



Appeal Decision

Site visit made on 6 January 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 9 January 2020

Appeal Ref: APP/J9497/X/19/3220670

Holditch, Mary Tavey, Tavistock, PL19 9QD

- 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 Michael Venner against the decision of Dartmoor National Park Authority.
 - The application Ref 0277/18, dated 31 May 2018, was refused by notice dated 20 July 2018.
 - The application was made under section 191(1)(c) 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 as a separate unit of accommodation (C3 dwellinghouse) without complying with conditions on planning permission reference 0681/07.
 - **Summary of Decision:** Appeal allowed and LDC issued
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Procedural Matters

1. The Authority failed to attend the site visit but the appellant provided access for me to inspect the property.
2. For the avoidance of doubt, I should explain that the planning merits of the development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

The appeal site and relevant planning history

3. The appeal property is known as the Old Mill which is a converted farm building attached to the main farmhouse at Holditch Farm.
4. Permission 0681/07 was granted in January 2008 to convert the building to ancillary accommodation. At the time of my site inspection the property was tenanted and it consisted of a utility room on the ground floor and two bedrooms, living room with kitchenette and bathroom on the upper level.
5. Condition 2 of the permission required the building to be used 'solely as additional living accommodation in connection with, and ancillary to the existing dwelling and shall not be used, let or otherwise disposed of as a separate unit of accommodation.'

6. The approved plans required an internal link between the barn and the house to be created but this was not carried out and the barn and the house remained separated. The appellant states that the barn was not used as ancillary accommodation to the main house.
7. The appellant states that there are a number of conditions attached to Permission 0681/07 that required the submission of details for approval prior to work commencing and before the installation of certain elements or materials. In view of this and the development not having been carried out in accordance with the approved plans, the appellant considers that Condition 2 never came into effect. The Authority is silent on this matter and insufficient information has been submitted by the appellant for me to make a determination on this point. However, sufficient evidence has been submitted to consider the lawfulness of the current use as a single dwelling.

Main Issue

8. I consider that the main issue is whether the Authority's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

9. Section 171B(2) of the Act states that where there has been a breach of planning control consisting in the change of use of any building or land to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The onus of proof rests with the appellant and the standard of proof is on the balance of probabilities.
10. The appellant considers that there is sufficient evidence to show that the appeal property has been used continuously as a separate dwelling for a period in excess of four years since March 2010. However the Authority does not consider the evidence to prove on the balance of probabilities that there has been a breach of condition for a period of at least four years for any four year period preceding the date of the LDC application on 31 May 2018.
11. The appellant has submitted considerable evidence in support which includes tenancy agreements, information from the letting agents (Stags), bank statements, West Devon BC Council Tax confirmation, and utility bills limited to a telephone and an electricity bill.
12. In a letter dated 20 April 2018 from the Lettings Manager of Stags Residential Lettings, four tenancies are listed from 25 January 2012. In addition further information regarding another tenant (Wendy/Mike Pain(sic) March 2010 Nov 2011) has been handwritten above the typed list. It is not clear whether this has been added by Stags or by another party.
13. The Authority points out that no corroborating evidence has been submitted in the form of signed/dated tenancy agreements in support of the Letting Agents indication that the property had been continuously occupied from March 2010 to June 2018. I note that copies of only two agreements have been submitted (by D Lillyman and B Weetman), and not for W Nicholls or J Fitchet. However there is no reason to dismiss the evidence from Stags who have been responsible for the letting of the property.

14. West Devon BC has confirmed that Council Tax has been payable on The Old Mill which has been banded as Band B separately to Holditch Farm since January 2012. The Authority point out that the valuations office considers only physical features when considering whether an additional area of living accommodation exists within a domestic property and not how it is used. Although the date that this separate banding was introduced is some 22 months after the appellant claims the property was originally separately occupied, I note that this coincides with the commencement of the Lilleyman's tenancy.
15. The appellant has submitted copies of bank statements relating to the receipt of rents from different tenants, some of which were submitted on 7 March 2019 as part of the appeal and following the determination of the LDC application. However these have not led to the Authority to reach a different conclusion on lawfulness as they do not consider that the statements provide an indication of continuity of rental income. The gaps in the documented rental income cannot be explained through changes in tenancies, and the appellant provides no explanation as to why a greater number of bank statements has not been submitted.
16. However, the outcome of this appeal does not depend on the submission of bank statements alone, but in a wider consideration of the evidence in the round. Whilst I understand the Authority's concerns about the continuity of some of the evidence, the evidence from Stags carries considerable weight and this shows that the appeal property has been let out to a series of tenants since at least 25 January 2012 (or from March 2010 allowing for the hand written addition) for a period of at least four years and that any breaks in occupation are the ones normally expected when tenancies change.
17. My conclusion is given support by Mary Tavy Parish Council who believe that the Old Mill has been continuously occupied, as a separate dwelling, for approximately ten years. Although not a determining factor, the fact that the permission was not implemented in accordance with the approved plans through the creation of an internal link is a further indicator that the appeal property has not been used ancillary to the main house.
18. Furthermore the Authority has not provided any evidence that contradicts the appellant's evidence to suggest that it is less than probable. Whilst the appellant's evidence could have been more consistent in terms of submitted documentation, it is sufficiently precise and unambiguous for it to be accepted¹. The appeal property known as The Old Mill has, on the balance of probabilities, been used as a separate dwelling to that of the main farmhouse for a continuous period of at least four years prior to date of the application.

Conclusions

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use as a separate unit of accommodation (C3 dwellinghouse) without complying with conditions on planning permission reference 0681/07 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

¹ Gabbittas v SSE & Newham LBC [1985] JPL60

Formal decision

20. 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.

P N Jarratt

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 31 May 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

The appeal property known as The Old Mill has, on the balance of probabilities, been used as a separate dwelling to that of the main farmhouse for a continuous period of at least four years prior to date of the application and is therefore lawful through the passage of time.

Signed

P N Jarratt

Inspector

Date 9 January 2020

Reference: APP/J9497/X/19/3220670

First Schedule

Use of The Old Mill as a separate unit of accommodation (C3 dwellinghouse) from that of the main farmhouse.

Second Schedule

Land at Holditch, Mary Tavey, Tavistock, PL19 9QD

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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:9 January 2020

by **P N Jarratt BA DipTP MRTPI**

Land at: Holditch, Mary Tavey, Tavistock, PL19 9QD

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