



Appeal Decision

by **Brian Cook BA (Hons) DipTP MRTPI**

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

Decision date: 05 March 2020

Appeal Ref: APP/N0410/X/18/3217296

Plum Tree Cottage, East Burnham Lane, Burnham SL2 3TL

- 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 Paul Uppal against the decision of South Bucks District Council.
 - The application Ref 18/00914/CLUED, dated 17 May 2018, was refused by notice dated 18 October 2018.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is trenching to implement enlargements pursuant to GPDO 2015 Sch 2 Pt1 Class A as more particularly described in the evidence provided.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

3. The Council does not dispute that the trenching works that are the subject of the LDC application took place sometime in September 2016 (the material date). That is less than two years prior to the application date of 17 May 2018 and thus well within the period of four years during which a local planning authority can take enforcement action against operational development. The main issue therefore is whether, when carried out, the works were the implementation of a development permitted by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order, 2015 as amended (GPDO) and thus immune from enforcement action by virtue of s191(2)(a) of the Act.

Reasons

4. The trenches to which the application refers are to form foundations for extensions to the building that is Plum Tree Cottage. There is a considerable planning history to Plum Tree Cottage, most of which is not relevant to the determination of this appeal. The essence of the appellant's case is that at the material date, while there was no extant planning permission, the building was a dwelling as defined by case law and, as such, Schedule 2, Part 1, Class A GPDO rights were available. At the material date the works carried out

therefore had planning permission by virtue of Article 3 of the GPDO and were therefore immune from enforcement action.

5. This argument is simply not correct.
6. From the evidence the building now known as Plum Tree Cottage was converted from a horticultural building into a dwelling. The date is not given. Nevertheless, from at least 1988 until 2003 it was occupied as a dwelling in an ancillary residential relationship to Garden Cottage in the grounds of which it stands. That ancillary relationship was broken in 2003 when Garden Cottage was sold although the owner of Garden Cottage retained ownership of Plum Tree Cottage and its curtilage. It therefore became a separate planning unit in a separate residential use which the Council regarded as a breach of planning control.
7. The new circumstance was resolved in December 2003 when planning permission¹ was granted for "Use of Plum Tree Cottage as an independent dwelling for the sole occupation of the current occupant only" (the 2003 permission). Permission was granted subject to two conditions.
8. Condition 1 made the permission personal to Miss Warr only and ensured that the permission did not benefit the land or any other person or body. The use permitted was to be discontinued when Miss Warr ceased to be the occupier of the building and "the site reinstated to the satisfaction of the District Planning Authority". Informative 1 explains that to satisfy the Council and comply with Condition 1 upon Miss Warr ceasing to occupy the building, the land and building must revert to being used in an ancillary capacity to Garden Cottage.
9. Condition 2 removed most of the rights available under Schedule 2, Parts 1 and 2 of the GPDO and specifically those in Class A².
10. The appellant first sought to carry out the development permitted by the 2003 permission without complying with Condition 1 in 2012. The application was refused planning permission and the subsequent appeal decided in November 2013 (the 2013 decision). By that time, Miss Warr was no longer in occupation, having died.
11. A second appeal decision in February 2018 (the 2018 decision) post-dates the material date. It is not therefore relevant to my determination of the appeal which turns on the interpretation of the 2003 permission.
12. The mere 'use' of land and/or buildings is not development requiring planning permission; it is the material change of use of land and/or buildings that amounts to development by virtue of s55 of the Act. Notwithstanding the description of the development permitted by the 2003 permission, I consider the only reasonable interpretation in all the circumstances to be that it permits the change of use of Plum Tree Cottage from an ancillary residential building to an independent, self-contained dwelling.
13. Given the retrospective nature of the application, the change of use permitted had, in effect, already been made. The permission was therefore spent on granting and the use permitted was and remains the lawful use until lost by

¹ 03/01445/FUL

² Although it is the 1995 GPDO that is referred to in the condition, the inclusion of "or any Order revoking or re-enacting that Order" in the condition means that the condition applies the provisions of the 2015 GPDO.

any one of several routes which includes the implementation of an inconsistent permission³. The planning history set out in the evidence confirms that none of those routes have been followed in this case. In particular, the permission granted by the 2018 decision could not, as a matter of fact, have brought the lawful use to an end at the material date since it post-dates it by at least 17 months. The 2003 permission remains extant and was so at the material date; it had not lapsed as contended by both parties.

14. I am reinforced in that conclusion by the Procedural Matters section of the 2013 decision letter. Paragraph 4 states that the views of the parties were sought following the change of circumstances in the appeal, those circumstances being the death of Miss Warr. If either party argued that her death caused the 2003 permission to lapse, the Inspector clearly did not agree as she continued to determine the appeal. No purpose would have been served by doing so if she considered that the 2003 permission had lapsed as there would have been no planning permission to, in shorthand, 'vary'.
15. In fact, when Miss Warr permanently ceased to occupy the dwelling that simply triggered Condition 1. As far as I am aware from the evidence, the terms of the Condition have been complied with insofar as the dwelling has not been occupied by anyone else, but I have no evidence about compliance with the second part of the condition (reinstatement).
16. Since the 2003 permission was extant at the material date, Condition 2 was operative. The trenching that has been carried out by way of implementation of enlargements within Schedule 2, Part 1, Class A of the GPDO is expressly not allowed by Condition 2. At the date of the application it was still open therefore to the Council to take enforcement action if it had considered it expedient to do so.

Conclusion

17. Much of the appellant's evidence is directed at establishing with reference to case law that the building was a dwelling at the material date. While I have considered this evidence, ultimately it is not relevant to the determination of this appeal.
18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of trenching to implement enlargements pursuant to GPDO 2015 Sch 2 Pt1 Class A as more particularly described in the evidence provided 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.

Brian Cook

Inspector

³ See Encyclopedia of Planning Law and Practice at P57.08 for the discussion with reference to case law. This confirms that a change of use permission is spent when the authorised development occurs and sets out the circumstances in which existing lawful use rights may be lost.