



Appeal Decision

Site visit made on 18 December 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/D0840/X/19/3225087

143 Jasmine Way, St Merryn, Padstow, Cornwall PL28 8TF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Gillian Watts against the decision of Cornwall Council.
 - The application Ref PA18/11082, dated 19 November 2018, was refused by notice dated 11 January 2019.
 - 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 described as "full time permanent residential use of the whole property."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use as full time permanent residential use of the whole property, which is considered to be lawful.

Main Issue

2. This is an appeal that relates to the refusal of an application for a LDC and turns on matters of law rather than the planning merits of the use. The onus of proof is upon the appellant. The main issue is whether the Council's decision to refuse the LDC was well-founded.

Reasons

3. There is no dispute that the building contains the facilities required for day to day private domestic existence. As such it is a dwellinghouse even though it was originally approved in 1986 (planning permission 6/86/1533/OOP) subject to planning condition No 3 which states that "the development hereby permitted shall be used for holiday purposes only and shall not be used for permanent residential occupation".
4. It is agreed by the main parties that the relevant time period as set out in s171B of the Act for taking enforcement action against a breach of the condition, is 10 years. There is no suggestion by any party that there is any enforcement notice in force that relates to occupation in breach of the planning condition. The onus is upon the appellant to demonstrate a continuous breach of the condition for 10 years prior to the date of the application, on the balance of probabilities, which would render the occupation lawful by reason of s191(2)(a) of the Act. The material date is therefore 19 November 2008.

5. The Council questions the strength of the appellants evidence. However, some matters are not disputed. This includes that the dwelling was purchased in April 2008 (Registered Title Absolute is dated 25 June 2008, still before the material date) by the appellant's son, and that a breach of the condition was occurring at the relevant date of the application. The LDC was refused because the Council did not consider that the evidence submitted was substantive, compelling, sufficiently precise and unambiguous. The decision also refers to "having regard to other information available to the authority".
6. I have been referred by both parties to legal authorities including *Gabbittas*¹ which held that the appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict an appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. The Planning Practice Guidance also states that without sufficient or precise information, a local planning authority may be justified in refusing a certificate.
7. The appellant has submitted copies of Council Tax bills covering 2008 to the present time apart from 2011 to 2012. However, the Council's Revenue's Officer confirmed on 14 October 2019 that the appellant has been liable for Council Tax at the property since 18 April 2008 and does not indicate why copies of the 2011 to 2012 bill could not be provided but does not refer to any period when tax the appellant was not liable for Council Tax. The Electoral Services officer has confirmed that the appellant has been included on the Register of Electors and has been "since at least 2011". It is not explained what the situation was prior to 2011. It has also been confirmed by South West Water in an email of 15 August 2018 that the appellant has been liable for water rates since 29 March 2008. Overall, despite the lack of clarity about the electoral register, this evidence from reliable sources indicates that there has been consistent liability for these local authority and utility charges continuously since prior to the material date. However, this evidence does not go as far as indicate occupation continuously for 10 years in breach of the planning condition.
8. Other independent evidence includes confirmation in August 2018 that with respect to the appellant's previous application for an LDC (ref 6/86/1533/OOP), St Merryn Parish Council "is aware that the occupier has lived at this property since the sale of her previous home". However, the Council has provided a further response to the appeal application dated 21 December 2018 stating that the "parish council has no knowledge of the occupation of this property". No explanation is given for this swift change of view from the Parish Council and this evidence is ambiguous at best.
9. Letters have also been submitted. One from the appellant's son states that as well as buying the house for his mother to live in, that "she has been there since April 18th 2008". This indicates that the appellant has occupied the dwelling but does not confirm on what basis that has been. The statement made could for example leave scope for the occupation to have been regular but not continuous. It would not, in my view, rule out occupation on a holiday basis in compliance with the planning condition. It has been held that discontinuance of the offending activity in breach of a condition with a continuing requirement

¹ *Gabbittas v SSE & Newham LBC* (1985) JPL 630

such as this, will bring an end to that particular breach, even where immunity has previously been attained.

10. The occupants of 2A Primrose Drive nearby have also stated that the appellant has lived at the property since April 2008. They can “vouch for” the fact that she has lived there uninterrupted for a decade. The context of the letter clearly indicates that the signatories have been neighbours since that time and have therefore had knowledge of the site as well as the appellant. Reference to uninterrupted occupation, when looked at in combination with the Council Tax and utility evidence, does in my view help to clarify a picture of the occupation. This letter does not have the weight that evidence in a declaration under the provisions of The Statutory Declarations Act 1835 would have. However, it does carry some limited weight.
11. The appellant has provided 2 statements. The first, although signed and witnessed, is not a statutory declaration. However, it also helps to explain the nature of the appellant’s occupation. She confirms that she lived “residentially” at the property from 2008. In the context of the appellant’s description for the application, I understand the term “residentially” to mean as her permanent home. Until January 2017 the appellant lived with somebody as their carer. In these circumstances it seems to me that this occupation probably would have been permanent. The appellant confirms that she then lived there for a period with her grandson and after 21 October 2018, she continued to live alone residentially at the property. The second statement re-affirms the details.
12. The appellant’s second statement has been sworn in front of a solicitor but does not include the usual wording from the schedule to the 1835 Act. As such this also does not carry the full weight of a statutory declaration. Nevertheless, these statements do carry some further limited weight and assist in explaining the nature of the appellant’s occupation.
13. The Council has referred to another appeal decision where the Inspector has given limited weight to signed documents that were not statutory declarations (APP/X1355/X/17/3181946). I agree with that Inspector’s view of that matter. However, in that case, there were clear ambiguities in the evidence that were not resolved by the statements. In the present case, I consider that the combination of the Council Tax and utility bills along with the other statements makes the appellant’s version of events probable. Although the statements relied upon by the appellant do not have the weight of statutory declarations, they fill in the gaps of the other information making it sufficiently precise and unambiguous. In the absence of any evidence to contradict the appellant’s version of events, on the balance of probabilities, I consider that the holiday occupancy condition has not been complied with continuously for 10 years.

Conclusion

14. 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 the full time permanent residential use of the whole property, 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.

Andy Harwood

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 19 November 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched 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 full time and continuous residential use of the whole property for a period of more than 10 years, in breach of condition No 3 of planning permission 6/86/1533/OOP, has been demonstrated on the balance of probabilities. The occupation does not contravene the requirements of any enforcement notice currently in force.

Signed

Andy Harwood

Inspector

Date 17 January 2020

Reference: APP/D0840/X/19/3225087

First Schedule

Full time permanent residential use of the whole property.

Second Schedule

143 Jasmine Way, St Merryn, Padstow, Cornwall PL28 8TF

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:17 January 2020

by Andy Harwood CMS MSc MRTPI

Land at: 143 Jasmine Way, St Merryn, Padstow, Cornwall PL28 8TF

Reference: APP/D0840/X/19/3225087

Scale: Not to scale

