Appeal Decisions

Site visit made on

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 11 November 2019

Appeal A - Ref: APP/Y3940/X/19/3228562
Linney Cottage, Whitebridge Farm, Sedgehill, Shaftesbury, Dorset SP7 9JT

- 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 Mrs Annabelle Fuller against the decision of Wiltshire Council.
- The application Ref 18/09167/CLE, dated 27 September 2018, was refused by notice dated 14 November 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: Use of Linney Cottage as a residential dwelling house.

Appeal Ref: APP/Y3940/X/19/3228118
Swallow Cottage, Whitebridge Farm, Sedgehill, Shaftesbury, Dorset SP7 9JT

- 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 Mrs Annabelle Fuller against the decision of Wiltshire Council.
- The application Ref 18/0897/CLE, dated 21 September 2018 was refused by notice dated 13 November 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: Use of Swallow Cottage as a residential dwelling house.

Decision

1. Both appeals are allowed and Lawful Development Certificates are attached.

Background information and matters of clarification

2. The appeal properties, Linney Cottage and Swallow Cottage, are two of five 'holiday let' cottages formed from the conversion of a u-shaped barn building adjacent to the farmhouse at Whitebridge Farm. Linney Cottage is on the eastern side of the building and Swallow cottage is on the northern side. Between the cottages and the farmhouse there is a grassed and treed area and, to the north, there are other farm buildings.

3. Planning permission for the conversion of the farm buildings to 5 holiday lets was granted in 1992 (S1992/0678). Condition No 3 of the permission stated:

> '*The holiday let dwelling units hereby permitted shall be used for tourist accommodation only and for no other purposes whatsoever (including any other purpose within Class C1 of the Town and Country Use Classes Order* (UCO) *1987)'.*

4. In the case of *Bloomfield v SSETR and Another [1999]* it was held that the permanent residential occupation of a building, subject to a condition such as Condition No 3, above limiting its use to a holiday let, did not involve a change of use to a single dwelling house and that the ten year rule in section 171B (3) of the Act applied. However, in the Appeal Court, in the case of *First Secretary of State v Arun District Council and Brown [2006],* it was held that for the purposes of the four year rule, a change of use to a single dwelling house need not be material. It also held that any change of use including one that does not involve development is sufficient to trigger the immunity period.

5. Use as a holiday let and a dwellinghouse both fall into Class C3 of the UCO. However the uses have different planning impacts in terms of usage. In the case of '*Arun'* it was held that a breach of planning control, from a failure to comply with a condition restricting change of use to use as a single dwelling house, was governed by the four-year rule in section 171(B) (2) of the Act. In this case there has been a change in the approved 'holiday let' use of both Linney Cottage and Swallow Cottage to permanent dwellinghouses not for tourism or holiday let use.

6. This does not constitute development since the uses are both Class C3. However, as indicated in the *'Arun'* case the change in usage is sufficient to trigger the immunity period. Having considered the LDC applications and the fact that the Council dealt with them on the basis of the four-year rule, I have dealt with them in the same way. Thus the use for which the certificates of lawful use are now sought is the use of both Linney Cottage and Swallow Cottage as Class C3 dwellinghouses without restricting the Class C3 uses to holiday lets. In my assessments below I have dealt separately with each cottage on the basis of the evidence submitted for each property.

The main issue

7. The main issue in both appeals is whether or not, on the balance of probabilities, the appellant has precisely and unambiguously shown that Linney Cottage and Swallow Cottage respectively have been used as single dwelling houses and not as a holiday lets for a continuous 4 year period, commencing on or before 27 September 2014 for Linney Cottage and 21 September for Swallow Cottage: that is, at least 4 years prior to the respective applications for the lawful development certificates.

Introduction

8. Appeals relating to a Certificate of Lawful Use or development (LDC) are confined to the narrow remit of reviewing the LPA's decision. Section 195 (2) of the Act requires an assessment to be made as to whether the refusals of the applications are, or are not, well founded. The assessments in each case are based on whether or not the existing uses, for which the certificates are sought, were lawful at the time of the applications (27 September 2018 for Linney Cottage and 21 September for Swallow Cottage).

9. The burden of proof lies with the applicant and the relevant test is '*the balance of probabilities'*. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient or precise information, a LPA may be justified in refusing to grant a certificate. PPG also indicates, however, that if a LPA has no contrary evidence itself and there is none 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.

Appeal A – Linney Cottage

The gist of the appellant's case

10. Assured Tenancy Agreements (ATAs) dating back to 2013 have been submitted in support of the case that Linney Cottage has been used continuously as a dwelling house, as opposed to a holiday let for the required four-year period (27 September 2014 to 27 September 2018). From 30 October 2013 to the date of the application, the ATAs indicate that there were a total of 5 different tenants with one occupying the property for 2 years.

11. The appellant also relies on her own and her husband's Statutory Declarations which indicate that since they purchased the properties, in May 2013, Linney Cottage has been let as a dwellinghouse. This is confirmed by another Statutory Declaration made by a cleaner who had worked there since 2014 and stated that it was in use as a dwelling house and had not been in tourism use. A letter from the Parish Council is also submitted in support of the appellant's case indicating that the property had been let for well over the 4 year period.

The gist of the case for the Council

12. The Council acknowledges that the property has been in existence on the site for a substantial period and that this is evident from aerial photography from 2001. Reference is also made to the 1992 planning application (S/1992/0678) for the conversion of the existing barn into five holiday units and the refurbishment of the hay barn and stables. Linney Cottage and Swallow Cottage are two of the five approved holiday units and both were subject to the condition restricting the use to holiday let dwelling units.

13. With regard to contrary evidence to that put forward by the appellant, the Council refers to records from its Revenues and Benefits section. It is stressed that Linney Cottage is not shown in the Council Tax records as being liable for a Council tax charge and that there are no records of payment for Linney Cottage. It is stated, therefore, that this questions the use of the building as a separate dwelling house, as opposed to use as a holiday let.

14. In addition it is argued that the tenancy agreements submitted with the application fail to demonstrate a continuous four-year period as a dwelling house and that a Statutory Declaration does not reflect the dates shown within the submitted tenancy agreements.

Assessment

15. With regard to the ATAs, there is a gap of 2 months in the dates of the tenancies, in that no one is shown to be occupying the property from 30 October 2014 until 1 January 2015. The second and third tenants appear to have overlapped for a period of 6 days but this is explained on behalf of the appellant. It is indicated that the second tenant left the tenancy early and the third then stayed for a two year period from 5 June 2015 until 5 June 2017. The next tenant took over the property ten days later and stayed for a 6 month period. There was only a three day gap between that tenant and the last one who was still in occupation when the LDC application was made.

12. The letter from the Parish Council does not particularly assist in determining whether the lettings were for permanent Class C3 use or holiday lets. However, the Statutory Declarations made by the owners and a person who has cleaned the cottages from February 2014 clearly support the case that Linney Cottage has been in use as a separate dwelling, as opposed to its authorised holiday let use for the

relevant period. Despite the fact that the latter declaration is not directly related to the ATAs does not, in my view affect its stated details.

13. With regard to the cottage not being listed or recorded for Council Tax purposes, I agree with the arguments put forward by the appellant that this evidence simply shows that the property was not recorded. It is not evidence which relates to exactly how the property was occupied during the required four-year period. I also accept that the responsibility for Council Tax rests with the tenant and thus little weight can be afforded to this part of the Council's evidence.

14. Having considered all of the submitted evidence in support of the LDC application I consider that, on the balance of probabilities, it has been demonstrated that Linney Cottage had been continuously occupied as a Class C3 dwelling house, as opposed to having been used as a holiday let from 27 September 2014 until 27 September 2018.

15. I acknowledge that there are gaps in the dates of the ATAs but, apart from the 2 month gap between the end of October and the end of December 2014, the other gaps are minimal and what might normally be expected when tenancies change. The 2 month gap also included a Christmas during which, in my view, it is less likely that a new occupant might wish to take up residence.

16. I do not consider that the Council's contrary evidence, to that submitted in support of the application, is sufficient to show on the balance of probabilities, that the property had not been used continuously as a separate dwelling house for the required 4 year period. It follows that I do not consider their decision to refuse a LDC was sound and that the appeal must succeed. A LDC is attached to this decision as set out below.

Appeal B – Swallow Cottage

The gist of the appellant's case

17. Assured Tenancy Agreements (ATAs) dating back to 2013 have been submitted in support of the case that Swallow Cottage has been used continuously as a dwelling house, as opposed to a holiday let, for the required relevant four-year period (21 September 2014 to 21 September 2018). From 15 November 2013 to the date of the application, the ATAs indicate that there were a total of 5 different tenants. The relevant period commenced approximately half way through the second tenancy.

18. It is stressed that the third tenant did not leave Swallow Cottage on the expiry date of the tenancy but that this was rolled over until 9 January 2016. The evidence is provided by a letting agent. In addition the fourth tenant has submitted a Statutory Declaration indicating continuous occupancy from 11 January 2016 until 11 June 2016. The letter from the Parish Council is also submitted in support of the appellant's case indicating that the property had been let for well over the 4 year period.

19. As for the case of Linney Cottage, the appellant also relies on her own and her husband's Statutory Declarations which indicate that since they purchased the properties, in May 2013, Swallow Cottage has been let as a dwellinghouse. Again this is confirmed by another Statutory Declaration made by a cleaner who had worked there since 2014 and stated that Swallow Cottage was in use as a dwelling house and had not been in tourism use. There is also evidence that the property has been liable for Council Tax from 1 November 2016.

The gist of the case for the Council

12. The Council acknowledges that the property has been in existence on the site for a substantial period and that this is evident from aerial photography from 2001. Reference is also made to the 1992 planning application (S/1992/0678) for the conversion of the existing barn into five holiday units and the refurbishment of the hay barn and stables. Swallow Cottage and Linney are two of the five approved holiday units and both were subject to the condition restricting the use to holiday let dwelling units.

13. With regard to contrary evidence to that put forward by the appellant, the Council refers to records from its Revenues and Benefits section. It is stressed that Swallow Cottage has only been liable for Council Tax from 1 November 2016. It is stated, therefore, that this questions the use of the building as a separate dwelling house, as opposed to use as a holiday let.

14. In addition it is argued that there are gaps in the tenancy agreements submitted with the application and thus they fail to demonstrate a continuous four-year period as a dwelling house. It is also indicated that a Statutory Declaration does not reflect the dates shown within the submitted tenancy agreements.

Assessment

15. With regard to the ATAs, the relevant period commences about half way through the second tenancy. The ATAs and supporting evidence indicates that this tenant vacated the cottage on 31 December 2014. It is also clear that the third tenant occupied the property for a 12 month period and not just 6 months. This is because the tenancy rolled over. Between the first and second tenancies there had been a gap of 2 weeks and slightly less than that between the second and third tenancies. Between the third and fourth there was only a two day gap and finally between the fourth and fifth there was a 17 day gap.

16. Again, the letter from the Parish Council does not particularly assist in determining whether the lettings were for permanent Class C3 use or holiday lets. However, the Statutory Declarations made the owners and a person who has cleaned the cottages from February 2014 clearly support the case that Swallow Cottage has been in use as a separate dwelling, as opposed to its authorised holiday let use. Despite the fact that the latter declaration is not directly related to the ATAs does not, in my view affect its stated details.

17. With regard to the cottage only being listed for Council Tax purposes from 1 November 2016 this evidence does not relate to exactly how the property was occupied during the required four-year period.

18. Having considered all of the submitted evidence in support of the LDC application I consider that, on the balance of probabilities, it has been demonstrated that Swallow Cottage had been continuously occupied as a Class C3 dwelling house, as opposed to having been used as a holiday let from 21 September 2014 until 21 September 2018. I acknowledge that there are gaps in the dates of the ATAs but these are minimal and what might normally be expected when tenancies change.

19. I do not consider that the Council’s contrary evidence, to that submitted in support of the application, is sufficient to show on the balance of probabilities, that the property had not been used continuously as a separate dwelling house (and not for holiday letting purposes) for the required 4 year period. It follows that I do not consider the Council’s decision to refuse a LDC was sound. This appeal also succeeds and a LDC is attached to this decision as set out below.

Other Matters

21. In reaching my conclusions in both appeals I have taken into account all of the submissions made by the appellant, by the Council and by other interested parties and persons. These include the planning history of the properties; the detailed LDC applications including ATAs and other evidence; all of the submitted appeal documents; the plans and the submitted photographs. However, none of these carries sufficient weight to alter my conclusions that the appeals should both succeed and nor is any other factor of such significance so as to change my decisions that LDCs should be issued in each case.

Formal Decisions

Appeal A

22. The appeal is allowed and a lawful development certificate is attached below.

Appeal B

23. The Appeal is allowed and a lawful development certificate is attached below.

Anthony J Wharton

Inspector

The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 27 September 2018 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 (1) 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.

Signed

Anthony J Wharton
Inspector

Date: 11 November 2019
Appeal Reference: APP/Y3940/X/19/3228562

First Schedule

The use of the property as a dwellinghouse in Use Class C3

Second Schedule

Linney Cottage, Whitebridge Farm, Sedgehill, Shaftesbury, Dorset SP7 9JT

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to Linney Cottage as shown on drawing No 300620181A, dated 30 June 2018

It certifies that the development described in the First Schedule, at the property 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 development described in the First Schedule and to the property specified in the Second Schedule. Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 21 September 2018 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 (1) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development

Signed

Anthony J Wharton
Inspector

Date: 11 November 2019
Appeal Reference: APP/Y3940/X/19/3228118

First Schedule

The use of the property as a dwellinghouse in Use Class C3

Second Schedule

Swallow Cottage, Whitebridge Farm, Sedgehill, Shaftesbury, Dorset SP7 9JT

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the Swallow Cottage as shown Drawing No 300620181A dated 30 June 2018.

It certifies that the development described in the First Schedule, at the property 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 development described in the First Schedule and to the property specified in the Second Schedule. Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.