



Appeal Decision

Site visit made on 13 January 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2020

Appeal Ref: APP/U1105/X/19/3230905

Hooked Rise Farmhouse, Lane to Hooked Rise Farm, Dunkeswell EX14 4QY

- 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 Susan Kay Weare against the decision of East Devon District Council.
 - The application Ref 18/2044/CPE, dated 30 August 2018, was refused by notice dated 15 January 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: Certificate of Lawful Existing Use in relation to the change of use of an outbuilding known as Hooked Rise Farmhouse Holiday Lodge to a single detached dwelling house.
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Summary of Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal concerns the lawfulness or otherwise of the use of a building as a dwellinghouse. The parties are however content that the appeal can proceed by the written representation procedure. I have no reason to disagree with the parties and so will proceed to determine the appeal on the basis of the written evidence before me.

Main Issue

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

Reasons

4. In cases such as this the onus is on the appellant to demonstrate, on the balance of probabilities, that the use of the building as a single dwellinghouse has continually subsisted for a period of 4 years prior to the submission of the certificate of lawfulness.
5. The appellant purchased Hooked Rise Farmhouse in June 2013 which includes a large dwelling and associated land. It also included the appeal building which is a comparatively modest timber cabin structure located in close proximity of the farmhouse. The appellant's statutory declaration describes that the appeal

building contained all the facilities necessary for it to be used as an independent and separate dwelling at the time of her purchase.

6. As a result, it was occupied in October 2013 by a friend of the appellant, Mr Ian Sellway, who refurbished the building. His occupation ceased in January 2014. From March 2014 the appellant's brother Brian Edmond stayed for long periods and helped the appellant with garden and refurbishment work. Other family members also stayed between May and the end of August 2014. However, whilst the building may well have been available and capable of occupation as an independent dwellinghouse, the evidence provided, including the letter of Mr Sellway, does not demonstrate with any precision the actual occupation of the building and thus whether it was occupied independently. Indeed, given the relationship of these occupiers to the appellant, and the work undertaken for her in return for staying, the occupancy could have been on an ancillary basis. The evidence is therefore not sufficiently clear in this regard.
7. In September 2014 all the refurbishments were complete. There is then no evidence of occupation until November 2014 when it was let to 4 Western Power employees who were working in the locality. This occupation ceased in March 2015, but again the evidence does not demonstrate whether this occupation was on an independent basis. It is then stated that there were several short-term lettings until July 2015, but again the precise nature of the occupancy is not before me.
8. The appellant then entered into a contract with a vacation rental company and the building was advertised as available from 1 August 2015. It is stated that the building has been occupied by various persons since that time and that during any period of non-occupation the building has continued to be advertised for rent and been available for occupation. The full or precise details of these lettings are however not before me, or indeed the accounts that are referred to by the appellant. Furthermore, even if this does amount to an independent use, this in itself only relates to a period of just over 3 years, being between August 2015 and August 2018 when the application was submitted.
9. It is also stated that the building has been insured as a holiday cottage and that it has been assessed for non-domestic rates since January 2018. However, these matters in themselves do not demonstrate the actual usage and occupation of the building.
10. On the available evidence I accept that the building has been equipped and capable for independent occupation, indeed since the appellant purchased the site. However, in order for a certificate to be issued it is necessary for the appellant to demonstrate on the balance of probabilities that the building has been used as a dwelling for a continuous period of 4 years; and with it the creation of a new planning unit that is no longer liable to enforcement action.
11. I appreciate the Council has no evidence to directly dispute the appellant's versions of events. Nevertheless, it remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. The evidence is however not precise and is unclear in respect of whether the occupation of the building has been independent, which then calls into question the continuity of any use.

12. There is also very little evidence concerning an associated garden which is denoted by a red line on the submitted plans. During my site visit, I could see that parts of this did not appear to follow existing boundary treatments or other features of the site.
13. I am consequently not satisfied on the balance of probabilities that the appellant has demonstrated the continuous independent occupation of the building as a single dwellinghouse for the relevant period, or indeed the associated use of any land.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

15. The appeal is dismissed.

Paul T Hocking

INSPECTOR