The Planning Inspectorate

# Appeal Decision


**by Richard S Jones BA (Hons), BTP, MRTPI**

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



**Decision date: 22 October 2020**


**Appeal Ref: APP/E9505/X/20/3246539**
**Plot K, Bureside Estate, Crabbetts Marsh, Horning, Norfolk NR12 8JP**

- 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 Amanda Jefferies against the decision of The Broads Planning Authority.
- The application Ref BA/2019/0458/CLUED, dated 29 October 2019, was refused by notice dated 28 January 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 described as 'C3 dwellinghouses'.

## 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 found to be lawful.

## Preliminary Matters

2. I wrote to the parties to advise that, having reviewed the evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision. The parties did not object.

3. S191(4) of the Town and Country Planning Act 1990, as amended (the 1990 Act) allows me to modify the description of the application, granting a lawful development certificate (LDC) in the terms that accord with the facts and evidence. In this case, for the reasons explained below, I have found that the development should be properly described as a 'material change of use of the first floor to use as a flat (Use Class C3)'. As the LDC is sought for one dwelling, the description is singular, rather than plural as set out on the application forms.

4. I've noted the comments made about describing the property as a flat or a dwellinghouse, but a flat is regarded as a dwellinghouse for the purposes of the 1990 Act.

## Background and Main Issue

5. An application under s191(1)(a) of the 1990 Act seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful. S191(2)(a) of the Act explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired.

6. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. The burden of proof lies with the appellant and the relevant test is 'the balance of probability'.

7. From the evidence before me, the main issue in this appeal is whether the boathouse building has been used as a dwellinghouse for more than four years before the LDC application was made, so as to be immune from enforcement action under s171B(2) of the Act. The material date is therefore 29 October 2015.

**Reasons**

8. Planning permission was granted in 2002[1] for the boathouse fronting onto the River Bure. The plans provided by the Authority show an internal wet dock at ground floor level and the first-floor accommodation as a sail loft. It is not disputed that that permission has been implemented. Indeed, planning permission was granted in June 2006[2] for the retention of three roof lights in the boathouse, the approved plans for which show the same ground and first floor uses as per the 2002 permission.

9. The Council acknowledge that the first floor of the boathouse has since been changed into accommodation comprising an open living area and a shower room without the benefit of planning permission, and that the applicant has used this area for overnight accommodation on occasion as well as for an art studio and study. The Council state, however, that as there is no restriction on the 2002 planning permission, these uses are not considered to be unlawful as they are incidental to the use of the building as a boathouse. The appellant's position is that the property has been used as a second home since 2006 and since 2013 in her ownership.

10. There is no definition of dwellinghouse in the 1990 Act, but in *Gravesham 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. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals.

11. In support of the appeal the appellant has provided a statutory declaration which states that when she purchased the property in October 2013 it was a boatshed with a flat above. The annexed extract from the estate agent sales particulars show that the first floor of the property has the facilities required for day-to-day private domestic existence with an open plan living/dining/bedroom area, galley style kitchen, shower room and balcony area. The appellant confirms that she and her husband have stayed at the property overnight for weekends or longer periods and have regarded the property as an additional residence, in addition to the use of the internal wet dock and mooring.

12. Also annexed to the declaration are:

    - An energy performance certificate from March 2013 which refers to the dwelling type at the boathouse as a top-floor flat.

[1] Application Ref: BA/2002/1634/HISTAP
[2] Application Ref: BA/2006/1217/HISTAP

- Electricity bills covering the periods from February 2014 to October 2015, May 2016 to February 2018, April 2019 to July 2019 and October 2019 to January 2020.
- Council Tax bills from 2013/2014 through to 2018/2019. (Separately, the appellant has provided an additional Council tax bill for the period 2019/2020.)

13. The statutory declaration and each of the annexes are signed by the appellant and witnessed by a commissioner for oaths. Such sworn evidence carries significant weight.

14. Although the appellant's declaration refers to Band B, the bills consistently refer to Band D. Band D Council Tax valuation list details are also provided with effect from 2005 as well as confirmation from North Norfolk District Council that the property has been banded for Council Tax between 2005 and 2006 as a main dwelling and since 2006 as a second home. I recognise that that letter also clarifies that Council Tax is chargeable regardless of any planning restrictions or lack of planning. Nevertheless, the fact that Council Tax has been paid on the property does add further weight to the appellant's case.

15. I also note that planning permission was granted in 2005 for the installation of a bio-disc treatment plant (sewage treatment) at the property and annual service reports are provided from July 2015 to April 2019.

16. The appellant has also provided a HM Revenue and Customs Land Transaction return which lists the property type as residential as well as television licences from 2014 through to 2020. An email from BT dated December 2014 confirms the order of broadband, a phone package and BT Sport, albeit to Plot 26 Crabbatts Marsh, rather than Plot K. The BT bills that are provided for the month of October in the years 2014 to 2019 are addressed to the appellant's main address, although I note that the phone number corresponds with that set out in the email order.

17. In considering whether there has been a material change of use is a matter of fact and degree; there needs to be some significant difference in the character of the activities from what has gone on previously. In this case, there has been a significant change in the nature of the use of the first floor from a sail loft to residential accommodation and the evidence points to the change of use taking place prior to the appellant purchasing the property in 2013. Moreover, the type, extent and level of that use cannot be reasonably described as ancillary to the use of the boathouse, in the same way that a sail loft clearly can.

18. However, the evidence shows that the use of the ground floor of the boathouse has continued as an internal wet dock. Therefore, the material change of use relates only to the first floor of the property.

19. Taken together, I find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the breach of planning control, consisting of a material change of use of the first floor to use as a flat (Use Class C3), occurred more than four years before the date of the application, without material interruption. As such, the use has become lawful through the passage of time. The Council has provided no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable.

## Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s195(2) of the 1990 Act as amended.

*Richard S Jones*

**INSPECTOR**

The Planning Inspectorate

# 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 29 October 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:

It has been demonstrated, on the balance of probabilities, that the material change of use of the first floor to use as a flat (Use Class C3) had taken place for a period of more than four years without material interruption by 29 October 2019, and so the time for taking enforcement action under s171B(2) of the Town and Country Planning Act 1990 had expired.

Signed

*Richard S Jones*

Inspector

Date 22 October 2020

Reference: APP/E9505/X/20/3246539

***First Schedule***

Material change of use of the first floor to use as a flat (Use Class C3)

***Second Schedule***

Land at Plot K, Bureside Estate, Crabbetts Marsh, Horning, Norfolk NR12 8JP

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 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:

**by Richard S Jones BA (Hons), BTP, MRTPI**

**Land at: Plot K, Bureside Estate, Crabbetts Marsh, Horning, Norfolk NR12 8JP**

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Scale: NTS