



Appeal Decision

Site visit made on 23 March 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2021

Appeal Ref: APP/C1625/X/20/3262443

The Cart Shed, Horsemarling Lane, Standish, Stonehouse, Gloucestershire GL10 3BZ

- 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 G Winchle against the decision of Stroud District Council.
 - The application Ref S.20/1545/CPE, dated 28 July 2020, was refused by notice dated 18 September 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which an LDC is sought is for the conversion and use of first floor of the Cart Shed as an independent residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority (the LPA) is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
3. For the avoidance of doubt, in an appeal under s195 of the 1990 Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
4. Where an LDC is sought, the onus of proof is on the applicants (now the appellants) and the standard is the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and their evidence is sufficiently precise and unambiguous, an LDC should be granted.
5. The appellant's evidence is set out in submitted Statutory Declarations¹ and photographs together with an appeal statement and planning statement with

¹ Supplied by Gary Winchle, Robert Winchle and Conor Winchle which declare that The Cart Shed has been in continuous use as an independent dwelling since July 2009.

associated appendices detailing, amongst other things, utility supplies, Google aerial images, building regulation applications and appeal decisions.

The background

6. The appeal building known as 'The Cart Shed' is a 5 bay garage with the ground floor being used for the storage of residential paraphernalia with residential accommodation within its roof space. The surrounding site contains a swimming pool building, two dwellings comprising Maidenhill House, which is occupied by the appellant, and The Coach House independently occupied by one of the appellant's sons.
7. Maidenhill House was purchased in 2003 by Mr Gary Winchle, the appellant. In 2007 Planning permission² was granted for the 'erection of two storey cart shed with first floor storage'. The permission was subject to a condition which specified that the development should 'only be used for domestic purposes incidental to the enjoyment of the dwellinghouse as such, and shall not be converted to, or used as, separate living accommodation'. The reason for the condition was to enable the LPA to retain control over the use of the premises in accordance with Policy HN10 of the Stroud District Local Plan, November 2005.
8. Works to convert the roof space to facilitate living accommodation were subsequently undertaken. The appellant claims that the works were substantially completed in 2009 after the construction of the building was completed in late 2008 and the upper floor of The Cart Shed was used as a separate dwelling from July 2009.

Main Issues

9. This is whether the Council's decision to refuse to issue an LDC was well-founded. More specifically, in this case, the main issues relate to whether the use of the property amounted to an independent dwelling and, if it did, whether that use had become lawful due to the passage of time, having regard to the terms of section 171B of the 1990 Act.

Reasons

10. With regard to s191(2)(a) of the 1990 Act, the appellant's case is that the residential use of the building as a separate and single dwellinghouse, which is physically and functionally separate from Maidenhill house, is lawful. This is because the use as such has continued without any material interruption for more than 4 years prior to the date of the application, that is 28 July 2020, thereby gaining immunity from enforcement action³.
11. There is no disagreement between the parties that the layout and facilities provided within The Cart Shed are consistent with a "dwellinghouse" as set out in *Gravesham*⁴ which established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities for independent day-to-day private domestic existence, such as facilities for cooking, washing, eating, and sleeping.

² S.07/1425/FUL

³ S171B(2) - Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

⁴ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

12. The LPA has concerns that, despite the Statutory Declarations, limited tangible evidence has been submitted to demonstrate that the building was continuously occupied as an independent dwelling for a period in excess of four years. The LPA refer to the non-payment of Council Tax, the inclusion of the appeal building on the insurance policy for Maidenhill House and no evidence of tenancy agreements or separate utilities bills. For these reasons, the LPA consider that continuous occupation has not been proven and that there is a degree of dependence on Maidenhill House with the occupation of The Cart Shed being akin to a 'granny flat'.
13. Furthermore, the LPA provide that previous planning applications⁵ included the appeal building within the red edge and refer to The Cart Shed as an existing 5 Bay Garage both on the site plan and in the design and access statement. The appellant rebuts this statement, stating that The Cart Shed was included because it was proposed for demolition.

Whether the use of the property amounted to an independent dwelling

14. The existence of a building used as a dwellinghouse does not in itself establish that a separate or new planning unit has been created and/or that there has been development in the form of a material change of use. Indeed, the LPA's view is that the appellant's evidence fails to demonstrate that either has occurred and that the use of The Cart Shed remains part and parcel of Maidenhill House.
15. Whether there has been a material change of use of the appeal building is a matter of fact and degree; there needs to be a definable change in the character of the activities from what has gone on previously. The tests for determining the correct planning unit are laid down in *Burdle*⁶.
16. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes. The concept of physical and functional separation is key. In some cases, uses may be physically separated but functionally connected – or vice versa. Neither factor is necessarily decisive.
17. The Statutory Declarations affirm that from July 2009, the appeal building is and has been continuously occupied as a residential dwelling by the appellant's sons. The appellant continues to occupy Maidenhill House and so the pre-existing planning unit remains in single family occupation. Whether The Cart Shed is a discrete unit of occupation and whether a material change of use has occurred will depend on its physical and/or functional separation.
18. The Cart Shed provides all the facilities necessary for independent day-to-day living, consequently its use is no longer incidental to the enjoyment of Maidenhill House. The question is whether the building remains part of the same planning unit as Maidenhill House and the unit remains in single family occupation – or whether the planning unit was subdivided in 2009 as a result of a change of use of the appeal building to a separate dwelling. It follows from *Burdle* and *Uttlesford*⁷ that regard must be had to physical and functional

⁵ S.20/0318/FUL & S.19/2007/FUL

⁶ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

⁷ *Uttlesford DC v SSE & White* [1992] JPL 171

connections in the round and not simply the relationship between the occupiers of the land.

19. The Council asserts that the occupation of the appeal building by the appellant's sons is similar to the use of the building as an annexe with a reliance on the main house. The appellant argues that no facilities are used in Maidenhill House and there is no reliance on the main house. It is stated that The Cart Shed provides for the accommodation needs of the occupants and therefore, as a matter of fact and degree, the appeal site is an independent dwelling.
20. Whilst I attach significant weight to the formal statements made under the provisions of the Statutory Declarations Act 1835, further evidence supplied by the appellant does not lead me to be certain that its occupation is or has been independent from the main house.
21. I saw during my site visit that the property had only basic cooking facilities in the form of a small microwave and a toaster, and that there was no washing machine. Although the absence of these household items does not indicate that the property cannot function as an independent dwelling, it leads me to question whether there remains a dependence on the main family home. It is reasonable to consider that without such items there would be reliance elsewhere and that would most likely be the family home, considering the relationship of the occupants, the proximity to the main house and the rural setting of the appeal site. Furthermore, I did not see any display of a place name to indicate the property address or a letter box or post box to receive mail or goods.
22. The appellant's statement describes that the occupants use The Cart Shed as their own home where: meals are cooked and eaten; they sleep, bathe, and socialise; it has its own supply of running water, electricity and heating system; there are not frequent visits to Maidenhill House and vice versa; only occasional meals are eaten with the family similar to any other family; the area of garden to the rear is maintained as a garden area exclusively for occupants; there is no financial dependency on the appellant.
23. I do not dispute these points, but the occupants could live in this way whether the use of the appeal building is integral to that of Maidenhill House or if there has been a material change of use. Furthermore, the evidence suggests that some weight should be attached to the relationship between the occupants and the appellant. The occupants were able to move into The Cart Shed because the appellant purchased and occupied Maidenhill House. I am informed that there is "no reason to assume that as there is not a formal tenancy agreement in place and that who actually pays the bills is irrelevant".
24. Tenancy agreements on their own are not a conclusive form of evidence of residential use and occupation, neither would the non-payment of Council Tax be a factor that would suggest the property was not used independently. Furthermore, the inclusion of the appeal building⁸ on the main household insurance, plus some shared utilities are not uncommon in such circumstances where the properties are within the same ownership and lived in by close blood-relatives. However, no documentary evidence has been provided by the appellant of any form of payments for the use of the appeal building or for

⁸ Listed as 'five bay garage with flat above'

utilities provided. There is no other evidence or other correspondence indicating a separate address and independent occupation that would usually be considered helpful in cases such as this.

25. Overall, I consider that the use of the appeal building for living accommodation has been facilitated and sustained by family ownership of the land and family ties, such as to indicate a functional link between the use of Maidenhill House and The Cart Shed.
26. Turning to the physical connections, whilst The Cart Shed is a physically separate building, it shares the vehicular access to Maidenhill House, has use of an area of garden to its rear and uses an area of the driveway to the front of the building for parking. However, in terms of physical separation there are no intervening physical barriers to define a separate unit of accommodation, and on the ground, the appeal building visually appears as part of the larger complex of buildings.
27. The appellant states that the garden associated with the appeal building is separated by a change in ground level from the garden of Maidenhill House, rather than a fence, and is accessed via steps from the rear of The Cart Shed. From what I saw at my site visit, the garden area provides an adjoining area of open space. However, with no physical boundaries this area blends into and appears as a continuation of the spacious private land which surrounds Maidenhill House and the Coach House. The degree of separation is limited to the physical distance between the properties. As a matter of fact and degree, I find that the use of The Cart Shed was physically and functionally connected to the use of Maidenhill House as a dwellinghouse on the date of the LDC application. On the balance of probabilities, the site was still part of the planning unit at Maidenhill House, which was still in single family occupation. The appellants have not shown, on the balance of probabilities, that a material change of use to a separate dwellinghouse had occurred.

Continuity of Use

28. An unauthorised use must continue substantially uninterrupted before it can acquire immunity from enforcement action. Had a material change of use taken place, The Cart Shed would need to have been used as a dwellinghouse for four years from 28 July 2016 or earlier, such that any periods of non-occupation were de minimis and the Council could have taken enforcement action at any time. Where a dwelling is lawful, the occupiers do not need to be continuously or even regularly present but, prior to that, the use must be affirmatively established.
29. Robert Stephen Winchle declares in his Statutory Declaration that he used and occupied the appeal property continuously as an independent private residential dwelling for the period July 2009 until August 2017. I note that a friend of Robert Winchle says she visited in January 2010 and that "he already looked well established and had been living there a while". She adds that she did not revisit the property until September 2010 whereafter she stayed regularly until August 2017. Conor Elliott Winchle declares in his Statutory Declaration that he has used and occupied the appeal property continuously as an independent private residential dwelling for the period from August 2017 to the present day⁹.

⁹ Date of the Statutory Declaration 16 July 2020

30. Although the Statutory Declarations carry considerable weight, the appellant has given little information to illustrate continuous occupation for a four year period. I have seen no correspondence addressed to Robert or Conor Winchle at The Cart Shed. I have seen no evidence of any rent paid or utility bills; such documents are commonly provided in cases such as this. Apart from photographs of the works to convert the appeal building and aerial images to show a parked car, stated as belonging to the occupant, in front of the garage block, there is limited evidence of the property being used as a home. I conclude the appellant has not shown continuous occupation or use of The Cart Shed for any four year period, such that enforcement action could have been taken at any time.
31. The appellant has provided appeal decisions to demonstrate similar circumstances where it was determined, amongst other matters, that it was reasonable that families could co-exist with independent use with an informal unwritten tenancy arrangement, and where there was no rent charged. However, in these instances, bank statements demonstrated regular payments from the appellant to her parents in one decision and reciprocal accommodation arrangements existed between the parties in the other. The appeal decisions provided also present considered evidence to support the individual cases.
32. Reference has also been made to the Coach House which was approved as an independent dwelling in 1998 receiving the same electricity and sharing other private services, including the septic tank. Unfortunately, the evidence referenced as relating to this permission in Appendix E shows the 1993 permission which was refused. Nevertheless, even if I had the full details of this case, the merits of the appeal before me lead me to consider that there remains a physical and functional connection between The Cart Shed and Maidenhill House.

Conclusion

33. The Council has not sought to produce evidence of its own to contradict or make the appellants' version of events less than probable. However, the appellants' evidence is scant and alone is not sufficiently precise and unambiguous. The onus on providing proof of lawfulness rests with the applicant, now the appellant. It has not been shown that, on the balance of probabilities, a material change of use of The Cart Shed to use as a separate dwellinghouse had occurred by the date of the LDC application or that any such use took place for a continuous four year period. I find that the evidence is not sufficiently precise and unambiguous to establish on the balance of probability that the use of the appeal building as a single independent dwellinghouse is lawful. I have had regard to all other matters raised, including various appeal decisions provided by the appellant, but none alter my conclusion.
34. 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 the appeal 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.

S A Hanson INSPECTOR