



Appeal Decision

No site visit undertaken

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/Q9495/X/20/3252168

3 Wythe Gill Mews, Low Lorton, Cockermouth, Cumbria CA13 9UW

- 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 Mrs Madelaine Kerr against the decision of Lake District National Park Authority.
 - The application Ref 7/2020/2013, dated 14 January 2020, was refused by notice dated 19 March 2020.
 - The application was made under section 192(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 the proposed use of 3 Wythe Gill Mews as a dwelling occupied by persons described in the application.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision

Procedural Matters

1. I have adopted the description of the proposal in the Header above from the Authority's formal decision notice. However, in the interest of clarity, I have considered this appeal on the basis that the dwelling known as 3 Wythe Gill Mews would be occupied by the appellant, namely Mrs Madelaine Kerr.
2. Given that this appeal turns solely upon the interpretation of a condition imposed upon a planning permission against a set of facts relating to the appellant, a site visit was not necessary.

Reasons

3. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Authority's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

4. Planning permission was granted in November 2016 for a residential development comprising 4 dwellings for local occupancy (Authority Ref: 7/2016/2219). The permission was subject to a number of conditions, one of which (Condition No.3) restricted occupation of the dwellings to persons who have been permanently resident in the locality defined for three years. The dwelling known as 3 Wythe Gill Mews is one of those constructed pursuant to that permission, and there is no dispute that the property is subject to Condition 3. The area of dispute is whether or not occupation by Mrs Madelaine Kerr would be in accordance with Condition 3.
5. There are multiple elements to Condition 3, but for the purposes of this case the salient element is whether the appellant is a 'Person with a Local Connection'. The definition of a 'Person with a Local Connection' is set out within Condition 3 itself, and is defined there as meaning an individual who before taking occupation of the dwelling satisfies one of four conditions. Of these conditions, (1), (2) and (4) do not apply to the circumstances of the appellant and can be discounted. The relevant condition is therefore (3), which states that

The person has been continuously resident in the locality defined for three years immediately prior to:

- a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children or downsizing*
 - b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion*
 - or*
 - c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release.*
6. Of the above, b) and c) are not relevant to the appellant's circumstances and can also be discounted. This leaves just (3) a) to be considered.
 7. In her Appeal Letter, the appellant explains that she and her husband lived in the Lorton Valley for over 36 years, during which time they were fully involved in the community. This is confirmed in the representations made by Lorton Parish Council and a local resident. Having lived in the same house for some 20 years, Mrs Kerr explains that that she had been contemplating downsizing into a smaller property in Lorton. However, in or around 2013, her husband was advised to move to Cockermouth in order to be closer to medical facilities and Mrs Kerr made the move with him. The move was made in September 2013 but her husband passed away in April 2015.
 8. In her evidence, Mrs Kerr explains that it had been her intention to move back to Lorton immediately and in fact she did move back to Lorton temporarily between December 2015 and June 2016 whilst her home in Cockermouth was being renovated. In the event, circumstances beyond her control prevented a permanent move back to Lorton from taking place in the short term and it was not until January 2020 that Mrs Kerr returned to Lorton, moving into rented accommodation there.

9. It is evident from Mrs Kerr's evidence that she was only continuously resident in the locality defined for some seven months out of the three years immediately prior to the date on which the application was submitted. That in itself would not be sufficient to accord with condition 3 a). However, as the appellant points out, there is no time limit within condition 3 a) as to when the 'need' to downsize arises. The question remains, then, whether Mrs Kerr was continuously resident in the locality defined for three years immediately prior to needing to downsize to a smaller property in Lorton.
10. It is Mrs Kerr's evidence that she was contemplating downsizing prior to moving to Cockermouth in September 2013 and was intending to do so within Lorton. Indeed, Mrs Kerr sets out some very cogent reasons as to why she was contemplating downsizing: her house at that time was large and located on steeply sloping ground, and she needed a house that was smaller, more economical and more accessible. It is therefore evident that Mrs Kerr had identified a need to downsize whilst still residing in Lorton and prior to circumstances dictating the move to Cockermouth in September 2013. At that point in time, Mrs Kerr had been continuously resident in the Lorton Valley for some 36 years.
11. It is clear from the above that Mrs Kerr had been continuously resident in the locality defined for well in excess of the three years specified in condition 3 a) at the time that the need to downsize arose. It follows that, as a matter of ordinary language, the appellant (namely Mrs Madelaine Kerr) would qualify as a Person with a Local Connection for the purpose of Condition 3. It further follows that the occupation of 3 Wythe Gill Mews by Mrs Kerr would be in accordance with Condition 3 imposed upon planning permission 7/2016/2219.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use or development in respect of the use of 3 Wythe Gill Mews as a dwelling occupied by Mrs Madelaine Kerr 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.

Formal Decision

13. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Paul Freer
INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 14 January 2020 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The occupation of 3 Wythe Gill Mews, Low Lorton, Cockermouth, Cumbria CA13 9UW by Mrs Madelaine Kerr would qualify as occupation of the dwelling by a Person with a Local Connection for the purpose of Condition 3 imposed upon planning permission 7/2016/2219, and would therefore be in accordance with that planning permission.

Signed

Paul Freer

INSPECTOR

Date: 24 September 2020

Reference: **APP/Q9495/X/20/3252168**

First Schedule

Use as a dwelling occupied by Mrs Madelaine Kerr

Second Schedule

Land at 3 Wythe Gill Mews, Low Lorton, Cockermouth, Cumbria CA13 9UW

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 September 2020

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Land at: 3 Wythe Gill Mews, Low Lorton, Cockermouth, Cumbria CA13 9UW

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Scale: Not to scale

