Appeal Decision

Inquiry Held on 29 October 2019

Site visit made on 29 October 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 3 December 2019

Appeal Ref: APP/Y9507/X/18/3213601
Lithywood Acres, Green Lane, Hambledon PO7 4SX

- 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 C Lewis against the decision of South Downs National Park Authority.
- The application Ref SDNP/17/04547/LDE, dated 1 September 2017, was refused by notice dated 27 March 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 building as commercial offices (Use Class B1).

Procedural Matters

1. Evidence was given under oath in the form of a general affirmation.

2. The appellant confirmed at the commencement of the inquiry that he was content to be representing himself.

3. The National Park Authority is represented by Winchester City Council, which was the planning authority for much of the period in question. For ease of reference when identifying the planning authority I have identified it as the Authority.

Decision

4. The appeal is dismissed.

Reasons

5. For lawfulness to have been achieved through the passage of time the use must have occurred continuously for a period of 10 years prior to the date of the application. It does not have to be the 10 years immediately preceding the application, but if it was before the date of the application the use cannot have been subsequently abandoned before the application. The appellant's Affidavit notes that since February 2015 the building has been largely vacant. At the beginning of the inquiry it was acknowledged by the appellant that the level of use after February 2015 would not be sufficient to contribute to a 10 year period of use to prove his case, so it is necessary for the continuous 10 year period to have been achieved prior to February 2015. If that were found to be

the case, there is no argument being put by the Authority that the use would have been abandoned.

6. Within the holding of Lithywood Acres is a dwellinghouse and the appeal building. The whole of the land that includes the house and outbuilding has been in the same ownership since the appellant and his wife purchased the property in 2002. There are two drives and, because of the slope of the land, some embankments formed, and there is a small length of wall and a gate. There are significant areas where there are no boundary structures between the house and outbuilding, so while there are two separate buildings these are not physically separated in the site.

7. Part of the purchase included a building previously used for goats. At the inquiry the appellant explained that this was in derelict condition with much of the roof collapsed. It had in part previously been used for commercial engineering. The appellant made an application for a LDC in February 2002 associated with trying to confirm office use. That was refused in November 2002. The appellant indicates that about half of the building was started to be used for offices in 2002 in connection with the appellant's businesses.

8. The appellant explained at the inquiry that the initial intention for the building was for use as a 'granny annexe'. The Authority at the time noted that this would be an acceptable use in terms of the lawful use of the land previously confirmed, but that the annexe could not have both a bathroom and kitchen. This was not acceptable to the appellant, so the annexe use was not pursued.

9. In August 2002 an application was made for building regulation approval for works to the building, identified as 'proposed conversion of former goats dairy to habitable accommodation' so at that time the intention was for habitable accommodation. The description of the rooms on the drawings, is study, games and hobbies were not indicative of office use, but rather incidental residential use associated with the dwelling.

10. The appellant notes that conversion of the building commenced in 2002. At around the same time about half of the building was put to office use on a full time basis by the appellant and his wife. Therefore at this time even if the office use by the appellant and his wife was 'separate', half the building remained in a residential use. It is not unusual to have a home office used by a husband and wife. The appellant also indicated that with the surveying aspect he might be working away for part of the week, but in the office at least one day. In my view, on the balance of probability the business aspect described of the appellant and his wife would be incidental to the use of the dwelling at that time. It also seems from the appellant's description of the derelict state of the building in 2002, that the building would have needed significant attention, even for part to be used for offices.

11. The building had alarms installed to protect expensive surveying equipment and was serviced separately, with all electric outlets and communication facilities necessary for office use. At its busiest in 2007 the appellant notes that the company employed in excess of 14 staff, with two or three normally in the office while other staff would come and go. However, there is little information in terms of records to understand the number of staff that were employed or self employed and how they used the office. The appellant notes that there was no requirement to keep any records and they have not been retained. That is

unfortunate, but it is for the appellant to prove his case on the balance of probability.

12. The appellant notes that surveying staff were mainly 'in the field', but they would return to the offices when jobs were complete. However, it was also noted that surveyors could be away for up to 6 months, having worked on jobs in Scotland and the Channel Islands. It was agreed that in those periods they would not be there. To my mind, in those periods, in all probability, it would not have been possible for the Authority to have taken enforcement action against the use and a material break would have been likely to have occurred if the use had begun.

13. Three boats were parked to the rear of the building when not in use. The use by C&S Survey Solutions Ltd continued up to 2012, but staff numbers had diminished at this point and the parking of boats would not by itself indicate an office use occurring, but carries a little weight by itself. Between 2012 and 2015 the offices continued to be used by Lithywood Facilities and Lithywood Holdings, with the layout unchanged, but fewer staff. Since February 2015 the building has been largely vacant, but not abandoned. I would also add that on the appellant's own evidence 'the staff usage was severely diminished' between 2012 and 2015, so there is some likelihood that the intensity of use would have declined significantly between 2012 and 2015, such that some time in that period it is quite likely that a separate office use would be hard to maintain. However, for the purpose of this decision I have looked at the end time to be February 2015.

14. There is a difference in the parties' opinions as to when the conversion works were completed. However, the evidence provided clearly indicates that it took a long time to complete. A building control officer, on a visit in January 2006, made a contemporaneous note 'partly in use as office, other areas of work still proceeding……' Quite clearly from this the building works were not complete and the whole building was not in use as an office.

15. Similarly, a visit from an enforcement officers in 2006 found that the conversion was not complete. C&S Survey Solutions Ltd were in part of the building with the other section unoccupied. Floor boards were being laid and hardstandings being formed externally. The use of the building observed is very similar to that of the building control officer.

16. In addition, it would seem that at about this time or a little later around March 2006 the appellant approached the Authority to see if the building could be converted into a dwelling. Clearly if that was being considered the existing use of the building and what it was being converted from would be highly material to any consideration. A letter was sent to Mrs Lewis following the meeting to set out the view on the residential use. This letter noted, 'I understand the building is currently partially used as a commercial office by family members in connection with the dwelling' and added that 'should the business develop to a point where the commercial/office use is the main or only use of the building planning permission will be required'. To my mind, it is clear from the letter that Mrs Lewis had explained the building's use at the meeting.

17. This summary of the situation is not surprising, as it is what the building control officer and enforcement office had found on their visits at about the same time. I conclude that in March 2006 the conversion of the building was not complete, the whole of it was not in office use and part was in use in

connection with the dwelling. This is reinforced in correspondence from the appellant to the Authority. In 2008 he noted, 'we have discussed several times with the planning authorities if we need planning permission for various activities, including running our business'. 'The conclusion has always been that we can utilise the outbuilding for our work or pleasure but due to the tie we can not rent or hire them to third parties'. We trust this letter has completely clarified the situation and strongly defend our position that on the advice of Winchester CC we have not or indeed intend on breaching any planning regulations'.

18. The appellant suggests he did not understand planning law and had effectively not understood the use to which the building was being put. I do not accept this. The appellant had made applications for an LDC for office use in the past and the Authority had clearly explained how a change to office use would come about. The appellant also acknowledged in examination that he was aware that the offices would only be lawful if incidental to the house. The 2008 correspondence indicates the tie of the use to the house was understood and the correspondence noted there had not been a breach of planning regulations.

19. The views expressed by the building control officer and enforcement officer and the letter related to potential residential use were all contemporaneous and I attach considerable weight to them. I conclude on the balance of probability that in the first part of 2006 the building conversion was not complete and while some office use was being made of the building, it remained an incidental use to the dwelling and the Authority would not have been able to take enforcement action.

20. I have taken into consideration the letters provided as evidence. Mr Ralph notes he had several meetings in the office, but does not say when or how many. He noted they functioned from 2002 and were complete in 2004. That seems unlikely, given the observations of the building control and enforcement officers, or perhaps it was only part of the building was seen. Mr Keaveney had several meetings at the premises, but again number and timing are not provided. Mr Lilly traded with the appellant since about 2004 from the appeal building and believed there were in excess of 15 staff. Laura and Gary Plaisted note the use as offices from about 2004, with visits to the building to drop off their son to work there in about 2007. Mr Garrett worked for Mr Lewis between 2005-2010 as a land surveyor and was based at the appeal building and notes that they fully functioned as offices at the time. This provides little to say how the building was used, particularly in the light of Authority's other observations that the building was in partial use in 2006, with the planning officer's understanding from Mrs Lewis also of partial use. There is no dispute that some office use has occurred at the building over the period, it is the extent of that use that is to be proved by the appellant.

21. In examination the appellant acknowledged that some of what Mr Garrett had provided was not accurate, but it was his best remembrance and it is not reasonable to expect greater detail than that given for the time period. He said the letters show that those who had written them had traded with him, even if they might not be precise in terms of timing. The weight to be attached to these letters is clearly reduced, but in any case, they provide little understanding of the continuous nature of the use over the period in question.

22. Some trading figures were provided by the Authority from Companies House. It was acknowledged that these are not gross turnover figures as suggested, so I attach little weight to them in this respect. I also note they do not include figures for C & S Survey Solutions Ltd. However, the figures do give some indication of how some trading went, with relatively high values around 2006 with a trend downwards to around 2013 and then consistently low figures after that. This accords with C&S Survey Solutions Ltd ceasing around 2012. This provides a little indication of a larger business in 2006 declining thereafter. I would also note that the appellant could have provided his own figures to support his case.

23. Following a visit from a Council Tax Inspector in 2003 the appellant started to pay business rates and this continues to date. While this is a material consideration it is not decisive, as planning and tax systems do not necessarily take into consideration the same factors, so just because business rates are paid does not mean that there has been a material change for planning purposes occurring or that it was over a continuous period of 10 years to make the use lawful in planning terms.

24. For LDCs the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it 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 is precise and unambiguous to justify the grant of a certificate on the balance of probability. However, in this case I do not consider that there is clear and precise evidence to show the continuous nature of the use claimed.

25. To my mind, the evidence the Authority has produced clearly indicates the building conversion was not complete until probably some time in 2006 and at that time the building was only partly used for offices and on the appellants' evidence I consider it likely to have been incidental to the dwellinghouse use. The figures provided by the Authority show the business to be active in 2006 and declining to 2013. The letters, while providing some support, do little to help with dates or the level of activity claimed and have limited weight. I think the office use claimed may have occurred some time between 2006 and 2012, as there is some support for this including the figures provided by the Authority, but even then not enough for it to be proven on the balance of probability and in any case it would not enable a continued 10 year use to be demonstrated before 2015. I accept the appellant has paid business rates and this adds weight to the case, but given the evidence of the Authority this is not sufficient to tip the balance of probability in the appellant's favour.

26. The appellant complained at the inquiry that the Authority had not told him what information was required. However, it is for the appellant to prove his case on the balance of probability and decide what evidence will do that. I appreciate that it is a long time ago, and understand that employment evidence was not kept, which is unfortunate, but it remains for the appellant to provide appropriate evidence.

27. For the reasons given above I conclude that the Authority's refusal to grant a certificate of lawful use or development in respect of use of the building as commercial offices (Use Class B1) was well-founded and that the appeal should

fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Graham Dudley

Planning Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Lewis	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Streeten	Of Counsel
He called	
Mr S Cornwell	Winchester City Council

DOCUMENTS

Document	1	Notification letter
	2	Agreed statement of common ground
	3	Case No CO/1699/2019