



Appeal Decision

Site visit made on 13 October 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/Q3305/X/20/3257441

Two Oaks, Underhill Lane, Ston Easton, Wells BA3 2RX

- 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 and Mrs Nick Leggett against the decision of Mendip District Council.
 - The application Ref 2020/0935/CLE, dated 13 May 2020, was refused by notice dated 3 July 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 the building (and its curtilage) has been used as a separate dwelling for at least the past 4 years.
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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 extent of the existing operation which is found to be lawful.

Procedural Matter

2. There was a discrepancy between the red line delineating the appeal site on Drawing Leggett-JH-01 and that which was attached to Mr Leggett's statutory declarations submitted in support of the appellants' case. The parties' views were sought on which plan was correct, were the appeal to be allowed. The appellants responded by email, dated 10 November, stating that they were content for the area on the plan attached to the statutory declaration to be used. No response was received from the Council. As neither party would be prejudiced by my doing so, my decision is based on the area delineated in the plan attached to Mr Leggett's statutory declaration.

Main Issues

3. The main issues are: whether what is on the land is a building; and the period that it has been lived in continuously.

Reasons

4. The appellants seek a certificate of lawfulness for the use of a building and its curtilage as a dwelling for 4 years. The site lies in the open countryside to the east of the town of Midsomer Norton. The site comprises the north-eastern corner of a sloping field that lies at the end of a largely unmade lane that runs from Midsomer Norton.

5. Amongst its terms, section 191 of the 1990 Act provides the statutory framework for a person wishing to ascertain whether any operations which have been carried out in, on or under the land are lawful. Section 191(2) states that such operations will be lawful if no enforcement action could be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Here, the evidence shows that there was no enforcement notice in force at the time that the application was made.
6. The burden of proof in the appeal lies with the appellants to make their case, on the balance of probability.

Whether a building?

7. Section 336 of the 1990 Act defines a building as any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings.
8. The appellant states that following the purchase of the land, in 2005, they brought an articulated lorry trailer (the trailer) to the site. The use it was put to at this time is not specified. In 2009, they sited a mobile home on the land. Again, its use at the time of its siting is not specified. In late 2010, they say that they joined the trailer and the mobile home together. It appears that this involved cutting out a door in the metal side wall of both the trailer and the mobile home and constructing a raised wooden walkway between the two. They say that they extended the trailer in much the same period. To create this, a significant part of the metal wall of the trailer, on the opposite side from the walkway, was removed and the timber extension was constructed.
9. The appellants state that the various elements were fixed to the ground in the following manner: the original steel legs of the trailer are set into the ground and steel stanchions at its front are concreted into the ground; the mobile home sits on a concrete block and its front and rear legs have concrete over them; the walkway is supported by wooden legs that are concreted into the ground; and the extension is supported by steel stanchions that are concreted into the land.
10. The Council states that these structures are not permanent and can easily be removed from the land. Its statement refers to the manner that these are fixed to the land, citing paragraph 2.7 of the appellants' statement. The Council states that the structures' supports do not have 1m deep foundations required under the Building Regulations, that some of the stanchions are set into irregular blocks of concrete lying on the ground whilst others do not have concrete and just lie against the ground. It goes on to say that the mobile home merely sits on the concrete pad and is not connected to it. The result, it says, is that the various elements are clearly not permanent. The articulated lorry body and caravan would be capable of being moved simply and easily once the connecting and extending elements are removed and necessary works to the supports is undertaken.
11. No specific date has been given by the appellants regarding when the elements were affixed in the manner claimed. However, they have stated in this regard that "all of the works having been completed over four years (if not ten years) ago". Having regard to this, and not having substantive reason before me to

find otherwise, I find that on the balance of probability that the physical works, including the manner of fixing the various elements, were completed at least four years before the date of the application. Whilst there may not be footings of 1m depth, this is not in itself determinative of whether what is on site is a building.

12. Established case law¹ sets out three primary factors identified as being decisive of what is a 'building'. These are: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.
13. There seems little doubt that, when brought to the site, the trailer and mobile home were not buildings. They were essentially mobile chattels. However, on a fact and degree basis, this changed as a result of their being linked together. This change was compounded through the extension to the trailer and the manner of fixing of the constituent elements. As a result, I find that the mobile home and the trailer lost their mobility and became a single permanent feature in late 2010. They became a single entity of significant scale, that by reason of a combination of its weight and manner of fixing became a permanent feature.
14. Although I was not provided with a copy of the decision letter referred to by the Council, (PINS reference APP/Q3305/X/14/3000719), I understand the distinction between a dwelling and a dwellinghouse. On the basis of the evidence, the subject of the appeal before me is clearly the latter.
15. The evidence shows that what is on the site can reasonably be described as a structure that falls within the definition of the word 'building' in s336(1) of the Act.

Period the building has been lived in

16. Given my finding on the first main issue, it is for the appellants to show that the building has been lived in for a continuous period of four years up to the date of the application. Therefore, they have to show that the use commenced on or before the 16 May 2016 (the 'relevant date') and continued without substantial break until the date of the application.
17. Case law² has defined 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. The appellants have set out what facilities have been available to its occupants and these are shown in the Layout and Elevations drawing³. These meet the test in *Gravesham*.
18. It is unclear from the evidence that when Mr Leggett moved to the site in 2010 he did so on a permanent basis, and it was his sole residence that he used continuously. The appellants' submissions, including their statutory declarations, state that Mrs Leggett and their children moved into the dwelling in June 2012. That the appellants cannot recall a precise date for this is not fatal to their position. What is of importance is that this date is prior to the relevant date. Some of the supporting letters and photographs they have submitted do not provide precise and unambiguous evidence of residential use. However, when taken as a whole, the appellants' evidence, including official

¹ Cardiff Rating Authority and Skerritts

² Gravesham BC v SSE and O'Brien, [1983] JPL 306

³ Leggett-JH-03

letters addressed to both Mr and Mrs Leggett and the contents of their statutory declarations, indicates that on the balance of probability they occupied the dwellinghouse for more than four years at the time of their application. On the basis of the evidence before me, I find that they have used the associated land, as delineated on the attached certificate, as a single planning unit for a house and garden since the family moved in.

19. For its part, the Council does not dispute that the appellants have lived on site for four years. Its case was that they had not lived there for what it considered to be the required ten years. It agreed that a residential use had occurred for seven years and approximately 11 months prior to the application being made.
20. From the evidence before me, on the balance of probability I find that the building was used as a dwellinghouse for four years continuously up to the date of the application.

Conclusion

21. 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 the building (and its curtilage) has been used as a separate dwelling for at least the past 4 years 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.

Roy Curnow

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 13 May 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched black 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:

The appellants have demonstrated on the balance of probability that the dwelling on the land is a building. Further, they have shown that it was used continuously as a dwellinghouse for a period of at least four years prior to the date of the application.

Signed

Roy Curnow
Inspector

Date: 04 December 2020

Reference: APP/Q3305/X/20/3257441

First Schedule

The building (and its curtilage) has been used as a separate dwelling for at least the past 4 years

Second Schedule

Land at Two Oaks, Underhill Lane, Ston Easton, Wells BA3 2RX

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 04 December 2020

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Scale: Not to scale

