



Appeal Decision

Site visit made on 9 December 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Appeal Ref: APP/D0121/X/19/3227427

The Oxe Yard, Annexe, North End Road, Yatton BS49 4AS

- 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 Christopher Mallett against the decision of North Somerset Council.
 - The application Ref 19/P/0241/LDE, dated 31 January 2019, was refused by notice dated 4 April 2019.
 - 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 as: Change of use of a building from use as annexed accommodation and storage incidental to The Oxe Yard to a use as a single dwellinghouse.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

2. An application for costs was made by Mr Christopher Mallett against North Somerset Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the use of the appeal building as a single dwellinghouse is well founded.

Reasons

4. The appeal building (the building) is an extended former agricultural building located near the dwelling known as the 'The Oxe Yard'. It loosely forms a courtyard with this dwelling, which itself is a converted agricultural building. There is a garden surrounding the courtyard.
5. In 2012, planning permission relating to the building was granted under reference 11/P/2322/F for '*repair and extension of former agricultural store to provide accommodation for elderly relative with open store*'.
6. The planning permission was implemented with the works being completed by January 2014. The building was then occupied by the appellant's elderly

mother from January 2014 until September 2014. This was on an ancillary basis, as, for example, the majority of meals were taken in The Oxe Yard. The relationship between the two buildings and surrounding garden therefore represented the unit of occupation at that time.

7. There is no dispute between the parties that the building is currently occupied as a dwelling. The Council however contend that the relevant period for lawfulness in respect of this appeal is 10 years, as there has not been a material change of use from that granted planning permission under reference 11/P/2322/F. Rather, it considers there has been a breach of condition 3 of that permission.
8. The planning application was submitted on a householder application form and simply sought permission for the repair and extension of a former agricultural store, within the curtilage of The Oxe Yard, to provide accommodation for an elderly relative, along with open store. Indeed, the delegated report at that time described the application as the extension of an agricultural store to form ancillary accommodation for an elderly relative. There is no mention in the documentation that I have been provided with that the planning application either sought, or planning permission was granted for, a change of use to a dwelling.
9. It is therefore clear to me that the Council granted planning permission for ancillary residential accommodation within the same planning unit as the dwelling known as The Oxe Yard, as opposed a new dwelling. This is further reaffirmed by condition 3 of the planning permission which states that '*the accommodation hereby permitted shall not be used as a self-contained dwelling and shall be used only by the occupants of the existing dwelling in connection with their enjoyment of that residence.*' The condition therefore precluded its use as a dwelling. Had the application sought to establish whether the planning permission for the repair and extension of a former agricultural store without compliance with condition 3 was lawful then 10 years would be the appropriate time. However, success on the basis would not establish whether any change of use to a dwellinghouse was lawful and in any event the application is described as a change of use to a dwellinghouse.
10. To this effect, section 171B(2) of the act is relevant for the purposes of this appeal. It is therefore necessary for the appellant to demonstrate, on the balance of probabilities, that the building has been occupied as a dwelling for a period of 4 years prior to the submission of the certificate of lawfulness. The relevant period is accordingly 1 February 2015 – 31 January 2019.
11. The evidence is that the building was occupied as a dwelling from 7 November 2014 until 5 February 2016 by Mr and Mrs James. From 10 February 2016 until 22 November 2018 by Mr Rees and Mr Cavendish and from 12 January 2019 until the date of the application by Mr Prince and his wife.
12. The use of the building as a dwelling has resulted in the severance of the planning unit as there are now separate and physically distinct areas of occupation. The use of the building as a dwelling therefore amounts to a material change of use from the ancillary residential accommodation granted planning permission in 2012.
13. Whilst I appreciate that building works were undertaken in order to convert the open store, this was whilst the appellant's mother was in occupation, and so

was before the relevant period. I also have little evidence to persuade me that these building works have a bearing on the appeal before me, which is solely confined to the use of the building as a dwelling during the relevant period.

14. The occupation of the building, since 7 November 2014, does not appear to be contested by the Council. In any event, I am satisfied that the evidence is sufficiently clear and unambiguous in respect of the relevant period to demonstrate that the building has been occupied as a dwelling. During my site visit I could also see that it contained a kitchen, bathroom, bedrooms and living room which facilitates its independent occupation. However, one end of the building remains in use as a workshop/store for purposes incidental to the occupation of The Oxe Yard. Accordingly, there has not been a material change of use in respect of this part of the building.

Conclusion

15. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use as a single dwellinghouse 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.

Formal Decision

16. 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.

Paul T Hocking

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 January 2019 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:

The use has continued for more than 4 years prior to the date of the application for a lawful development certificate and so is not liable to enforcement action.

Signed

Paul T Hocking

INSPECTOR

Date 16 January 2020

Reference: APP/D0121/X/19/3227427

First Schedule

Use as a single dwellinghouse

Second Schedule

Land at The Oxe Yard, Annexe, North End Road, Yatton BS49 4AS

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: 16 January 2020

by Paul T Hocking BA MSc MRTPI

Land at The Oxe Yard, Annexe, North End Road, Yatton BS49 4AS

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Scale: DO NOT SCALE

