The Planning Inspectorate

Appeal Decision

Site visit made on 10 March 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 12 March 2020

Appeal Ref: APP/K1128/X/19/3226155
Coombe Paddock, Coombe House Lane, Aish, Stoke Gabriel, Totnes, TQ9 6PU

- 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 Benedict Downing against the decision of South Hams District Council.
- The application Ref 3717/18/CLE, dated 9 November 2018 , was refused by notice dated 22 March 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 the use of part of building as a single dwellinghouse.
- **Summary of decision:** Appeal allowed

Procedural matters

1. For the avoidance of doubt, 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.

2. In order to establish a lawful use for use of part of the building as a single dwellinghouse, it is necessary to show that the property has been in that use before the date of the application for a period of four years beginning with the date of the breach (s171B(2)). In this case the relevant date is 9th November 2014. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities. I note that the Council considers the relevant date to be 6 December 2014 when the application was validated but the difference in dates has no material effect on my decision.

The site

3. The appeal property is a single-storey metal sheet and boarded structure comprising a barn, stables and a tackroom located above a bank to Coombe House Lane and aligned parallel to it. The central former tackroom (referred to as the cabin) has been converted into living accommodation and has a wood burner, sink, single bed, settee and small table. The adjacent former covered walkthrough has been partially enclosed and accommodates a shower, water

heater and cooker, powered by bottled gas. The property has a water supply and electricity is provided by solar panels.

4. A chemical toilet is located in a corrugated metal-clad rear part of the barn. However for the purposes of this decision, I have not regarded it as an integral part of the use of the building as a separate dwellinghouse but as a WC in a separate part of the building which is more akin to an outside toilet serving the use of the stable/barn and the residential use.

5. The site is in the open countryside and is accessed via concrete pedestrian steps from the road and via a pedestrian path on the side of a paddock. The side of the structure is visible from the road. At the time of my site visit there were two horses in the small paddock/yard adjacent to the barn.

Reasons

6. The appellant states in his statutory declaration that the residential use of the building began on 20 September 2014 when he moved out of the marital home and has been continuous since. As this is more than four years before the date of the application, it is immune from enforcement action and therefore lawful. He commenced the refurbishment of the dilapidated tack room in 2014 with the intention of providing a day room for shelter and completed it in mid-August 2014. Photographs submitted dated 5 August 2014 show the installed shower and boiler, and images dated 20 September 2014 show the kitchen area and living area with wood burner, small table and chairs, futon and sink. In mid-November 2016 he obtained a postal address and letterbox for the property.

7. A statutory declaration by Jane Downing confirms that her husband moved out of the marital home by 20tth September 2014 and took up permanent residence in the cabin. A statutory declaration by Alexis Georghiades confirms that the appellant has been living in the appeal property since September 2014, although no precise date is given. A fourth statutory declaration by Neagh Dent-Asghari indicates that he/she observed the conversion work reach completion and it was obvious that by 20 September 2014 the appellant had moved into the cabin.

8. Shirley and Roy Hater refers to the modernisation of the property but do not comment on any period of occupation. Susan Bieby and Sheila Wolledge refer to the property being the appellant's home for the past four years. Numerous receipts and invoices for materials for the conversion of the property have been submitted although the Council points out that these were addressed to the marital home, with the exception of the water bills, and some related to caravan equipment.

9. The Council accepts that the appeal building contains the necessary facilities for day-to-day domestic existence and has been so for more than four years or more prior to the application. The evidence supports this conclusion. However the Council does not consider that the evidence supports the continuous use as a dwellinghouse for 4 years based on the contrary evidence of third parties, including the Parish Council. This indicates that no one locally was aware of the residential use or if there was any occupation, it was not in evidence or continuous with limited sight of the appellant's vehicle parked on the road in front of the site. It is claimed that here was no evidence of light, noise or anything else to indicate the appellant was living at Coombe Paddock. It is alleged that what has happened is occupation by stealth.

10. The appellant states that he did not wish to draw attention to his occupation of the building without planning permission, and whilst he did nothing to conceal the fact, he kept a low profile. Whilst the planning system relies heavily on the public's respect for and adherence to planning procedures, persons who seek to circumvent the system are often subject to criticism. However, planning law provides for unauthorised development to become lawful subject to time and other requirements being met. In this case, the evidence indicates that part of the appeal property has been used as a dwellinghouse for the requisite period and that its use has been continuous, based on the four statutory declarations to which I attach considerable weight, and other evidence that has been submitted.

11. I consider that the appellant has demonstrated on the balance of probabilities that part of the barn has become lawful through the passage of time.

12. One neighbour refers to an historical covenant that disallows the erection of any building on the appeal site. However this is a private matter not relevant to this appeal.

Conclusions

13. 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 use of part of building 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.

Decision

14. 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

The Planning Inspectorate

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 9 November 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-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:

Part of the building has been used as a dwellinghouse for a period of four or more years prior to the date of the application and it is therefore immune from enforcement action.

Signed

P N Jarratt
Inspector

Date 12 March 2020
Reference: **APP/K1128/X/19/3226155**

First Schedule

Use of part of building as a single dwellinghouse.

Second Schedule

Land at Coombe Paddock, Coombe House Lane, Aish, Stoke Gabriel, Totnes, TQ9 6PU

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.

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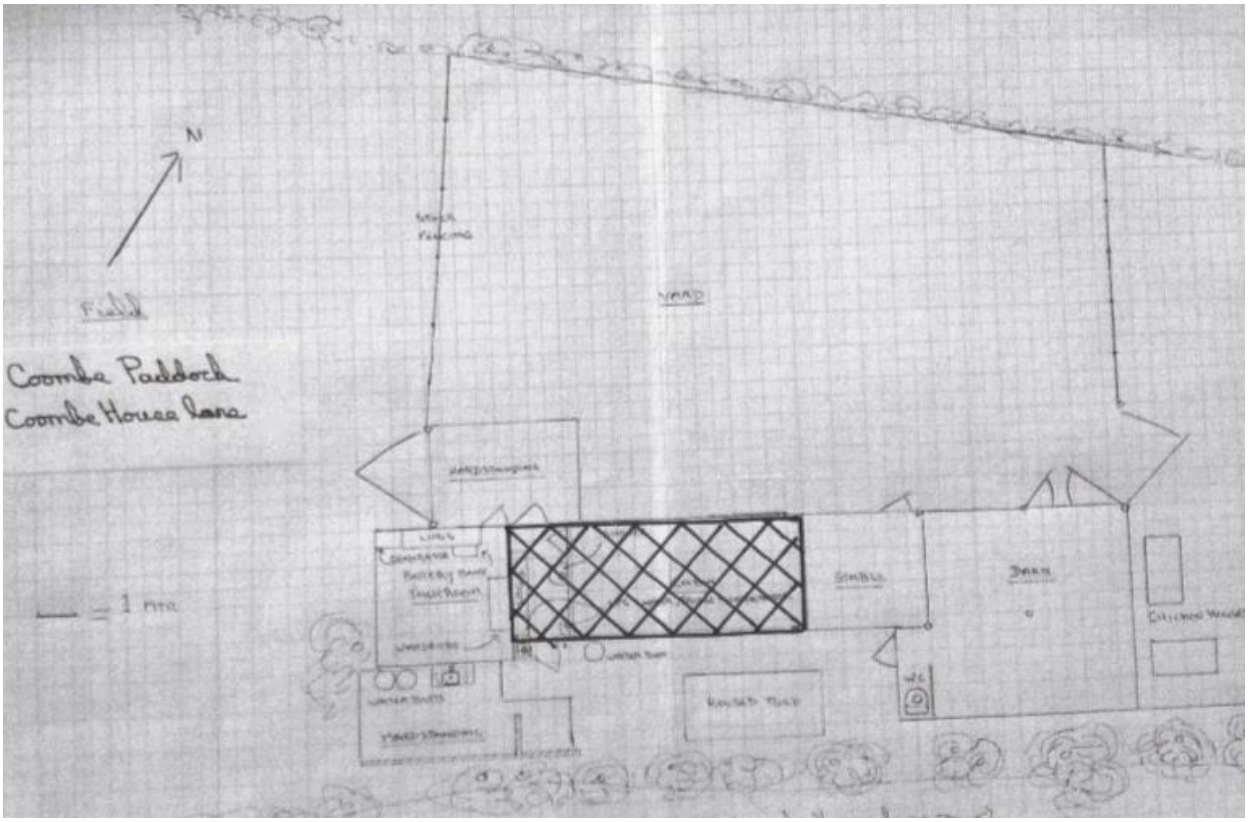
Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 March 2020

by P N Jarratt BA DipTP MRTPI

Land at: Coombe Paddock, Coombe House Lane, Aish, Stoke Gabriel, Totnes, TQ9 6PU

Reference: APP/K1128/X/19/3226155

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