



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 22 April 2020

Appeal Ref: APP/A0665/X/19/3239073

Acorn House, Dog Lane, Kelsall, Chester CW6 0RP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs V Slater against the decision of Cheshire West & Chester Council.
 - The application Ref. 19/02735/LDC, dated 23 July 2019, was refused in part by the Council by notice dated 9 October 2019.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is described as "C3 – dwellinghouses".
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Preliminary Matters

1. There is a related appeal at the property, against the Council's refusal to grant a LDC for the installation of a dormer window, which was made under section 192(1)(b) of the 1990 Act as amended (Ref APP/A0665/X/19/3239071). This is the subject of a separate Decision.
2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as a LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. For the avoidance of doubt, the planning merits of the development are not relevant in the context of an appeal made under Section 195 of the 1990 Act as amended.
5. Section 191(4) of the 1990 Act as amended allows the local planning authority to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an

outright refusal. In this case, the Council issued the LDC with a modified description of development. The application form specified "C3 – dwellinghouses" whereas the certificate was issued in respect of "residential occupation of Acorn House in breach of conditions 18 and 20 on planning permission 03/01126/FUL for more than 10 years".

6. The Council's stance stems from its assessment that a material change of use to a dwellinghouse has not occurred, but instead, the building is being used and occupied in breach of conditions. The original planning permission was for the conversion of the former barn to a live/work unit plus stables/garage. The Council considers that this permission conferred a primary residential use¹ to the property with the business use being incidental. The effect of the subject LDC, as issued, was to remove condition 18, which restricted the occupancy of the building to persons associated with the business operating from it, and condition 20, which confirmed the permission was for a live/work unit only.
7. However, this is not what was sought by the appellant who wished to establish that a material change of use of the building from a live/work unit to a dwellinghouse occurred more than four years prior to the date of the application and is now immune from enforcement action. Consequently, this appeal is made under section 195 of the 1990 Act as amended against the Council's refusal to issue a certificate of lawful use or development in whole or in part, with "part" in this context including the Council's modification of the development described in the application.

Main Issue

8. I consider that the main issue is whether the Council's decision to grant, in part, a certificate of lawful use or development was well-founded.

Reasons

9. Section 191(1)(a) of the 1990 Act as amended enables any person to apply to the local planning authority for a certificate to the effect that any existing use of buildings or other land is lawful. Section 191(2)(a) sets out that uses are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action has expired. Under section 171B(2), where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
10. The property subject to the appeal is a former barn, which was converted pursuant to planning permission (Ref 03/01126/FUL, dated 8 August 2003) for "conversion to live/work unit plus stables/garage". The appellant argues that the original permission was properly implemented but there has been a subsequent material change of use. It is claimed that the building has been used primarily as a residence for a continuous period in excess of four years, prior to the date of the application. Hence, the application sought to establish that the use of the building as a dwellinghouse had become lawful through the passage of time.

¹ C3 of the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order).

11. I shall first consider the Council's position regarding the nature of planning permission 03/01126/FUL (the 2003 permission). When interpreting planning permissions, the basic rule is that the permission should stand by itself, and the meaning be clear within the four corners of the document. If the permission clearly incorporates the application and plans, as in this case, and there is something which is not clear, then the application and plans may be used as aids to interpretation to define the scope of what is permitted².
12. It is clear from the 2003 permission that approval was given for a live/work unit. The approved plans show the ground floor of the building would accommodate a reception area, a staff kitchen, two offices and a meeting room. The first floor shows an area reserved for company visitors. The layout would have enabled separation between the areas set aside for private residence and the business use. The Council initially indicated there would have been 60/40 split of residential to workspace, although it is now considered this was a "conservative estimate". Nonetheless, the scale of the office use shown on the approved plans, and the fact that two uses are specified on the planning permission, shows that the office use was not incidental to the residential use. The approved development comprised a mixed use consisting of two primary uses operating within the same planning unit.
13. As such, I do not find that the development permitted was a dwellinghouse within Class C3 of the Use Classes Order but was a live/work unit as described. A mixed use as a live/work unit, in the circumstances before me, is 'sui generis' for the purposes of the Use Classes Order. I note that the subject LDC states that condition 21 of the 2003 permission, relating to the removal of permitted development rights, is still in force. However, that condition was not lawful as the permitted development rights set out therein (Class(es) A, B, C, D, E, F, G and H of Part 1 of the Town and Country Planning (General Permitted Development) Order 1995) related to development within the curtilage of a dwellinghouse. As explained, planning permission was given for a live/work unit, which would not have benefitted from these permitted development rights in any event.
14. The Council goes on to argue that conditions 18 (restricting occupancy) and 20 (restricting use), which it also imposed on the 2003 permission, would not have been necessary if the permission related to a mixed use. While that may be correct, it does not show the permission was for a dwellinghouse, simply that the conditions may have been imposed in error.
15. A change of use of the approved live/work unit to a dwellinghouse would result in a significant difference in the character of the activities from what had gone on previously. The extent of the office accommodation shown on the approved plans was significant and, if a relatively large part of the building was no longer used for business purposes, it would have had planning consequences. In particular, there would be no employment use of the building, which was a policy requirement at the time of the permission due to the Green Belt location. To conclude on this matter, I am satisfied that such a change would be a material change of use, for which planning permission would be required under the provisions of section 55(1) of the 1990 Act as amended.
16. There is no dispute between the parties that the 2003 permission was implemented. Therefore, what must now be considered is whether the

² *Slough Estates v Slough BC* (No 2) [1970] 2WLR 1187.

appellant has shown, on the balance of probability, that a material change of use to a dwellinghouse occurred on or before 23 July 2015 and continued after the date of change without any significant interruption.

17. The appellant's main argument is based on the Council's acceptance that Acorn House had been occupied in breach of condition 18 (occupancy restriction) when it issued a LDC for "occupation of Acorn House without compliance with condition 18 of planning permission 03/01126/FUL (restricting occupancy)" (Ref. No: 16/05323/LDC, dated 4 February 2017 – the 2017 LDC). It is contended that this created a new chapter in the planning history of the property.
18. It is clear from the Council's reasons for issuing the subject LDC that it relied on evidence submitted in support of the 2017 LDC application. Moreover, there is no dispute that Acorn House has been occupied and used, primarily, for residential purposes. Crucially, the Council has stated that "the LPA's position is that the property has been primarily in residential use for over 10 years" and "the supporting information submitted alongside the 2017 LDC application and subsequent planning applications provides evidence that the property had been occupied continuously for residential use by persons not employed in any business occupying the property for a continuous period in excess of 10 years"³. Furthermore, I note that a Statutory Declaration, dated 2 November 2016, submitted by the previous owner, stated that the building had been occupied solely and continually as a residence (without any connected work related activity) since 26th November 2006. A further Statutory Declaration, dated 19 July 2019, has been submitted by the appellant confirming that they occupied the property as a primary residence from 15 November 2015.
19. Given the Council's stance on this particular matter, and lack of any evidence to the contrary, I find the appellant's evidence to be sufficiently precise and unambiguous. I am satisfied that the appellant has shown, on the balance of probability, that a material change of use to a dwellinghouse occurred on or before 23 July 2015 and continued after the date of change without any significant interruption.

Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in part to grant a certificate of lawful use or development in respect of "C3 – dwellinghouses" 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

21. 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.

Debbie Moore

Inspector

³ Officer Report 19/02735/LDC.

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 23 July 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 appellant has shown, on the balance of probability, that a material change of use to a dwellinghouse occurred on or before 23 July 2015 and continued after the date of change without any significant interruption.

Signed

Debbie Moore

Inspector

Date: 22 April 2020

Reference: APP/A0665/X/19/3239073

First Schedule

C3 – dwellinghouses

Second Schedule

Land at Acorn House, Dog Lane, Kelsall, Chester CW6 0RP

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 / 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: 22 April 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

Land at: Acorn House, Dog Lane, Kelsall, Chester CW6 0RP

Reference: APP/A0665/X/19/3239073

Scale: NTS

