



Appeal Decision

Site visit made on 10 March 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 07 May 2020

Appeal Ref: APP/Y2620/X/19/3221078

The Lodge, Rectory Road, Wood Norton NR20 5BA

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal by Stephen Hilldrup against North Norfolk District Council.
 - The application ref. CL/18/1907 is dated 7 October 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The certificate is sought for lawful use of the property as a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in an appeal under s.195 of the Act the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal 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.
3. Determination of the application was delayed by unavoidable absence of the Council's case officer. On the officer's return the evidence submitted by the appellant was assessed and an e-mail drafted which gave the appellant the opportunity to address and clarify inconsistencies before final determination. In the meantime this appeal against non-determination was lodged. Had they determined the application the Council state they would have refused it.

Background

4. The appeal property was in the same ownership and residential curtilage as 'Starwood', the house immediately to the south-east and now known as 'Cherry Tree Lodge'. In 2012 Mr Hilldrup sold 'Starwood' and retained the appeal property.
5. In 2010 planning permission was granted subject to conditions for conversion of the property – which was then a games room – to one unit of holiday accommodation and creation of a new vehicular access¹.

¹ Decision notice ref. PF/10/0722, dated 10 August 2010.

6. In 2015 the appellant made an application to change the use of the property to a permanent dwelling – that is, without complying with conditions 2 and 3 of the 2010 permission². These conditions limited the use to holiday or ancillary accommodation and required the holiday accommodation to be commercially available for at least 140 days per year. The application remained undetermined, and an appeal made to the Inspectorate in January 2016 was withdrawn when turned away as being out of time.

Reasons

7. The main issue for me to determine is whether the Council's deemed decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the use as a dwellinghouse was lawful at the date of the application – 7 October 2018. This would be the case if the use had subsisted continuously for a period of 4 or more years before that date.
8. The government's Planning Practice Guidance on Lawful Development Certificates³ includes the advice that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
9. The appellant states in the LDC application that use as a single dwellinghouse began in December 2012. It is also stated that the use as a holiday let had never occurred. However, even if there had been no holiday letting that does not give any indication of continuous use as a C3 dwelling.
10. A number of accounts for water and sewerage charges have been put forward covering the period from June 2013 to June 2018. The Council say that usage is less than might be expected. This may be so, but I find it difficult to judge. Notwithstanding, use of water could relate to other potential uses of the building and does not necessarily indicate that The Lodge was in use as a dwelling.
11. Photographs included in an estate agent's sale particulars for the appeal property show the interior with the bedroom and living room furnished, including easy chairs/sofa, dining table and dining chairs in the living room, double bed, wardrobe, chest of drawers and curtains on the bedroom. The kitchen area and bathroom are fully fitted out. The particulars describe the property as a holiday home and include a note that it is subject to a holiday home restriction. A letter from the agent states that marketing took place from November 2014 to April 2015.
12. The Council Tax bills for the annual periods 2012/2013 and 2013/2014 state that the property was unoccupied and unfurnished. These fall outside the critical period of October 2014 to October 2018. However, this information conflicts with the appellant's statement that he and his wife occupied the property as their permanent home for at least 6 years prior to December 2019.

² Application ref. PF/15/0649, dated 7 May 2015.

³ Planning Practice Guidance 'Lawful Development Certificates' - Paragraph 006 Reference ID: 17c-006-20140306.

13. The Council Tax bills for the years 2012/2013, 2013/2014 and 2014/15 are all addressed to Mr Hilldrup at an address in Swannington rather than to The Lodge in Wood Norton. This is consistent with the statement accompanying the May 2015 planning application that Mr and Mrs Hilldrup were staying with Mr Hilldrup's parents on a short-term basis. However, no information has been submitted about the length or purpose of that stay.
14. I appreciate that the appellant requested a copy of the 2014/2015 Council Tax bill, and that this was addressed to The Lodge. However, this copy is dated 2 December 2019 when the building may well have been in use as a Class C3 dwelling, and that would have been the requested destination for the bill. I do not consider this is likely to refer back to the situation in 2014. The bills issued on 10 March 2014 and 24 March 2014 are more likely to reflect the situation at that time.
15. The 2015 planning application stated the use had been as a holiday home, which had ended on 31 August 2010, which I note was little more than 3 weeks after grant of planning permission for the change of use from a games room. The Planning Statement accompanying the application stated that Mr & Mrs Hilldrup were then living with Mr Hilldrup's parents on a short-term basis, and that not enough income would be generated to make holiday letting a viable business.
16. In his final comments the appellant has distanced himself from the details provided in the 2015 planning application, arguing that it had been withdrawn on account of being submitted on the wrong form. Furthermore, it had been completed and submitted by a third party, contained incorrect information, and an undated accompanying letter contained lapsed information.
17. However, as noted above, the appeal against non-determination of that application was turned away by the Inspectorate as being out of time, and I understand this was the reason for the eventual withdrawal of the application.
18. The application was made by an agent acting on the appellant's behalf, and the subsequent submission of the appeal made in the same way. The undated Planning Statement – which I take to be the letter referred to by Mr Hilldrup – clearly relates to the application, and includes information concerning a conversation between Mr Hilldrup and a neighbour owning another holiday let in Wood Norton.
19. The appellant gives no detail of the points on which the application was incorrect or had lapsed. I find it improbable that an agent would have been acting at both application and appeal stages without the full knowledge of the appellant and without his instruction. Nor is it likely that the agent would have been able to include details of the appellant's whereabouts and conversations without such instruction. In the light of this I am reluctant to put aside the evidence of the 2015 planning application.
20. It is also argued that the address of The Lodge is not on the postal system, and that the Swannington address was used occasionally as an alternative. However, there is a name, street name, village name and postcode for The Lodge. Virtually all the documents put in by the appellant use that address and postcode when referring to the property. I find it highly questionable that the property was not registered on the postal system and give little weight to this argument.

21. Overall, the utility and fuel bills presented do not of themselves indicate a continuous residential use – such bills would be incurred for more or less any use to which the building was put. The Council Tax bills, most of which were originally sent to the appellant at the Swannington address, tend to indicate he and his wife may have been living elsewhere. Even if this was on a short-term basis, as stated in the 2015 planning application, it would indicate a break in the claimed residential use during the critical 4-year period for which no plausible explanation has been provided.
22. In a case of this sort it is reasonable to expect documentary evidence of continuous occupation that might include sworn affidavits from nearby residents, photographs showing day-to-day use, payments and receipts for maintenance and domestic items purchased. The evidence here is vague and in some respects obfuscating – as for instance the discrepancy between the claimed 6 year occupancy and the Council Tax record of the property being empty until 2014, the attempt to go back on the 2015 planning application details, the lack of explanation of possible residence in Swannington, and presentation of a copy of the 2014/2015 Council Tax bill dated December 2019 with a corrected address as though that were the one originally put in. Although I am not persuaded this amounts to positive deception, as claimed by the Council, I consider the evidence is imprecise and ambiguous to a degree that casts significant doubt on the claim that The Lodge has been used continuously as a Class C3 dwellinghouse for a period of four or more years prior to the date of the LDC application. On the balance of probabilities this has not been the case, and this appeal should fail.

Conclusions

23. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of use of The Lodge, Rectory Road, Wood Norton NR20 5BA as a single dwellinghouse 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.

Stephen Brown

INSPECTOR