
Appeal Decision

Hearing Held on 18 January 2021

Site visit made on 18 January 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/P3040/X/19/3243082

Willow Farm, Car Colston, Nottingham NG13 8JE

- 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 John Martin against the decision of Rushcliffe Borough Council.
 - The application Ref 19/01637/CLUEXD, dated 5 July 2019 was refused by notice dated 7 November 2019.
 - 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 use of part of the former stable building as a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issue

2. Section 191 (4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.
3. The main issue is whether the Council's decision to refuse to grant a certificate of lawfulness of existing use or development (LDC) was well founded. That turns on whether the appellant can demonstrate, on the balance of probability, that a change of use of part of the former stable block to a single dwellinghouse took place more than four years before the date of the application and continued without significant interruption thereafter, so as to be immune from enforcement action.
4. The relevant date in this instance is 5 July 2015. The Council confirmed at the hearing that having regard to the Statutory Declarations that were submitted with the original application, and in the absence of any evidence that would contradict or otherwise make the appellant's version of events less than

probable¹, they do not dispute that the appellant has been living in the building since 2012, which is longer than the required four year period. Nor does the Council make any allegation that the residential use of the building has been deliberately concealed.

5. The issue which is in dispute in this appeal is whether there has been a change of use of the building to use as a single dwellinghouse.

Description of the site

6. The appeal relates to a former stable and store which form part of a collection of buildings at Willow Farm. The ground floor plan submitted with the application shows that the store is now in use as a washroom, and the stable as a living room. The two buildings abut each other but are not connected internally.
7. The living room is a small wooden framed building with a dual pitch roof of corrugated material. The appellant states that the walls, roof and floor have been insulated and a ceiling has been installed. I saw on my site visit that the internal walls have been boarded, painted and some pictures and shelving units were affixed to them. The original stable door has been retained and the single glazed window replaced with double glazing. Within the living room there is a wood burning stove to heat the room, and during my visit I noted that there was a kettle and pan next to it. The living room also contained a small table with chairs, a large sofa where Mr Martin says he sleeps, and a kitchenette with a worktop, electric kettle, and a fridge. At the time of my visit there was a tin bath in front of the fire and the floor was covered in linoleum with some rugs. A small part of the living area is partitioned. The partitioned area contains a cupboard, where some food and clothes are stored, a kitchen bin, pegs on the wall to hang coats, and a microwave with integral hot plates sited on a table along with pans and a drainer. The living room has plug sockets and a ceiling light.
8. The adjacent washroom is also a predominantly timber framed building with a flat roof covered in a corrugated material. This building is not insulated, and at the time of my site visit the concrete floor was wet and the room felt damp. There were Calor Gas heaters being stored in this building along with a freezer, a worktop, cupboard unit and table. This building had an electric strip light attached to the ceiling to provide light.

Reasons

9. I have been referred to several High Court decisions, including *Gravesham*² and *Grendon*³. *Gravesham* identified the distinctive characteristic of a dwellinghouse as its ability to afford those who used it the facilities required for day-to-day private domestic existence. This principle was endorsed by *Moore*⁴. *Grendon* indicated that it is necessary to have regard, to the appropriate degree in each case, to both the physical state of the premises and their user, actual, intended and/or attempted.

¹ Para 17c-006020140306 Planning Practice Guidance

² *Gravesham BC vs SSE and Another* [1984] 47P.& CR 142

³ *Stephen Grendon v The First Secretary of State, Cotswold DC* [2006] EWHC 1711 (Admin)

⁴ *Moore v SSE and New Forest DC* [1999] 77 P&CR 114

10. From the outside, this building does not have the appearance of a conventional dwelling, despite its double-glazed window and door. However, both the Council and the appellant accepted at the hearing that, taking account of *Welwyn Hatfield*⁵, a building can be “used as a single dwellinghouse” for the purposes of S171B of the 1990 Act, even though it does not look like a “dwellinghouse” from the outside.
11. The buildings have been re-roofed, however only the living room has been insulated and provides warm and watertight accommodation. The washroom has poor natural light, no insulation, a concrete floor, and from the evidence before me and my own site inspection is merely used as a storage room. There is no sink or running water in either the living room or washroom, and therefore its labelling as a washroom would seem to be a misnomer.
12. The living room provides cooking facilities for the appellant, including two hotplates, a microwave and kettle. There is also a fridge. Therefore, despite these facilities being basic, they do, nevertheless exist. However, there is no water supply to the building. The nearest mains supply is at the bottom of the access drive to Willow Farm and approximately 150m from the building. Although the appellant has a large water butt which he uses to collect rainwater from the building, that water is not be suitable for drinking or for use in cooking. The absence of a water supply to the building is to my mind a severe limitation to providing habitable accommodation.
13. Furthermore, the building does not have a bathroom facility. The appellant advised at the hearing that he uses the tin bath in front of the fire to wash, and on warmer days will shower outside with a bucket. The water he uses to wash with would be from either the water butt or the supply at the end of the drive. He also stated that on occasion he may have a shower at his mother’s house, which is in a neighbouring village.
14. Moreover, there is no toilet within the building. The appellant utilises a portable chemical toilet which he has positioned in an adjoining open-ended barn which is used for storage. However, that barn does not form part of the Land the subject of this appeal. The appellant stated at the hearing that the barn where the toilet was positioned did not fall within the same planning unit as the appeal proposal, but is part of a separate agricultural use. In addition, there are no facilities at Willow Farm to discharge any wastewater or foul sewage. The appellant stated at the hearing that he utilises the waste disposal facilities at a local campsite, or on occasion his mother’s property to empty the toilet.
15. I appreciate that the appellant has been utilising these buildings as living accommodation for a significant number of years. However, the ‘washroom’ still retains the characteristics and appearance of a store. It is not insulated, has poor natural light, and from the photographs provided by the appellant and the Council, and from my own observations on my site visit, it is predominantly utilised for storage purposes, akin to the use of the other buildings at Willow Farm. The washroom is not connected internally to the living room, which in itself, is just one small room. There is no separate bedroom, just a sofa in the living room where the appellant says he sleeps.

⁵ *Welwyn Hatfield Council v SSCLG and Beesley* [2010] EWCA Civ 26

16. The appellant may well subsist with the facilities this accommodation provides. However, to my mind a dwellinghouse must provide at least basic hygiene facilities, which would include a toilet and running water. These are essential facilities for day-to-day existence. Without those basic facilities, or indeed a bed or sofa bed, the facilities that are available amount to no more than a fire, basic cooking equipment and somewhere to sit, eat and take respite from the outdoor elements. It is not a dwellinghouse.
17. The appellant has referred me to another appeal decision⁶, which he considers to be comparable to his appeal case. However, in that case the appeal building had a shower and toilet. There are no such facilities available in this appeal case, and it is not therefore directly comparable.
18. I have taken into account the nature of the appeal buildings, the works that have been undertaken to them and the limited space and facilities they provide. However, despite the appellant appearing to have resided in them for many years, as a matter of fact and degree, the appeal building does not possess the facilities required for day-to day domestic existence and cannot properly be regarded as being used as a "dwellinghouse."

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 part of the former stable 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.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Martin	Appellant
George Machin, MTCP MRTPI	Grace Machin, Planning & Property

FOR THE LOCAL PLANNING AUTHORITY

Rebecca Sells	Principal Solicitor
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⁶ APP/Y3615/X/11/2161823