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# Appeal Decision

Site visit made on 9 November 2020

**by P N Jarratt BA DipTP MRTPI**

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

**Decision date: 19 November 2020**

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**Appeal Ref: APP/X1118/X/20/3255571**

**Ring O' Bells, Prixford, Near Barnstaple, Devon , EX31 4DX**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Phillip Milton against North Devon District Council.
  - The application (Ref 71492) is 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 residential.
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## Decision

1. The appeal is dismissed.

## Reasons

2. On 23 August 2019 an enforcement notice was issued in respect of the appeal premises alleging 'Within the last 4 years, unauthorised material change of use consisting of the residential use of a public house.' The appeal was on the ground set out in section 174(2)(d) which was that at the date when the notice was issued, it was too late for the Council to take enforcement action. The appeal was dismissed on 7 September 2020 and an enforcement notice upheld with correction and variation (APP/X1118/C/19/3237425).

3. The inspector's decision letter sets out in detail the reasons why the appeal was dismissed. At paragraph 19, the inspector concludes:

*"I find that when the first of the tenancies let by the Appellant commenced on 30 April 2016, this did not amount to the continuation of the breach of planning control that occurred in April 2012. Rather, that first period of residential use had ceased before it gained immunity from enforcement, and there then followed a period of some 14 months during which no active use of the premises, residential or otherwise, was being made and the Council could not have taken enforcement action. The commencement of the tenancy on 30 April 2016 amounted to a fresh breach of planning control, consisting of the residential use of the first-floor living accommodation that was wholly unconnected with any use of the Ring O' Bells as a public house. Applying the test at s171B(2), this took place less than four years before the date on which the enforcement notice was issued."*

4. An application for an LDC and dated 30 April 2020 was submitted to the Council but this was not determined within the prescribed time. An appeal against non-determination was made on 7 July 2020. The appellant considers that as there was an appeal against the enforcement notice pending determination, the Council should not have refused to determine the LDC application. However, that is not a matter for this appeal. In any event the appellant has exercised his right to appeal against non-determination.
5. The grounds of appeal against non-determination of the application is on the basis that a certificate should be issued for the 4 year continuous residential use of the planning unit from 30 April 2016 until 30 April 2020. The appellant states that the material change of use occurred on 30 April 2016, and, although the 4 years required to establish immunity had not been met by the relevant date on the ground (d) appeal when the notice was issued on (23 August 2019), it had been met by the date of the LDC application. This was at a time when the enforcement notice was not in effect due to the appeal against the enforcement notice continuing but not yet determined as provided for in s175(4).
6. Section 191(2) states:  
*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.*
7. There are therefore two limbs to be satisfied before finding a development to be lawful.
8. The purposes of s191(2)(a) is to ensure that the recipient of a notice issued within the relevant period in s171B is not able to avoid its outcome by continuing to appeal it until an application under s191 could succeed and the second bite provision under s171B(4)(b) is available. This permits the taking of further enforcement action in respect of any breach of planning control, if during the period of four years ending with the action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach. During this period of four years since the authority has taken or purported to take action, it remains the case that enforcement action may be taken in respect of the breach. It follows that s191(2)(a) could not therefore be satisfied during this period. Only in circumstances where, at the date of the application for an LDC, an enforcement notice was still not in force and the local planning authority had allowed the end of the four year period available to it to pass, without first issuing another notice, could the development be found to be lawful. However, such circumstances do not apply in this case and the residential use applied for cannot be regarded as lawful.
9. The enforcement appeal has been determined and is now in force. The LDC for the use applied for would therefore be a contravention of the requirements of the notice which is what s191(2)(b) seeks to avoid.
10. The use applied for therefore fails both tests of lawfulness as set out in s191(2).

11. It should be noted that even were I able to be satisfied that the use applied for is lawful, an LDC would be of no value due to s285(1) and the notice is in force.
12. For the reasons given above I conclude that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*P N Jarratt*

**Inspector**