



Appeal Decision

Site visit made on 21 August 2019

by B M Campbell BA(Hons) MRTPI

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

Decision date: 5 September 2019

Appeal Ref: APP/U1430/X/18/3214268

Griggs Ghyll Barn, Battle Road, Dallington TN21 9LQ

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Tice against the decision of Rother District Council.
 - The application (Ref:RR/2018/1876/O), dated 16 July 2018, was refused in part by the Council by notice dated 18 September 2018.
 - 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 described on the application form as "use of a converted building as a residential dwelling".
-

Decision

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

Preliminary matter

2. Due to a lack of communication between all parties, the Council's representative was not present when I conducted my site visit. The Appellant's wife allowed me access and I inspected the site alone. The Council subsequently confirmed that it was content with this course of action.

The matter in dispute

3. The Council granted an LDC for the development as applied for, being satisfied that the use had commenced more than four years before the date of the application and had continued thereafter. However, it confined the certificate to the building only, excluding all the land around the building which had been included within the red line delineating the application site.
4. It is the Council's view that the associated land requires ten years continual use for residential purposes before that use can be found lawful.
5. The issue is, therefore, whether the entirety of the planning unit should benefit from an LDC for use as a residential dwelling.
6. For purposes of clarification, the word "curtilage" can play no part in my determination of this case which is confined solely to consideration of use. Curtilage defines an area of land in relation to a building and not a use of land. It is not for me to define any curtilage that the building might have. Section 191(1)(a) of the Act is concerned solely with ascertaining whether any existing use of buildings or other land is lawful.

Reasons

7. Section 191(2) of the Act states that a use is lawful at any time if (a) no enforcement action can be taken in respect of it and (b) it does not constitute a contravention of any of the requirements of any enforcement notice in force. In relation to the latter, there is no enforcement notice in force and thus (b) is satisfied.
8. The evidence which is not disputed by the Council, is that the Appellant and his wife moved into the appeal property on 10 October 2013 and have lived there continuously since. As the dwelling was formed by converting a barn, the development for which planning permission was required was the change of use of the building to use as a single dwellinghouse. Section 171B(2) of the Act states that for that specified breach, no enforcement action may be taken after the end of the period of four years beginning with the date of that breach. In this case therefore, no action could be taken after 10 October 2017 and the Council was thus right to issue an LDC in respect of the use. – s191(2)(a) was also satisfied.
9. In my view, however, the notice should have included all the land associated with the building and in the same residential use provided there had been no change to the extent or use of the planning unit (as outlined by the red line) over the relevant time period. At the time of the breach, there was only one planning unit and that planning unit was only subject to a single change of use to one primary use – that is as a dwellinghouse. It is wrong, in my view, to attempt to separate the land from the building and, in effect, suggest that two separate breaches of planning control occurred, one falling under s171(2) and the other under s171(3). It is simply not the case.
10. With regard to the extent of the planning unit at the time of the breach, two statutory declarations have been submitted. One, from a colleague of the Appellant, Mark Low, confirms that the land around the barn has been maintained by the Appellant as a garden since 2007. The declaration does not specify the extent of the land referred to and thus is of limited assistance. In addition, until the change to a dwellinghouse occurred in 2013, the land could not have been said to be in residential use as there was no residence associated with it.
11. The Appellant's declaration similarly talks of maintaining the land as a garden since 2007 which has no relevance until the change to the residential dwellinghouse use occurred. The declaration does, however, clearly state that it is the area delineated in red on the attached plan (which corresponds to the red line on the application plan) which has been used as a garden. That is clear evidence of the extent of the residential use at the time the change of use to a dwelling occurred and there is clear evidence that it has continued since. There is no evidence to contradict it.
12. The government's Planning Practice Guidance (PPG) advises that if a local planning authority has no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse an application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. The Appellant's evidence is clear and precise that the entirety of the planning unit as outlined in red has been used in association with the dwelling since the change of use occurred in October 2013.

13. I note that the Council criticises the accuracy of the description of the use applied for on the application form but I do not agree. There was clearly a change of use of the building to a residential dwelling. The red line indicated the extent of the planning unit which has not changed over time in that single primary use. Ancillary uses such as garden or parking areas are simply part and parcel of the one primary use as a dwellinghouse.
14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in part to grant a certificate of lawful use or development in respect of use of a converted building as a residential dwelling at Griggs Ghyll Barn, Battle Road, Dallington was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector



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 16 July 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

No enforcement action could be taken in respect of the use because the time for taking such action had expired (s191(2)(a) of the Act) and the use does not contravene the requirements of any enforcement notice in force (s191(2)(b) of the Act).

The use began more than 4 years before the date of the application and has continued thereafter.

B M Campbell

Inspector

Date 5 September 2019

Reference: **APP/U1430/X/18/3214268**

First Schedule

Use of a converted building as a residential dwelling
(Use Class C3 of the Town and Country Planning (Use Classes) Order 1987)

Second Schedule

Griggs Ghyll Barn, Battle Road, Dallington TN21 9LQ

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 5 September 2019

by **B M Campbell BA(Hons) MRTPI**

Land at: Griggs Ghyll Barn, Battle Road, Dallington TN21 9LQ

Reference: APP/U1430/X/18/3214268

Not to scale



