
Appeal Decision

Site visit made on 4 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2020

Appeal Ref: APP/A0665/X/20/3251747

Noonday Cottage, Hall Lane, Edge, Malpas SY14 8LZ

- 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 M Vaughan against the decision of Cheshire West and Chester Council.
 - The application Ref 19/04005/LDC, dated 31 October 2019, was refused by notice dated 27 February 2020.
 - 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 [a] dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description given in the banner heading above is taken from the original application form. However, I note that the description used in the Council's decision notice and on the appellant's appeal form is 'use of former barn as dwelling'.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background

4. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. By virtue of s.171B(2) of the 1990 Act, where there has been a breach of planning control consisting of a material change of use of a building to a dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

6. The issue to be determined in this appeal is whether the use of the barn as a separate dwelling was lawful on the date the application was made, that is, 31 October 2019.
7. Whilst it is necessary for the use to be existing on the date the application is made, as established by the court in the case of *Panton and Farmer v SSETR and Vale of White Horse DC [1999] JPL 461*, a use which was merely dormant or inactive could still be 'existing', so long as it had not been extinguished by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use.
8. However, an unauthorised use must continue throughout, in this case, the four-year period before it can achieve lawfulness, although some minor interruption will not normally be 'fatal' provided it is not significant.
9. The appeal property is a brick-built barn, formerly in agricultural use. It is detached from but located in relatively close proximity to the appellant's house, Noonday Cottage and the appellant's workshop adjoins the barn. The appellant contended that the barn is not located within the curtilage of Noonday Cottage but accepts that it formed part of a single planning unit with Noonday Cottage.
10. There is no dispute between the main parties about when the conversion works were completed and that the building provides all the facilities required for day-to-day private domestic existence. However, as established by caselaw, even if the accommodation provides facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it is a matter of fact and degree.
11. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

The appellant's evidence

12. The appellant's evidence consists of three statutory declarations, letters from persons with knowledge of the property and various receipts and invoices for services and goods relating to the physical conversion works.
13. The evidence relating to the conversion works indicates that the conversion began in 2006 and was completed in or around October 2009 with the most recently dated receipts being for kitchen parts from B&Q dated between 14 and 19 October 2009.
14. The statutory declarations are from the appellant, the appellant's mother, Mrs Anne Walker and the appellant's son Mr Ben Vaughan. In his statutory declaration the appellant stated that the work to convert the barn was completed in autumn 2009 and his mother then moved into the cottage. His mother left to go to Thailand in May 2010 and shortly afterwards his son returned from working abroad and moved in. His son moved out in September 2014 and since then the building has been useful for having friends and relations to stay in when they are in the area. He stated that it has been an independent dwelling since his mother moved in in 2009 and regularly used as such until September 2015.
15. Letters from third parties confirm knowledge of Mrs Walker and Ben Vaughan's occupation of the barn.

16. Mrs Walker stated that she moved into the converted barn in October 2009 until May 2010 when she went to live in Thailand. She stated that she lived on her own in the barn independent of her son, the appellant and his wife, but she did not pay rent and her son paid all the bills.
17. Ben Vaughan moved into the barn in June 2010 and continued to live in the property until the end of September 2014. He stated that the barn was his sole residence and he did not share facilities in his parents' house any more than he would have done if he had lived in a house nearby. Rent was paid on an informal basis with payment including the cost of utilities. His post was delivered to his parents' house as there was no separate postal address.
18. Mrs Walker stated that she lived in the barn independently but provided no amplification about what is meant by this term, or details of such independent living. Similarly, Ben Vaughan's statement as to the sharing of facilities is an ambiguous remark as I do not consider that a person would share facilities in their parents' house if they lived in a separate dwelling.
19. That Ben Vaughan had a lodger for nine months during this time does not demonstrate independence and does not in any event, concern the necessary four-year period. Consequently, this is a matter of little weight.
20. I note that the appellant stated that the barn was regularly used as a dwelling until September 2015. However, little evidence or detail about such occupation is provided beyond September 2014, other than a generalised statement that it has been useful for having friends and relations to stay in when they are in the area.
21. Whilst there are separate meters there are no separate utility bills, council tax has not been paid and there is no separate postal address. Given the family relationship, an informal arrangement is not unusual and whilst the lack of separate utility bills and separate address would not of itself justify refusing an LDC as their absence is not determinative, in my view separate bills would have helped the appellant's case.
22. There is an access from the road and sufficient parking close to the barn and surrounding buildings however, there is nothing obvious to denote separate arrangements. Similarly, there appears to be no dedicated and separate outside amenity space for the barn.
23. I agree with the appellant that it is not a reasonable argument that a close family relationship cannot co-exist with independent use. However, in the absence of detailed explanation about how the barn was occupied, I can understand why the Council felt that there was inadequate evidence of a separate planning unit. It seems to me that the evidence here does not point to the residential use of the appeal building being, both physically and functionally separate from Noonday Cottage.
24. I note that there was a period of around one month where the barn was not occupied, between Mrs Walker moving out and Ben Vaughan moving in. However, I consider this to be a minor interruption and not 'fatal' and in any event, Ben Vaughan according to his statutory declaration, occupied the barn for over four years between June 2010 and September 2014.
25. Planning Practice Guidance states that if a 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.

26. I have taken account of my observations at my site visit and all the matters raised. On the basis of the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability that the use of the barn as a dwelling is lawful.
27. Section 191(4) allows an LPA and subsequently an Inspector on appeal to issue a LDC where a lawful use had been demonstrated by the evidence, and then, if necessary, to modify the description in the application, or to substitute a new one. Indeed, the *Panton* judgment indicated that an Inspector is obliged to issue a LDC for any use of the planning unit which the evidence shows is lawful, and to modify or substitute the descriptions of the use and the land if necessary.
28. In the event that the use as a dwelling was not found to be lawful, the appellant contended that I could issue a certificate for the alternative use. In this respect they referred to the Council concluding that the use is as an annexe however, I note that the Council suggested that the use has been ancillary to the main dwelling.
29. In the absence of suggestion or detail about what such a certificate should be issued for, I am unable to issue an alternative certificate in sufficiently precise terms. However, there is nothing to prevent the appellant from making an application to the Council for some other use which they consider to be lawful.

Other Matters

30. I note that Council officers would have been on site between 2017 and 2019, in connection with the adjacent building. However, there is no substantive evidence which demonstrates that they would have been aware of how the building was being used and, in any event, for the reasons given above this would not alter my judgement.

Conclusion

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

Felicity Thompson

INSPECTOR