



Appeal Decision

by Thomas Shields DipURP MA MRTPI

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

Decision date: 15 December 2020

Appeal Ref: APP/Q1153/X/20/3250422

The Cookhouse, Higher Whiddon, Beaworthy, EX21 5AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Stephen Hill against the decision of West Devon Borough Council.
 - The application Ref 2459/CLE, dated 25 July 2019, was refused by notice dated 13 March 2020.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is use of building as a dwelling.
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Application for Costs

1. An application for a full award of costs was made by Mr Stephen Hill against the West Devon Borough Council. This is subject of a separate decision.

Appeal Site

2. The appeal building, the Cookhouse, is a detached two storey stone building comprising an open plan lounge/diner with galley kitchen on the ground floor and one bedroom and bathroom on the first floor. It is located within a wider complex of various farm buildings at Higher Whiddon, with surrounding fields beyond. Within the complex of buildings is a small central farmyard largely enclosed by buildings on three sides including the appeal building and the appellant's detached main farmhouse.

Main Issue

3. The main issue in this appeal is whether the Council's decision to refuse a LDC was well founded.

Reasons

4. With regard to the determination of LDC applications for existing use the PPG¹ reiterates the approach to be taken as established by earlier Court judgments. Hence, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the

¹ Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)

- applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
5. The appellant's evidence is set out in submitted Statutory Declarations² (SD), plans and photographs together with a submitted statement of case (SOC), appendices and final comments³ (FC).
 6. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force.
 7. There is no dispute that the requirement of s191(2)(b) is satisfied. With regard to s191(2)(a) the appellant's case is that the residential use of the building as a separate and single dwellinghouse is lawful because it constituted a material change of use (MCU), thereby amounting to "development" within s55(1) of the Act, and that it gained immunity from enforcement action because it continued without any material interruption for more than 4 years prior to the date of the application⁴.
 8. There is no statutory definition of "dwellinghouse" and whether one exists or not is a matter of fact and degree. In this regard the parties refer to the Court judgment in *Gravesham*⁵ which established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities for day-to-day private domestic existence, such as facilities for cooking, washing, eating, and sleeping. The Council does not dispute, and neither do I, that the layout and facilities provided within the Cookhouse are consistent with a "dwellinghouse" as set out in *Gravesham*.
 9. However, the existence of a building used as a dwellinghouse does not of itself establish that a separate or new planning unit has been created and/or that there has been development in the form of a MCU. Indeed the Council's view is that the appellant's evidence fails to demonstrate that either has occurred and that the use of the appeal building remains an ancillary one.
 10. A MCU is not defined in statute or in any statutory instrument. In order to establish whether there has been a MCU, as set out by the Court in *Burdle*⁶, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to ancillary or incidental) uses of that unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes.
 11. In *Burdle* three broad categories were identified:-
 - a) a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;

² Statutory declarations: John Hill; Stephen Andrew Hill; Matthew Hill

³ Exbourne Planning Services

⁴ S171B(2) - Where there has been a breach of planning control consisting in 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.

⁵ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

⁶ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

- b) a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - c) the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
12. The submitted plans do not show any delineation of plot boundaries or separate access. However, in terms of physical separation the appeal building has adjacent parking and its own garden area. Nonetheless it lies very close to the main farm house sharing the same yard area to the front with no intervening physical barriers. The degree of physical separation therefore is quite limited, although not a determinative factor by itself.
13. There is ambiguity in the submitted evidence as to the provision of utility services. The SOC submitted on behalf of the appellant states that the appeal building shares services with the main dwelling, but in an earlier email to the Council and in later FCs it is stated that it “has its own metered water and electricity from the farm buildings”. There is no clarification of this point in the submitted SDs. However, whether the appeal building shares the same utility services with other farm buildings, rather than having its own independent and metered supply, may or may not be a relevant indicative factor. With regard to physical and functional separation it is simply one factor to take into account and is not determinative by itself.
14. Reference is also made to the previous use of the appeal building as a commercial kitchen. Whether that use was lawful and ancillary to a primary use of a larger planning unit, or whether it was a new primary use and planning unit by itself, is not clear. This also adds to the uncertainty as to what previous planning units and primary uses may have existed prior to the appeal building being used for residential occupation.
15. I understand that the appellant remains the owner of all the land and farm buildings, or at least the main farmhouse and appeal building, while it is members of his family who previously and currently live in the appeal building. These factors do not necessarily mean that the appeal building remains in a single unit of occupation and planning unit with the farmhouse, or potentially within a wider planning unit. However, there is no convincing evidence before me to demonstrate that the nature of the residential occupation of the appeal building was not previously, or is not currently, functionally related to the primary use(s) of the planning unit from which it is now claimed the appeal building is separated from and forms a single planning unit.
16. It is not for me to speculate but it may be, by way of example, that the original planning unit encompassed all of the land and buildings in the farm complex which were physically and functionally related to a single primary mixed use for residential and agriculture, or alternatively, that the main farmhouse and appeal building were ancillary to a single primary use for agriculture. However, the evolution of primary uses and planning units is far from clear and consequently so is the key question of whether the current use of the appeal building was a MCU creating a separate planning unit. The appellant’s evidence unfortunately simply focuses on the residential occupation of the appeal building itself, rather than establishing what is or was the relevant planning

unit(s) and identifying the primary use(s), as set out earlier in *Burdle*, so as to establish whether a MCU has occurred.

17. A third party representation does not address the detailed issues I have referred to above and hence adds no significant further weight in support of allowing the appeal.
18. Overall therefore, due to the lack of clarity and precision over what are the previous and current planning units and primary uses, it is not possible to determine which of the three categories above in *Burdle* might be relevant and hence whether there has been a MCU in the use of the appeal building. In this regard, as set out in paragraph 4 above, the onus on providing proof of lawfulness rests with the applicant, now the appellant. I find that his evidence is not sufficiently precise and unambiguous to establish on the balance of probability that the use of the appeal building as a single dwellinghouse is lawful.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the appeal building as a single dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

20. The appeal is dismissed.

Thomas Shields

INSPECTOR