



Appeal Decision

Site visit made on 16 September 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 23 September 2019

Appeal Ref: APP/W1145/X/18/3214936

The Garage, Hole Station, Highampton, Beaworthy, Devon EX21 5JH

- 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 Gregory Brown against the decision of Torridge District Council.
 - The application Ref: 1/0554/2018/CPE, dated 24 May 2018, was refused by notice dated 2 August 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 a C3 dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On reading the submitted evidence in the lead up to my site visit, I noticed that the Council had referred to the certain details about the appellant moving into the garage from the main house. I could not see where that reference had come from in the appellant's appeal documentation and thus sought clarification. In response, the Council sent a copy of the LDC application form it had received which showed where that information was taken from. It did not match the form sent by the appellant with his appeal. Despite some subsequent correspondence on the matter, it remains unresolved what caused the discrepancy between the two forms. Nevertheless, based on my reasoning below which was aided by my site visit, this is not an issue that I need to clarify or resolve. It has not been a reason why I have determined that the appeal should fail.

Main Issue

3. S191 of the 1990 Act enables any person to apply to the Local Planning Authority (LPA) for a Certificate to the effect that, relevant to this appeal, any existing use of buildings or other land is lawful. S191(2)(a) sets out that uses and operations are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). The relevant enforcement expiry time in this case is 4 years. That would need to have expired at least by the date of the application

for the Lawful Development Certificate (LDC) to the Council which was 24 May 2018 (hereinafter referred to as "the material date"). The burden of proof rests firmly with the appellant.

4. In view of the above, the main issue is whether the garage at Hole Station has, as a matter of fact and degree, been used as a C3 dwellinghouse and, if it has, whether, on the balance of probability, that has been on a substantially uninterrupted basis for four years before the material date.

Reasons

5. The appellant states that the garage was built by the previous owner who then converted it into living accommodation at some point between 1999 and 2007. The appellant purchased the whole property known as Hole Station, along with his wife, in 2007. There are very limited details about how the previous owner occupied the garage other than it apparently having some basic kitchen and bathroom facilities and a telephone line installed. There is no confirmation about how long the previous owner lived in the garage, whether it was truly independent of the main house or if that use was on a substantially uninterrupted basis. The previous owner's use of the garage does not show that it achieved a lawful status as a C3 dwellinghouse.
6. From 2007 to 2012 the appellant states that the garage was used for storage and ancillary living accommodation by his children. This, again, does not indicate a C3 use. Although there might be an issue around exactly when the appellant claims he moved into the garage, with reference to the preliminary matter section above, I have taken that it occurred sometime in 2012. As that is well in excess of four years before the material date, it makes no difference that I establish the exact date.
7. Although occupation is often the determinative factor when it comes to assessing use as a single C3 dwellinghouse, the test is whether there has been a material change of use to a separate dwelling. For example, it can be the case that an annex has the means of self-contained living, but if it cannot be demonstrated that the use is one that has been separate, thus severing the link with the main house and becoming its own planning unit, then the dwellinghouse use may not be established. In this case, the building was constructed as a garage to the main house. It would thus have had an ancillary residential use to start with.
8. I note the marital difficulties that led to the appellant moving into the garage. However, the appellant and his wife were partners in the campsite business, which always required at least one person on the site, as did care of the appellant's wife's horses and goats and 'shared' chickens. There were also children still living at home and both parents wished to maintain good relations with each other and the children. The move into the garage ensured continuity of the business, family contact and lifestyle. The business connection still exists, and the appellant is clear that if he had to move out it would be disastrous for the business which is their sole means of income. Moreover, the exterior timber cladding on the garage was replaced in 2017 which was done at the same time as the appellant's wife was having a conservatory on the main house replaced. It made practical and financial sense for the appellant and his wife to have the work done by the builders at the same time.

9. There is evidence supporting the case that the appellant has lived in the garage for six years and I have had regard to the statutory declaration stating the building has been his independent residential unit of accommodation. Nevertheless, it is very clear against the above background that while the garage has a residential use and it has the facilities needed for the appellant to live not in the main house due to the marriage breakdown, there is still an established link between the occupation of the main house and the business. The use does not show, as a matter of fact and degree, a material change of use to an independent C3 dwellinghouse or a separate planning unit.
10. Furthermore, while the garage is detached from the main house and on one side it has an enclosed area, it is not separated from a large yard at the entrance to the site which is used as a shared car park for campsite users, the main house and the garage. The main door to the garage also opens out onto the access to the campsite which is situated to the rear of both buildings. As such, the building does not have a clearly defined separate curtilage to the main house. It looks part and parcel of the same planning unit which comprises a mixed residential and related campsite use of the site. Consequently, while the garage appears to have a telephone line and a separate electricity meter, as a matter of fact and degree the physical evidence does not show a separate C3 dwellinghouse use either.
11. I note the circumstances of how the Council came to investigate the occupation of the garage which led to the LDC application and I note the appellant's suggestion of a "106 agreement". However, I cannot comment on any advice the Council may have given that suggested an LDC application was a way forward and it is not my place to suggest that an agreement under S106 of the Town and Country Planning Act 1990 would be appropriate. I acknowledge the appellant is worried about his continued occupation of the garage. This is a matter for discussion with the Council away from this appeal against the background of my decision.
12. I conclude that although the building has a residential use, as a matter of fact and degree the garage at Hole Station has not materially changed use to a C3 dwellinghouse. In view of this conclusion I do not need to consider the issue of the four year 'rule'. Based on the evidence now available, the Council's decision to refuse the LDC application was well founded.
13. Consequently, the appeal is dismissed.

Gareth Symons

INSPECTOR