



Appeal Decision

Site visit made on 29 December 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 8 January 2021

Appeal Ref: APP/P2365/X/20/3259154

Four Paddocks, Flax Lane, Burscough, Ormskirk L40 5TD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Stephanie Nuttall against the decision of West Lancashire Borough Council.
 - The application Ref 2020/0567/LDC, dated 9 July 2020, was refused by notice dated 8 September 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 "change of use of part of a building, to use as a single dwelling house for a time period exceeding four years. Development of ground floor approx 72sqm for residential purposes: - incorporating a separate entrance, installation of 3 sets of patio doors, 4 external windows, development of separate bathroom, 2 bedrooms, fitted kitchen area and open plan living area. A log burner with double doors, chimney and flue. A separate entrance for existing residential use/dwelling and 2 external upvc windows (planning permission 2014/0205)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal premises forms part of an agricultural building. I saw from my site visit that the building contains a self-contained residential unit at mezzanine level, incorporating a ground floor bathroom/wc, pursuant to planning permission for the change of use of part of the existing barn to residential use (Ref 2014/0205/FUL). A further self-contained unit comprising a living area, kitchen, two bedrooms and a shower room has been created on the ground floor, hereinafter referred to as the ground floor unit, which is the subject of this appeal.
3. It is clear from the application that the LDC is sought for the ground floor unit. I have determined the appeal on this basis.
4. The planning permission, referred to above, is subject to three conditions, as follows: - 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr David Nuttall and Mrs Stephanie Nuttall; 2) When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its

- condition before the development took place; 3) The residential use of the barn hereby permitted shall be restricted to the mezzanine floor and ground floor bathroom/wc as shown on the drawings stamped 2014/0205 received by the Council on 7 March 2014.
5. The Council indicates that the use of any part of the building for residential purposes, other than the mezzanine floor and its ground floor bathroom, would be in breach of condition 3. However, the condition concerns the residential use "hereby permitted", which ties that restriction to the approved use "as shown on the drawings". The effect of the condition, as it is worded, is to prevent that residential use encroaching into a wider area than shown on the approved plans. It does not seek to prevent the use of another part of the barn as a separate residential unit. This would be beyond the scope of the planning permission and, in any event, it would not be necessary since any further material change of use of another part of the barn would constitute a breach of planning control in its own right.
 6. The Council also suggests the use of the building by persons other than Mr and Mrs Nuttall and their dependents would be in breach of condition 1. As with condition 3, condition 1 only applies to the approved use. It restricts the use of that part of the building specific to the planning permission, not the barn as a whole. Therefore, I do not agree that the development for which the LDC is sought would be in breach of conditions 1 and 3 of permission reference 2014/0205/FUL.
 7. Hence, it is not necessary for the appellant to show, as the Council suggests, that the part building to which the LDC relates has been used as a dwellinghouse and occupied by persons other than Mr and Mrs Nuttall for a period of 10 years without significant interruption. This would be a misinterpretation of the planning permission for the reasons set out above.
 8. Nonetheless, the Council acknowledges that uses are lawful at any time if no enforcement action may 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)¹. The time limits are set out in section 171B of the 1990 Act. In this case, the material change of use would fall within subsection (2) – a breach of planning control consisting in the change of use of any building to use as a single dwelling house, and so no enforcement action may be taken after the end of a period of four years beginning with the date of the breach.
 9. It is also necessary to consider whether the use continued after the date of change without significant interruption, since during these periods the Council would have been unable to take enforcement action.

Main Issue

10. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

11. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an

¹ Section 191(2)(a) of the 1990 Act.

LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

12. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. Therefore, the comments from interested people about the effect of the development on a nearby Ancient Monument cannot be taken into account, since this would concern the planning merits.
13. Therefore, what I must consider is whether the appellant has shown that a material change of use of part of a building to use as a single dwelling house took place on or before 9 July 2016², and that the use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.
14. The appellant has provided a Statutory Declaration³ in which it is stated that the works began at the end of 2014 and concluded in early 2015. The works included fitting patio doors and creating a separate entrance, fitting a bathroom and a kitchen and forming a living area and two bedrooms. Electricity was provided at that time. The works were carried out on the ground floor below the mezzanine floor. While the Statutory Declaration contains details of the physical works that enabled the separate residential use, it stops short of stating how the ground floor unit has been used and occupied as a self-contained unit throughout the relevant time period. This is important because, as set out above, it is necessary to show that the premises was used and occupied continuously as a dwelling house for a period in excess of four years. Although this may have been an oversight, the fact that this detail has been omitted from the Statutory Declaration is significant.
15. The appellant's appeal statement does not address this matter. However, a letter to the Council, supplied as part of the appeal papers, sets out that the ground floor unit was occupied by the appellant in February 2015 and she has lived there continuously since that date.
16. I have also had regard to a further Statutory Declaration from Mr Thom. This describes the building comprising a stable block and two separate dwellings (upper and lower). It is stated that the building works were carried out in 2014/15 and there has been continuous residential use of the area referred to in the application since the Spring of 2015.
17. The Statutory Declarations carry significant weight as sworn evidence. However, there is a difficulty in that the statement of the appellant does not specify how the ground floor unit was used and occupied, as set out above. While the other declaration does include a statement to that effect, it is brief

² Four years prior to the date of application.

³ Statutory Declarations Act 1835.

and is not made by the person actually living there. I appreciate that the appellant has included these details elsewhere in other documentation, but this lack the weight of sworn evidence.

18. I note the reasons why there is no supporting information such as utilities bills or receipts for building work. This in itself would not be fatal to the appeal if the sworn evidence was sufficiently precise. However, in this case there is a significant omission about the use in the principal Statutory Declaration. For this reason, I am unable to conclude that the appellant has shown, on the balance of probability, that a material change of use of part of a building to use as a single dwelling house took place on or before 9 July 2016, and that the use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.

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 change of use of part of a building to use as a single dwelling house 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.

Debbie Moore

Inspector