 25 April 2012, the evidence is very patchy and intermittent. For instance, there is nothing appertaining to the Lower Stables between May 2011 and March 2015. No other documents which might have helped to shed some light on the matter, such as electoral roll entries or rental receipt records, have been put forward

21. Looking at the evidence as a whole, it does not paint a particularly clear picture of either the use in question, or whether it was continuous. Evidence regarding the 'end flat' is particularly thin. Indeed, had it been present in 2011, I find it somewhat surprising that it was not identified given what appears to be the very thorough record of the accommodation at Keddington Grange contained in the 2011 valuation report. Moreover, having read that the 'end flat' was used as guest accommodation for visitors to the main house, albeit staff accommodation is mentioned too, this raises the possibility that the 'flat' may not have been a separate independent dwelling. Indeed, as noted in paragraph

2, on the *"as existed in 1994"* plan, the words "*used for guests*" come after "*end flat*".

22. An appellant is often best placed to produce evidence regarding a matter such as this. However, in this instance the evidence is not extensive, and much of it is neither clear nor precise as to the nature and extent of the residential use of the building, and whether that use was continuous. I acknowledge that, as noted in paragraph 10 above, the test for the evidence is on the balance of probability. Nevertheless, and regardless of my view as to whether the use remained in existence, the somewhat limited nature of the evidence and the overall lack of clarity make it very difficult for me to conclude that at the time the LDC application was made, it was too late for enforcement action to be taken.

23. The circumstances of this case are such that I am not satisfied that the evidence is sufficiently precise and unambiguous to justify the grant of a LDC for the use in question. The burden of proof that lies with the appellant has not been discharged.

Overall Conclusion

24. For the reasons given above, and having regard to all the other matters raised, I am satisfied that the Council's refusal to issue a LDC in respect of the use of land at Lower Stables, Keddington Grange, Grange Lane, Keddington, Louth Lincolnshire LN11 7HF for 3 dwellings was well-founded. I shall therefore exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D H Brier

Inspector