



Appeal Decision

Site visit made on 25 August 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 15 September 2020

Appeal Ref: APP/C1435/X/19/3237563

Broomham Stables, Broomham Lane, Whitesmith, Chiddingfold BN8 6JQ

- 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 Ms Elizabeth Pennell against the decision of Wealden District Council.
 - The application Ref WD/2018/2696/LDE, dated 3 December 2018, was refused by notice dated 2 July 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as '*Use of land and existing building as residential in conjunction with equestrian use.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council, in its decision notice, refers to there being "insufficient and/or inadequate reasons to grant a Lawful Development Certificate (LDC) for use of the buildings as a dwelling." At my site visit, the details of which I highlight later, I observed two wooden buildings within, and separated by, the width of the equestrian yard. I also observed a horse box; presumably that referred to by both the appellant and her husband in their statutory declarations.
3. Historically, a dwellinghouse has been defined as "a building that is used, constructed or adapted for residential use and is lived in, or is capable of being physically used wholly or principally for human habitation", *Lewin v End* [1906] AC 299, 304 (HL). In *Whitfield v Commonwealth* [1939] 278 Ky 111, 128 SW.2d 208, 210 it was held as "a place of residence, habitation where a person (or persons) lives, ie eats, sleeps and rests; especially a place where one established a home."
4. There is no definition of 'dwellinghouse' in the 1990 Act, but in *Gravesend BC v SSE and O'Brien*, [1983] JPL 306 it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
5. More recently, the Planning Portal defines a dwellinghouse as 'a self-contained building, or part of a building, used as residential accommodation, and usually having a single household'.

6. In the circumstances I shall approach this appeal, in the first instance, on whether the form and nature of the residential accommodation can be reasonably considered as 'a *dwellinghouse*' and on this basis, if it can be considered as development in planning terms, whether it can be seen as being 'lawful' through the passage of time.
7. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

8. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, and whether the Council's decision to refuse the LDC was therefore well founded.

Reasons

9. For a dwellinghouse, as a single entity, S171B (2) of the 1990 Act says that where there has been a breach of planning control involving 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. Here, given that the application for the certificate of lawful use (LDC) was made on 3 December 2018, the Appellant must successfully demonstrate, on the balance of probability, that the breach of control commenced four years before, ie prior to 3 December 2014 (hereinafter referred to as "*the material date*") and has continued since.
10. In this particular instance, within the application site shown, to the right of the yard, immediately beyond the entrance gate, there is a small timber structure which has an informal living area, seemingly used for both sitting and sleeping but without clear demarcation, and a separate but limited washing room. Directly opposite is a larger wooden building which has a small kitchen and an area for sitting in. The Council, in its case report, has identified that the latter building also doubles as a site office, and refers to the building as a "mess room". Beyond this building is an agricultural barn which encompasses the stables which, I noted, accommodates a number of horses.
11. Determining whether a change of use, of significant materiality, has taken place is not easy to define, but a pointer is whether there is a clear impact in environmental terms or an impact on the amenity of neighbouring land. Unless this effect is inconsequential, it will in all probability indicate that a material change of use has taken place. In *Wakelin v SSE* the judge indicated that a material change of use may occur where a change in the nature of the use (in that case the sub-division of the planning unit) is not in accordance with the surrounding circumstances.
12. Although the application form describes the development as the use of land and existing building as residential in conjunction with equestrian use, the supporting Statement submitted to accompany the application refers to "residential use of the area edged red" on the accompanying site plan, and

says that the applicant has lived on the land edged red, either in a timber building or the horsebox since 2 December 2014.

13. The appellant, in her statutory declaration (SD) dated 11 December 2018, says that she has worked on the 'blue edged land surrounding the red area, since purchasing it in 2005. She adds that one of the buildings and a horse box have been in residential use continuously during the past four years. The appellant's husband, who does not live at the site, but has stayed there previously, has also produced a SD, dated 4 December 2018. He says that he previously stayed at the site within a wooden shelter and also a horse box, whilst confirming that his wife has been resident in a wooden structure, there.
14. Neither SD is particularly specific as to which of the wooden buildings are/have been used by either individuals since the material date, although my site visit observations have given an indication as to the appellant's current use of these separate buildings. Given also the evidence adduced by both main parties I consider that this has provided me with a good insight into the nature of the residential accommodation at the site.
15. It is apparent that the application site is used for equestrian related purposes and is surrounded by a wider agricultural use. With reference to the land ringed by the 'red line', the equestrian use, which comprises stables, hay storage and an associated yard, must be considered as the primary use of the land involved. As to the two wooden buildings mentioned, given that there is no defined bedroom, and the appellant appears to move between one building to another, no self-contained and settled unit of residential occupation exists. This opinion is not inconsistent with the findings of the enforcement officer, as set out in his e-mail of 8 February 2019 which has been provided by the Council.
16. Indeed, with reference to the manner of the residential use and the buildings' particular physical attributes I am satisfied that it performs little more than an ancillary function to the stabling of the horses to which the applicant has a clear commitment. Here, I am also mindful that she has been recovering from a serious fall from a horse and has a degenerative condition which has largely confined her to the site. In the circumstances it seems to me that the residential element at the site is an unusual and a somewhat unique set-up, and cannot in this instance be considered as constituting an identifiable and separate planning unit.
17. Consistent with the judgement in *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WCR 1207 the site arrangement here is one where its single main equestrian related purpose is such that any secondary activity is ancillary or incidental. There is no distinct and identifiably functional separate residential dwelling, nor any curtilage involved. The residential element exists because, in accordance with the horses' welfare, there is an essential need for the ancillary accommodation. The site office function, which one of the buildings facilitates – referred to by the Council as the "mess room" – is an indication of the inter-mix of use. I note that the appellant has submitted documentary evidence as to Council tax having been paid relating to the fact that the appellant lives at the site. However, this in itself, in light of my findings, does not, nor could be reasonably expected to, illustrate the method of occupation in this instance.
18. I am not convinced as to the relevance of the SDs; the information set down is unspecific and does not get to the crux of the matter. I also find that reference

to the horse-box is superfluous in the circumstances. Having inspected the vehicle it is wholly unsuited for any form of residential occupation and, as is currently the case, when not transporting horses, only lends itself for general storage purposes.

19. I note that an application was made in 2017 (ref WD/2017/0135/F) whereby planning permission was sought for a timber building which itself would serve as a self-contained residential unit. This would effectively have amounted to a functional and separate dwelling in its own right. The application was subsequently withdrawn, apparently due to advice from the Council that permission would likely be refused, and it would appear that this then prompted the LDC application at appeal.
20. On the above basis it seems to me that the appellant's intent has been shown. Any change, though, from the current informal arrangement, or expansion of the residential element as exists – certainly anything akin to the 2017 proposal – would likely mean that a defined residential unit would be created, with a resultant and consequential material change of use. I am guided here by the judgement in *Wood v SSE & Uckfield RDC* [1973] JPL 429. Accordingly, the Council would be then able to exercise its powers of planning control, as it saw fit.
21. Further, were I to consider that the extent of the existing residential use was to such a degree, form and arrangement as to comprise a single dwelling in its own right then I would have to conclude that the land was already in mixed use and, for the residential element to be lawful in this context, it would be necessary for the appellant to show that this had operated continuously for a period of at least ten years prior to the date of the LDC application. The four years claimed from the material date, whether proven or not, is irrelevant. As such, the application here made, and couched in such terms, must fail as, from the evidence provided, it is clear that such continuity cannot be demonstrated.
22. Weighing up all the evidence, and relating it to the very loosely worded description on the application form for the certificate sought which seeks confirmation that the entire area within the red line has lawful residential use rights, I am concerned that such an open-ended description, which is both imprecise and ambiguous, is far removed from the reality of the situation. In illustration of this, and inexplicably, neither of the two wooden buildings nor the horsebox have been marked on the site plan submitted with the application.
23. Accordingly, I find that the application is flawed, and the appellant has failed to apply or address the relevant requirements in such instances. Nonetheless, from my findings I am not convinced that the unusual and individual nature of the accommodation represents development in planning terms, certainly not to the point that the nature and character of the equestrian use would have been significantly altered since the appellant began living at the site in 2014. No environmental impact from such is apparent and none has been demonstrated.
24. I conclude, therefore, that the limitations of the residential accommodation available which I have identified does not, as it stands, constitute development. However, any upgrade or intensity of such could easily and would likely represent a material change in planning terms; one which the Council should reassess should this occur. In the circumstances existing lawful residential use rights cannot exist and the appeal must therefore fail.

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded, and that the appeal cannot succeed.
26. I will exercise, accordingly, the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR