



Appeal Decision

Site visit made on 8 February 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary

Decision date: 1 March 2021

Appeal Ref: APP/Y9507/X/19/3234115

The Cabin, Hawkley Road, Liss GU33 6JS

- 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 Alan Joseph White against the decision of South Downs National Park Authority.
 - The application Ref SDNP/16/06034/LDE, dated 5 December 2016, was refused by notice dated 9 August 2018.
 - 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 an existing use C3 – Dwellinghouse.
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Summary of Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form is not dated, but East Hampshire District Council, who determined the application on behalf of the South Downs National Park Authority, record in its delegated report that the validation date of the application was 5 December 2016. The appellant uses this same date on his appeal form as the date of his application to the Council. I have therefore determined the appeal on this basis.
3. The application form describes the application as an existing use falling within use class C3 – Dwellinghouse. I have therefore determined the appeal on the basis of the use of a structure, described as 'the cabin', as a dwellinghouse. The Council have refused the application with a description referring to use of the premises for residential purposes, which I shall address as part of my decision.

Main Issue

4. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the use of 'the cabin' as a dwellinghouse is well founded.

Reasons

5. In cases such as this the onus is on the appellant to demonstrate his case on the balance of probabilities.

6. The cabin is a small structure which the Council indicates has an internal floor area of approximately 8.5 sqm. It is therefore of an equivalent size to a domestic garden shed, which are generally held to constitute development for the purposes of the Act¹ and therefore amount to buildings. There is then a timber pergola type structure and outside toilet which is broadly attached around it.
7. The appellant's evidence is that the cabin has been at the site in its present location since January 2000. This is not contested by the Council. It therefore has permanence.
8. The cabin is of timber construction and sited on a series of dwarf staddle stones. It would appear from observations during my site visit that it is affixed to the ground principally by its dead weight being transferred to the staddle stones, which are then partially set into the ground. It therefore does not have traditional footings, but this method is commensurate with the size of the cabin, being akin to that of a domestic garden shed, which are again generally held to be buildings. On the balance of probabilities, it therefore has physical attachment to the ground.
9. I have very little evidence to demonstrate on the balance of probabilities that the building could be removed and transported from the site without requiring its demolition. Even if it could be dismantled and re-assembled elsewhere, this does not demonstrate on the balance of probabilities that the cabin was not a building operation and therefore not a building in its current guise.
10. The cabin is therefore a building for planning purposes. A relevant period for the determination of the certificate sought is therefore 4 years preceding the date of the application.
11. The cabin is an extremely modest building with an outside toilet, and no bathroom. It is largely accessed via an unmade track/grass. There is limited evidence concerning the supply of utilities into the building itself. At the time of my site visit, albeit I appreciate this not within a relevant period that I am considering, I could see that it contained a single and very basic kitchen unit, a chair, a chest of drawers and a partial fireplace/hearth.
12. Whilst there is no definition of the term dwellinghouse within the Act, it has been accepted² 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.
13. The appellant's Statutory Declaration, dated 22 August 2016, explains that he used the cabin as his special bolt-hole as and when he needed and that over those last 6 years it had become more and more his permanent residence with holiday breaks blending into continuous occupation. The turning point is described as being about six years prior to the date of the declaration, although it is then stated that there is no clear date, but that it was certainly more than 5 years. This is however vague and imprecise, which casts considerable doubt in my mind.
14. The appellant also provides a number of invoices and bills relating to various matters, amongst other evidence including information from the local Police

¹ Section 55 of the Act

² *Gravesham BC v SSE & O'Brien* [1983] JPL 306

force, which are all said to support of his contention. However, this evidence does not act to demonstrate either in itself or to otherwise corroborate that the cabin has been used, on the balance of probabilities, as a dwellinghouse for a relevant period.

15. There would appear to be the absence of some basic amenities, and even though the cabin could perhaps be occupied for short periods, the evidence concerning the continual and permanent occupation is limited and imprecise. This casts considerable doubt in my mind concerning the certificate sought by the appellant for the use of the cabin as a dwellinghouse.
16. The evidence of the appellant therefore does not demonstrate on the balance of probabilities that the cabin has the distinctive characteristic of a dwellinghouse and then that it has been used as such, continually, during a relevant period.
17. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities. Neither is there evidence to demonstrate on the balance of probabilities a residential use of surrounding land.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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

19. The appeal is dismissed.

Paul T Hocking

INSPECTOR