



Appeal Decision

by Andy Harwood CMS MSc MRTPI

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

Decision date: 10 February 2021

Appeal Ref: APP/Q1153/X/19/3228379

Three Meadows, Old Goat Barns, Highampton, Devon EX21 5LN

- 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 T Griffin against the decision of West Devon Borough Council.
 - The application Ref 3983/18/CLE, dated 3 December 2018, was refused by notice dated 25 March 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 described as "Certificate of Lawfulness for the existing use of a single dwellinghouse (Class C3) within part of the existing goat house."
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr T Griffin against West Devon Borough Council. This application is the subject of a separate Decision which also relates to the further costs application made by the appellant with respect to the withdrawal of the enforcement notice (Ref APP/Q1153/C/19/3227387).

Preliminary Matters

3. As well as refusing the application for the LDC, the enforcement notice issued on 10 April 2019 alleged that:

"There has been a material change of use of land and building, without planning permission, from agricultural to a mixed use of agricultural use and use as a dwellinghouse falling under the category of C3 Dwellinghouses of the Town and Country Planning (Use Classes) Order 1987 (as amended)" (*sic*).
4. The enforcement notice was appealed against on 25 April 2019. However, on 28 July 2020, the Council wrote to the Planning Inspectorate to say that they wished to "withdraw from the current appeals". They also stated that following the submissions by the appellant in the form of statutory declarations dated June 2020, it seemed likely to them that the Planning Inspector would be "likely to find, on the balance of probabilities, that there has been a change of

use of the building to a dwelling for a period in excess of four years”.

Furthermore, they stated that if the evidence had been produced as part of the application for a LDC or the appeal process, the decisions made by the Council “would almost certainly” have been different. The enforcement notice was not formally withdrawn until 10 December.

5. The cases had been proceeding by way of a public inquiry until the Council changed its formal position. However, I remained concerned that I had not received a detailed analysis of the Council’s view of whether the use applied for is lawful within the meaning of the Act. The decision that it is not expedient to proceed with enforcement action is not the same thing as saying the use is lawful. I considered that a hearing was necessary to test the evidence and for me to ask questions, until the Council provided additional information about the decision making process that had resulted in their change of position. In particular, it was clear that Highampton Parish Council had been informed and given an opportunity to comment given that they had provided the Council with evidence earlier in the process. I had been concerned to ensure that the appeal process would be open and transparent for all parties.
6. In order to minimise the amount of personal information that is revealed within this decision, I have not referred to the names of individuals who have provided evidence. Instead I have referred to the document references and the initials of the individual.
7. Given the evidence submitted I considered that it was unnecessary to undertake a site visit and the main parties were made aware of that.

Reasons

Main issue

8. The main issue is whether the Council’s decision to refuse the LDC was well founded taking account of the information that has been submitted. The onus of proof in LDC cases is upon the appellant and the standard of proof is on the balance of probabilities. If there is no evidence to contradict or make the appellant’s version of events less than probable and this evidence alone is sufficiently precise and unambiguous, a LDC in the form requested should be granted. The planning merits of the use are not relevant to the consideration of this appeal which turns on matters of law.
9. The time limits for taking enforcement action are set out in S171B of the Act. I have not been provided with detailed plans of the building in question although the Council does not dispute that it was used as a single dwellinghouse at the date of the application and that was part of the allegation on the subsequent enforcement notice. The applicable time limit for taking enforcement action is 4 years as defined by S171B(2), beginning with the date on which the breach commenced.
10. The courts have held that in such cases, the physical state of the premises is very important but it is not decisive in itself. Furthermore, actual or intended or attempted use is important but not decisive. It has also been considered to be a matter of fact and degree at what point such a building would be useable as a dwelling. Furthermore, in other cases it has been held that too much stress had been placed on the need for “actual use” and it is more appropriate to look at the matter in the round and to ask what use the building has or of

what use it is.

The appellant's evidence

11. Planning permission was granted for the erection of the building as a goathouse and haystore on 04 January 1993 and it was purchased by the appellant on 27 March 2003 as confirmed by the Land Registry Title information submitted. The appellant has provided a number of personal statements outlining the history of the building and its use. There are also a number of other statements submitted in support of the appellant's case.
12. Initially, in 2003, the appellant states that the only service connected to the barn was a water supply with only basic needs being catered for at that time. Further facilities such as a sink and compost toilet were installed subsequently, from 2007 during periods when the appellant was unemployed. By 2009, insulation started to be installed in the building and then in 2010 a generator was installed for power although solar panels were then fitted as well. An 'aga' was installed in the summer of 2010 as well along with the installation of a chimney flue. The appellant states that the 'aga' provided warmth during the winter as well as hot water for the "end of day wash up".
13. A sworn declaration (TWG41-KP) has been provided by an individual who states that they sold the current 'range cooker' to the appellant in 2011 and that they have visited frequently. It is not clarified if this was the 'aga' which the appellant says was installed the previously year. A subsequent statement signed by this person on 17 June 2020 confirms that the appellant and his wife stayed at the appeal site from June 2011 due to the smoke damage at their former home (I return to the fire, below) and because the building already had a kitchen, bathroom and 4 bedrooms. KP has visited since, frequently after they had all been to the regular local market, which closed in 2018. This subsequent statement also provides a concise description of the layout of the property. It states that "as you enter the property there is a small hall to the front door, once inside you have a bathroom toilet to the right hand side in front of your is the aga for heating and hot water, open plan kitchen dining room and lounge, with patio doors overlooking the stable yard, and to the back of the property are four bedrooms" (*sic*). This description verifies the view of the Council that the building is in use as a dwellinghouse.
14. The appellant was made redundant again in 2011 and so was able to progress with further work to the barns. This included insertion of additional foil insulation, the dividing up of the rooms and also the fitting of plasterboard. The fire near the appellant's home, resulted in them moving out to the appeal site until October of that year. First of all, they camped but then moving into the barns which by this time they say, contained all day to day facilities. Friends and family stayed with them during that time.
15. A receipt for building supplies from 'RGB' is dated 1 November 2011 and states the address as '3 Meadows Barns' which is the first indication of a delivery to the appeal site. The appellant states that this shows that things were "moving on" and that the day to day facilities were already in place by then although yellow sand and cement were required for finishing the floors with quarry slates. An electrical inverter was purchased in November 2011 to convert solar power to useable electricity, replacing a smaller unit that was already there. By 18 November 2011, preparations were being made for Christmas of that year including the purchase of beds for guests from an auction room. The

receipt for these does not indicate any address. A cooker point is said to have been needed before Christmas and a receipt (with the appellants previous address on it) is provided for a cooker switch socket as well as other materials. The appellant's 6 November 2018 signed statement states that he and his wife began to use it as their "dwellinghouse" in 2011. This document also states that 2 of their daughters moved back into their previous home, once that had been repaired.

16. A statutory declaration dated 15 August 2016 (TWG44 by SW) refers to having been a regular visitor to the site since "the conversion took place in 2009/10" and that they have stayed at the barns "every Christmas since 2011". A signed statement dated 22 June 2020 (App_Stat_2 by HD) states that they have also visited including at Christmas 2011 and confirming that the accommodation "consists of a bathroom, kitchen, dinner and lounge area" and also that although it has been decorated a little more over the years, "it is still very much the same".
17. One of the appellant's daughters has provided a statement (App_Stat_8 - a different SW) to confirm much of what is set out in other documents including her own moving from the site back to the previously fire damaged dwelling whilst her parents stayed continuously at the appeal site. The appellant's other daughters have also explained the history of the appeal site since it has been owned by the appellant and that it has been continuous occupation.
18. Additional statements including some statutory declarations have been submitted. Although some of these are general and not very specific to what needs to be demonstrated, some provide some confirmation of the appellant's case. Various photographs have also been submitted with various dates from 2011 helping to demonstrate domestic activity at the property and also illustrating the nature of the accommodation provided. The Council does not dispute the dates of these photographs or the domestic scenes that they show and the appellant has provided a statement which attempts to describe what some of the photographs show.

Evidence submitted by third parties

19. The main evidence submitted to contradict the appellant's version has been submitted by Highampton Parish Council although this submits various points on behalf of individual councillors. There is general scepticism about a number of factors such as whether the heating and hot-water systems would be sufficient all year around, the amount of fuel delivered, if there has been smoke emitting from the building from wood burning fires and in general about the statements given.
20. It is also suggested that the activity generally would have been more noticeable in a small village such as this. Much of this is speculation. However, there are some points that may well be valid to make in the context where it was in the appellant's interest to keep a low profile in terms of the occupation of the site. Overall however, given the additional evidence and submissions on behalf of the appellant, there is nothing of sufficient detail or weight that strongly contradicts the appellant's case or that makes it less than probable.
21. Other evidence from the site visits of the Council's own officers such as in June 2016, have not been provided to me in this appeal. It was indicated within the

statement of case that they would be produced at the stage of proofs of evidence but the case did not proceed to a public inquiry. It is not clear what other formal investigations were made.

Weighing up the evidence

22. Whilst there is a lot of evidence, not all of it is entirely clear or consistent or therefore unambiguous. The lack of floor plans showing the accommodation has also made it more difficult to understand the context of the evidence that has been submitted. However, the later information in particular such as the appellant's unsworn statement dated 25 June 2020 and the main appeal statement submitted whilst the parties were preparing for the case to proceed by way of a public inquiry, do help to bring the evidence together. Some of the deficiencies in the evidence such as the appellant's previous address on receipts for work or goods used at the appeal property, give that paperwork a degree of authenticity even if it has not helped their case at times. The information has been given 'warts and all', particularly that prepared when the first application for a LDC was submitted.
23. I therefore consider, on the balance of probabilities, that the building had the facilities to enable independent occupation. Even if there were periods when the building was not occupied, I consider that it has been affirmatively established that it had been occupied for a continuous period of 4 years from around late 2011. The use appears to have continued and was taking place at the time the application was submitted.

Conclusion

24. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of a single dwellinghouse (Class C3) within part of the existing goat house, was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Harwood

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 3 December 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in 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 appellant's evidence demonstrates on the balance of probabilities, that the building was adapted to include facilities that were sufficient to enable independent residential occupation as a single dwellinghouse and furthermore actual occupation was commenced and has been continuous for more than 4 years from around December 2011.

Signed

A Harwood

Inspector

Date 10 February 2021

Reference: APP/Q1153/X/19/3228379

First Schedule

Use of a single dwellinghouse (Class C3) within part of the existing goat house.

Second Schedule

Land at Three Meadows, Old Goat Barns, Highampton, Devon EX21 5LN

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 described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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

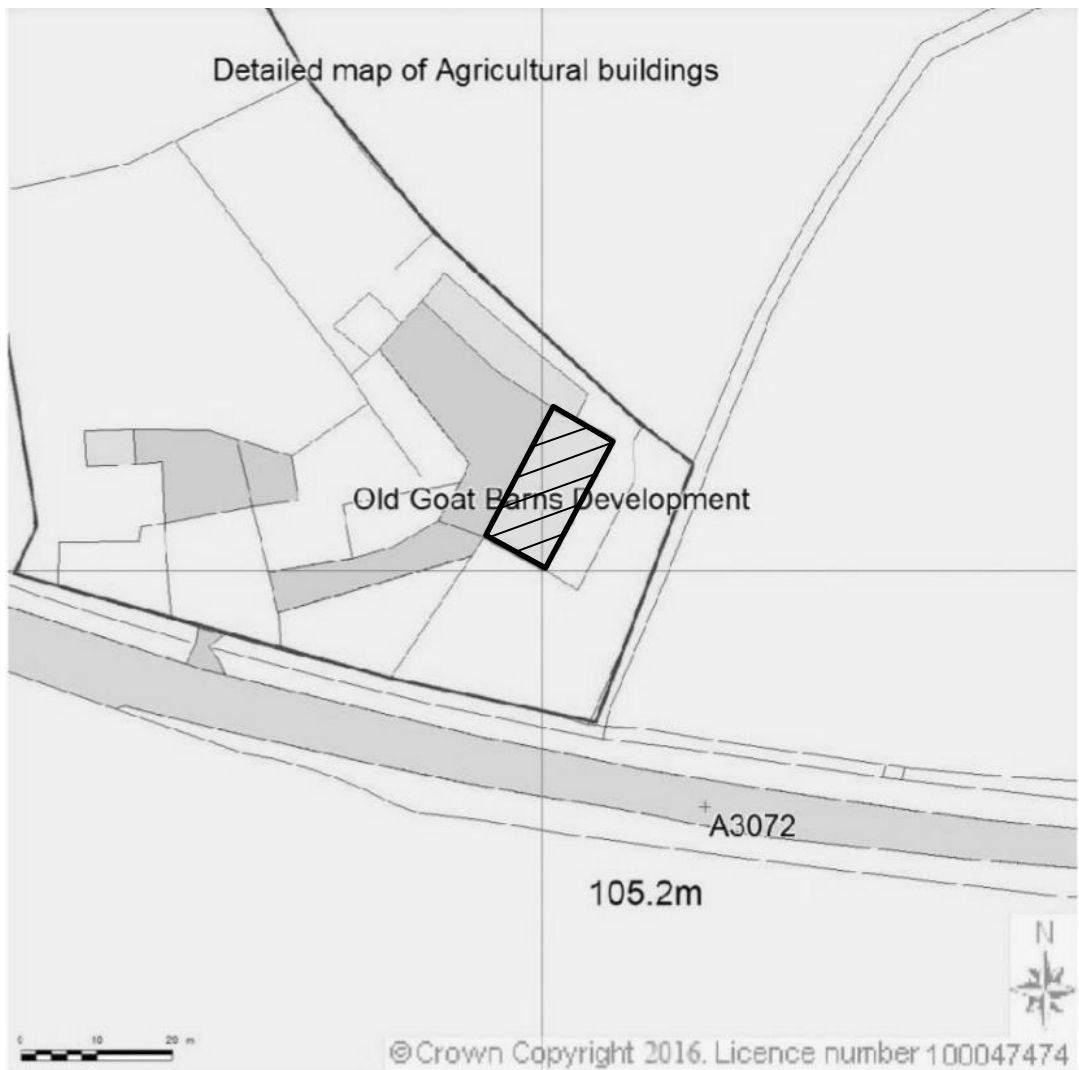
This is the plan referred to in the Lawful Development Certificate dated: 10 February 2021

by Andy Harwood CMS MSc MRTPI

Land at: Three Meadows, Old Goat Barns, Highampton, Devon EX21 5LN

Reference: APP/Q1153/X/19/3228379

Scale: Not to scale



Supplied by Streetwise Maps Ltd
www.streetwise.net
Licence No: 100047474
31/08/2016 22:33