



Appeal Decision

Site visit made on 1 September 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 8 September 2020

Appeal Ref: APP/P1133/X/20/3252414

Stokeleigh Farm, Edginswell Lane, Kingskerswell, TQ12 5LU

- 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 and Mrs N Waye against the decision of Teignbridge District Council.
 - The application Ref 19/02319/CLDE, dated 22 November 2019, was refused by notice dated 30 April 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 for the existing use of a building as a dwelling.
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Decision

1. 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.

Procedural Matters

2. The Council has pointed out that since 2012 when the holding only had one residential property and one industrial unit with stables, which had a low key character, there are now three residential properties which has led to significant changes to the land. However, for the avoidance of doubt, I should explain that the planning merits of the use are not relevant and they are not therefore issues 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.
3. The onus of proof rests with the appellants and the level of proof is on the balance of probabilities.

The appeal site and relevant planning history

4. The appeal relates to a former light industrial building which has been converted into an unrestricted open market dwelling without the benefit of planning permission. It is known as Stokeleigh Farm and referred to as Building 2, but this was the name of the original dwelling (Building 1) on the site purchased by the applicants in 2010 and which was subsequently sold in 2016. To the rear of the appeal building is a stable block (Building 3) and beyond that

is a former agricultural storage building (Building 4) now converted into residential accommodation and occupied by the appellants.

5. Planning permission was granted in 2012 to build Building 4 and to convert Building 2 into residential (holiday) accommodation subject to conditions restricting the use of the building to holiday accommodation and for a record to be kept of those using the building as holiday accommodation.

Reasons

6. The Council considers that the evidence suggests that the building has been occupied as a single dwelling for at least four years prior to the date of the application and that it normally would have been immune from enforcement action by virtue of s171B (2). In the light of the submitted evidence which includes a statutory declaration from Julie Lavinia Waye, correspondence from neighbours and tradesmen, and various invoices and statements, I concur with the Council's conclusion.
7. However the Council believes that, on the balance of probabilities, there is evidence of deception by the appellants through the positive/deliberate concealment of the change of use such that s171B(2) cannot be relied upon to provide immunity. It is upon this point that I shall concentrate.
8. The time-line of events indicates that the appellants moved into the newly converted Building 2 in 2014 and Building 1 was let to a third party. The name of Stokeleigh Farm was transferred from Building 1 to Building 2 at about the same time although there is no record of any Council Tax being paid for Building 2. In 2017 Building 4 was given prior approval for conversion into residential accommodation. The appellants moved from Building 2 to Building 4 in 2018 but their daughter and partner remained in Building 2.
9. As evidence of deception the Council refers to the application for prior approval for Building 4 in which Mrs Waye, one of the applicants, declared her residence as Stokeleigh Farm with the accompanying plan showing Building 1 and its curtilage surrounded by a blue line. As a prior approval application, an ownership certificate was not necessary and none of the submitted documentation indicated that Building 1 was in separate ownership. The Council refers to the fact that the non-disclosure of the change of ownership of Building 1 led them not to raise the relevant question of where the applicants were living. The non-disclosure of the separate ownership of Building 1 is considered by the Council as a clear attempt to suggest that the whole landholding was in one ownership and as such was an attempt to avoid questions regarding where the applicants were living. The Council also refer to the transfer of the name 'Stokeleigh Farm' to Building 2 assisted in concealing the move that had been made and the failure to register Building 2 for Council Tax purposes added to the impression of concealment.
10. The Council relies on *Welwyn Hatfield Council v SSCLG* [2011] UKSC and *Jackson v SSCLG* [2015] EWCA Civ1246 in support of their argument that the appellants have concealed their breach from planning control. However it is necessary to establish whether this was passive or positive concealment. I do not consider the failure to register the property for Council Tax or failing to notify the Council about address changes to amount to anything but passive concealment in terms of 'keeping your head down'. As the appellants state,

they were aware of the holiday use restriction on the appeal building and consequently did not register it for Council Tax purposes.

11. Turning to the extent of the blue line on the application plan for prior approval of Building 4, the appellants state that this was an error by the agent who had relied on his previous knowledge of the site when Building 1 was rented out and was unaware that the farmhouse had been sold. A Statement of Truth dated 6 May 2020 from the agent confirms this to be the case and that it was not an attempt to provide alternative facts for the purpose of deception but a simple oversight in the preparation of the plans. Although a Statement of Truth does not attract the same degree of weight as a Statutory Declaration, I consider that it provides a plausible explanation.
12. I note that neighbouring residents of Five Acres and Stokeleigh state that the appellants have never tried to conceal the fact that they were living in the appeal property. Additionally, the appellants claim that Building Inspectors and Planning Officers were aware that the appeal property was being used as a permanent home.
13. On the balance of probabilities, in the circumstances of this case, there has not been deception by the appellants to the extent of amounting to positive deception so as to engage the Welwyn principle and deprive the appellants of the benefit of the four year limitation period for enforcement action. What has occurred appears to be passive deception through the failure to ensure that the Council had the full facts about the transfer of a house name to the appeal building and the failure to register the property for Council Tax. This has been compounded by the error of the agent and the failure of the appellants to ensure that an application in their name was accurate. The action of the appellants is not in any way condoned as the planning system is dependent upon persons engaging with it being honest and responsible, but nevertheless the degree of deception is below the level of positive deception.
14. In view of this, the normal four year period for establishing immunity from enforcement action set out in s171B(2) remains relevant.

Conclusion

15. 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 use of the building as a dwelling 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.

P N Jarratt

Inspector

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 22 November 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 use is immune from enforcement action by virtue of s171B(2)

Signed

P N Jarratt

Inspector

Date 8 September 2020

Appeal Ref: APP/P1133/X/20/3252414

First Schedule

Use of a building as a dwelling

Second Schedule

Land at

Stokeleigh Farm, Edginswell Lane, Kingskerswell, TQ12 5LU

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 September 2020

by **P N Jarratt BA DipTP MRTPI**

Land at: Stokeleigh Farm, Edginswell Lane, Kingskerswell, TQ12 5LU

Reference: APP/P1133/X/20/3252414

Scale: Do not scale

