
Appeal Decision

Site visit made on 6 April 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 9 April 2021

Appeal Ref: APP/U1105/X/20/3263779

Streamwood, St Mary's Lane, Yawlcross, Uplyme, Lyme Regis, DT7 3XH

- 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 C E Bloomfield against the decision of East Devon District Council.
 - The application Ref 20/0078/CPE, dated 25 February 2020, was refused by notice dated 30 June 2020.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is for an existing use and operation consisting of the erection of 2no. buildings and their use for mixed residential, workshop and storage use in connection with management of surrounding woodland.
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Decision

1. The appeal is dismissed

Procedural Matters

2. I carried out a site visit on 6th April although I was unable to enter the site to inspect the buildings at close quarters. Following the site visit the appellant advised that he was not able to attend but that I was able to enter the site alone. Despite this late information my visit was not wasted. I was able to see one of the buildings from the track and I have access to the photographs submitted by the parties to assist my understanding. In any event, as this appeal is dependent upon the veracity of the evidence in respect of when the buildings were constructed, my inability to enter the site is not critical to the decision.
3. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
4. The appellant makes reference to Article 1 of First Protocol of the European Commission for Human Rights. However, rights under the Human Rights Act 1998 are not engaged in the context of an LDC appeal, except in relation to the fairness of the proceedings. The Public Sector Equality Duty is likewise not engaged.

5. The appellant also alleges prejudice and discrimination by the Council as there has been similar construction in the Yawl Wood area. Whether this has been the case is not a matter relevant to this appeal.

The site and relevant planning history

6. The site comprises an area of about 5 acres of mature woodland, known as Streamwood, in a wider area of woodland on a valley slope adjacent to a track and St Mary's Lane to the west of Lyme Road. Streamwood has in the past been managed under a Forestry Commission Woodland Grant Scheme and an area of productive conifers has been planted since 1955.
7. The appeal site remains as woodland. There are two structures on the site, described by the appellant as Structures A and B, both of which are multi-level structures of timber and tarpaulin which the Council consider to be buildings given their size, permanence and physical attachment. Structure A is said to be used as living/storage and Structure B for storage/workshop. Structure B has been partially constructed in brick.
8. Other than an application for decking and a new entrance at the site (06/0045) allowed on appeal, there is no other relevant planning history.

Issues

9. The two structures represent operational development so it would be necessary for the appellant to demonstrate on the balance of probabilities that the structures were substantially complete four years before the date of the application for an LDC. In respect of the material change use of the land from woodland to use as mixed residential, workshop and storage use, the relevant period is 10 years and the use should have been continuous.

Reasons

10. The appellant advises that the non-agricultural use of Streamwood has taken place since August 2003 when the appellant purchased the property which he says was to experience sustainable living in harmony with nature and the natural environment to nurture wildlife and regenerate the neglected flora and fauna. Without the structures for weather protection, storage and living on site would be impossible.
11. The appellant indicates in a letter that in 2003 he made improvements to the entrance, in 2004 there was on-site parking and tool store. In May 2004 the construction of the Structure A was commenced with completion in May 2009. Work to the Structure B used for storage/workshop was commenced in 2004 with completion in May 2010 after which work started on fencing and have been ongoing.
12. The appellant states that the living/storage structure (Structure A) was used for that purpose from the end of May 2009 to the present date. It is still in use and the appellant says he was in residence from 3-8 July 2020. In respect of the storage/work structure (Structure B), this was completed in May 2010 and used from that date to the present with it last being used from 3-8 July 2020.
13. Hand drawn plans and photographs have been submitted to illustrate the development. The living/storage structure is about 2.4x4m at first floor level and about 2x2m at ground floor level with a height of about 4m. No

- information has been submitted to show that the living structure is provided with the facilities required for day to day private domestic existence.
14. Unfortunately, the submitted evidence lacks clarity or precision relating to the when events occurred such as when the residential element commenced and the duration of stays. It is unclear whether this is the appellant's main residence as it is noted that the appellant's address on the application form is in Abingdon or whether the residential use was for recreational and leisure purposes and nothing more than 'camping out'. No receipts for any building materials, services or Council Tax have been submitted to support critical dates necessary for the application. No statutory declaration has been made.
 15. It is evident from the submitted documentation that the appellant is fully committed to the preservation and management of the woodland environment. However, any forestry use of the site does not appear to be related to any business or enterprise which suggests that the use is more recreational, albeit with the appellant's laudable objectives. The Council considers that the exact nature of the forestry which is taking place is not apparent or why a storage/workshop structure of the size built has a genuine justification. However, it is unnecessary for the appellant to justify the structure unless he is claiming that it has been constructed with the benefit of permitted development rights, which is not the case here. What remains relevant to this appeal are the critical dates and the demonstration that the uses have been continuous.
 16. A local person has commented that he quite often walks or runs along the track adjoining part of the eastern boundary of the site and has occasionally seen a vehicle parked at the site entrance and has noticed signs of activity from time to time such as some new fencing, scattered tree planting and the erection of netting and, through the trees, a tarpaulin. He states that he was not aware of anything that could be described as a building had been constructed on the site. Although these comments are vague and without dates, they do support a conclusion that whatever uses have taken place have not been sufficiently continuous to support the claim of lawfulness by the appellant.
 17. The evidence is imprecise and not sufficiently robust to demonstrate on the balance of probabilities that the structures and uses subject to the appeal have been substantially completed and been in use continuously to satisfy the periods of immunity from enforcement action required by s171b of the Act.

Conclusion

18. For the reasons given above I conclude that the Authority's refusal to grant a lawful development certificate in respect of the existing use and operation consisting of the erection of 2no. buildings and their use for mixed residential, workshop and storage use in connection with management of surrounding woodland was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

P N Jarratt

Inspector