



Appeal Decision

Site visit made on 3 August 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/Y2430/X/20/3248449

The Lodge, Manor Lane, Goadby Marwood, Melton Mowbray, Leicestershire LE14 4LQ

- 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 Paul Shaw against the decision of Melton Borough Council.
 - The application Ref 18/01090/CL, dated 12 September 2018, was refused by notice dated 22 January 2020.
 - The application was made under section 191(1) (a) and (b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a dwelling house.
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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 operation and use which are considered to be lawful.

Procedural Matters

2. A number of plans were submitted with the LDC application, 3 of which, all date-stamped 12 September 2018, are map-based. One of these is labelled 'Whole Site' and shows an extensive shaded area, with labelling suggesting an area of 3.19ha. Another plan shows a larger area still outlined in black, with a small part of it, apparently the footprint of the building, edged red. The application documentation does not make explicit which of these is the site boundary. The third plan shows an extensive hatched area, but this is clearly not meant to be the site as the building falls outside that area.
3. The plan attached to the decision notice issued by the Council has a red boundary line defining an extensive site. Conversely, a plan attached to the Council officer's report shows the site as just the footprint of the building.
4. I sought clarity from the parties regarding which of the various plans correctly shows the site boundary. Notwithstanding the plan attached to the decision notice, the Council is of the view that the application related only to the land occupied by the building itself, while the appellant says that the larger area is land within his ownership and is the relevant area.

5. Irrespective of the site boundary, both parties confirmed that the application sought an LDC solely in respect of the dwelling itself. The Council had previously set out its view that the garden and outbuildings around the wooden dwelling were separate matters, and the appellant has not taken issue with that. That is also consistent with the description of 'dwelling house' on the application form.
6. With these considerations in mind, I have approached this appeal on the basis that the certificate sought by the appellant relates only to the dwelling itself and not to any of the surrounding land, despite the evident use of much of it, including the large garden, in connection with the dwelling. Consequently, I have taken the site to be the footprint of the building only, as indicated by the red line on the appellant's plan date-stamped 12 September 2018 and the plan accompanying the Council officer's report.
7. The next matter to resolve is whether the appellant sought permission for the operational development (ie constructing the building), the use of the building or both. The description on the application form simply says 'dwelling house' and a box saying 'The use as a single dwelling house began more than four years before the date of this application' is ticked. The wording on the form does not entirely follow any wording in the Act, but it is evident that the appellant wishes to establish that the use is lawful.
8. The Council's decision refers to 'the erection of a log cabin', and it is thus clear that it has considered the operational development which has occurred (ie the building of the 'log cabin').
9. In truth, neither party has sought to draw any clear distinction between the operational development which has occurred and the use of the building. It also seems very unlikely to me that the appellant would have intentionally sought to establish the lawfulness of one but not the other. With these matters in mind I have dealt with the appeal on the basis that the LDC that is sought is for 'the erection of a wooden cabin and its use as a dwelling'. There can be no injustice to the appellant in adopting this approach as it considers both potential matters he could have sought to establish. Nor is there injustice to the Council, which was obliged to consider the lawfulness of the use (given the details on the application form) but which also considered the operational development, which is evident from its description of 'the erection of a log cabin'.

Main Issue

10. The main issue is whether the Council's refusal to grant an LDC is well founded. This will turn on whether the building and its use as a dwelling have become lawful due to the passage of time, taking account of any applicable permitted development rights.

Reasons

The relevant time periods for establishing lawfulness

11. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations are lawful at any time if—

- (a) 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*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*
12. Although an enforcement notice relating to the building was issued on 4 March 2020, it does not appear that any notice was in force at the date when the application for the LDC was made, which is the relevant date for the purposes of this appeal. Accordingly, my decision hinges solely on s191(2)(a).
13. The time periods for taking enforcement action (as referred to in s191(2)(a)) are set out in Section 171B of the Act:
- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
- (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.*
- (2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).*
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*
14. In this case, the erection of the building clearly falls within the ambit of s171B(1) and 4 years applies. However, that is only for establishing the lawfulness of the operations, not the use. There is nothing to suggest that the building has ever been used for any purpose other than as a dwelling, so there has been no change of use. Because of this, s171B(2), which is concerned with change of use of any building to use as a single dwellinghouse does not apply. Consequently, the use of the building can only be established with reference to s171B(3), which specifies a period of 10 years.

Applying the time periods in this case

15. As set out above, the time limit for enforcement action against the building constructed is 4 years, in accordance with s171B(1) of the Act. There is agreement that the building in this case has been in place for longer than that in total; the appellant says it was erected in 2008 and the Council accepts that it was on the site by 2011.
16. There is no dispute either that the building has been occupied by the appellant and his wife since it was built. Indeed, the Council's decision notice makes

specific reference to their occupation of the building. As set out earlier in this decision, the relevant period to establish the lawful use of the building is 10 years.

17. The appellant states that he and his wife moved into the Lodge in July 2008. This is more than 10 years prior to the LDC application in September 2018. The appellant has provided some evidence in support of this:
- 3 Letters from local residents. These all state that Mr and Mrs Shaw have lived at 'The Lodge' since 2008 and one specifies that they moved in in the summer of that year, which is consistent with the appellant's reference to July.
 - An aerial photograph from 2011 in which the cabin can be clearly seen.
 - A photograph dated 12 September 2010 showing a person sitting in front of the cabin and with the cabin evidently in residential use. The cabin shows no signs of having only recently been built, and features signs of established occupation such as blinds in the windows, external lighting, plants and a post box.
18. The Council does not directly challenge any of this evidence. It accepts that the building was 'on site by 2011', something the aerial photograph demonstrates. Additionally in my view, the photograph of a person outside the cabin gives a very clear indication that it was in place some time before September 2010.
19. The evidence of the period from July 2008 to September 2010 is less conclusive. The written evidence is in the form of letters rather than anything more binding on the writers, such as a statutory declaration. Nor is there any evidence such as day to day correspondence or formal documents, such as Council Tax notices. Additional evidence of that nature would have bolstered the appellant's case.
20. However, the Government's *Planning Practice Guidance* (PPG) advises that, in the case of applications for existing use, 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.
21. In my view, the appellant's evidence that he has occupied the building since July 2008 is precise and unambiguous. Moreover, the 3 letters provided are all consistent with that claim, as are the photographs. None of the evidence is directly disputed. Consequently, considering the evidence before me in the round, the most likely position appears to me to be that the appellant's claim is correct. Accordingly, on the balance of probability, a 10 year period has been shown.

The question of permitted development rights

22. The Council's case is rooted in the contention that the building was initially lawful due to the provisions of Class A of Part 4 of Schedule 2 of the Town and

Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This permits:

'The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land'.

23. However, I have no substantive evidence to support this claim. There is no evidence of any request from the appellant for the building under this provision or any correspondence from the Council approving such a request. Indeed, the Council says in its statement that planning records do not show any prior notification of the intention to move onto the site on a temporary basis. The appellant has denied that the building was required in connection with the adjacent development. Moreover, the building is not obviously temporary in nature. Although the walls are wooden, it appears of substantial construction and has a slate roof, which does not strike me as typical of a temporary dwelling associated with a building site.
24. Much of the material before me is concerned with establishing the points in time at which the appellant did and didn't have an interest in the adjacent building land. However, having an interest in the land is not a requirement of Class A of Part 4, which is simply concerned with whether the building is required temporarily in connection with the operations being carried out. In this case it does not appear to me that the question of an interest in the land is determinative.
25. It is clear that the appellant was involved in the adjacent housing development. Additionally, the Council says that the appellant is a builder and intended to occupy one of the houses on the site, both claims the appellant denies. But none of these matters assist one way or the other in deciding whether the dwelling was lawfully erected because it was, *required temporarily in connection with and for the duration of operations being or to be carried out on* the housing site. Overall, there is insufficient evidence to support the Council's claim that it was. Nor does the evidence before me support the suggestion that the information provided by the appellant contradicts information previously provided to the Council when it considered the matter in 2016.
26. The PPG establishes that the applicant is responsible for providing sufficient information to support an application for an LDC. In this case however, while the appellant's case is brief, his key claim – that the cabin was built and occupied by July 2008 – is not directly challenged, the Council focusing instead on its claim that the building was constructed and occupied in connection with the adjacent development site. There is, it seems to me, a responsibility on the Council to support its own claim. Moreover, I am not persuaded that any of the information the Council says is lacking, such as Council Tax notices, land registry documents and boundary/curtilage details, would have helped to determine the question of whether permitted development rights were utilised.
27. Taking all of these matters into account, I conclude, on the balance of probability, that the dwelling was not erected for temporary use in connection with the development of the adjoining land.

Conclusion

28. I have concluded, on the balance of probability, that the dwelling was erected more than 10 years prior to the LDC application and was occupied as a dwelling during that time. I have found insufficient evidence, on the balance of probability, to indicate that the dwelling was lawful during any of that period due to permitted development rights. Accordingly, I find that the time for enforcement action had expired at the time when the application for an LDC was made.
29. 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 a dwelling house is 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.

Peter Willows

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 12 September 2018 the operations and 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability: the building was erected more than 4 years prior to the LDC application and had been in use as a dwelling for more than 10 years prior to the application; the operations and use were not lawful due to permitted development rights during any relevant period; and, at the time of the application, they did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

Peter Willows

Inspector

Date: 15 September 2020

Reference: APP/Y2430/X/20/3248449

First Schedule

The erection of a wooden cabin and its use as a dwelling

Second Schedule

Land at The Lodge, Manor Lane, Goadby Marwood, Melton Mowbray, Leicestershire
LE14 4LQ

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 and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful on the certified date and, thus, 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 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: 15 September 2020

by **P Willows BA MRTPI**

**Land at: The Lodge, Manor Lane, Goadby Marwood, Melton Mowbray,
Leicestershire LE14 4LQ**

Reference: APP/Y2430/X/20/3248449

Scale: Not to scale

