The Planning Inspectorate

Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/C1570/X/20/3264714
The Stables, Rear of The Chalet, Brewers End, Takeley, Bishops Stortford, Hertfordshire CM22 6QJ

- 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 Gregory Vinyard against the decision of Uttlesford District Council.
- The application Ref UTT/20/0996/CLE, dated 22 April 2020, was refused by notice dated 6 October 2020.
- 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 existing use of residential annexe as a separate dwelling.

Decision

1. The appeal is dismissed.

Procedural Matters

2. It was agreed by the parties that because of the characteristics of this case, it would be possible for me to reach my decision on the basis of the representations made, without the need to visit the site.

3. The Council has expressed concern that the appellant is seeking to support the appeal with additional information, not previously considered by the Council. However I do not accept that this is problematic, in principle, because the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.

4. The appellant has referred to residential development that has taken place outside the appeal site, since the annexe was constructed, which he considers to be nearer, than The Chalet is, to the annexe. He therefore questions whether control over the occupancy of the annexe, in the interests of residential amenity, is justified. However, this point relates to the merits of the development and is not relevant to the question of whether the use of the annexe as a separate dwelling would be lawful.

Reasons

5. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired (s191(2)). In this case, the appellant seeks to rely on the period of time over which the use has continued.

6. It is necessary to consider whether, on the balance of probability, the use as a separate dwelling has continued for a period of four years or more prior to the date of the application, that is from at least 22 April 2016, so as to be immune from enforcement. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued without any significant interruption for the aforementioned four-year period.

7. In terms of relevant background information, the appeal concerns an annexe building, situated on the appellant's property, at the rear of the dwelling known as 'The Chalet'. Planning permission was granted for the construction of the annexe in May 2000[1]. This permission was subject to a planning condition requiring that the annexe be occupied only in an ancillary capacity, by persons who reside in The Chalet, and not therefore as a separate dwellinghouse, in order to protect the residential amenities of neighbours.

8. The appellant's case is that the annexe has been occupied as an independent dwelling since September 2015. For a number of weeks in November 2016 the building was vacant, following the departure of the original tenants and new tenants taking up occupation. During this break it appears that the property was redecorated in readiness to be re-let.

9. The appellant has submitted various documents in support of his case that the building has been used as a separate dwelling for the requisite period. These documents include correspondence with, and bills issued by, the Council's revenues division; copies of various social media pages, dated November 2016, advertising the annexe as available for rent; and bank statement records which would appear to list Council tax payments made between January and August 2020.

10. Email correspondence from the Council provides a summary record of who was understood to be occupying the annexe and at what time[2]. The chronology provided appears to conform with the appellant's account, indicating responsibility for Council tax between 15 September 2015 and 3 November 2016 and between 1 December 2016 and 1 October 2020 being attributed to separate pairs of tenants. In November 2016 and from 2 October 2020, Council tax responsibility is recorded as reverting to the appellant.

11. As set out above the onus is on the appellant to demonstrate continuous use as a separate dwelling, on the balance of probability. I have not been provided with evidence, such as bill payments, covering the entire period in question so as to corroborate the alleged continuous residential use.

12. However, irrespective of whether the evidence provided can be regarded as sufficiently persuasive in itself, the fact that there was a break in the letting of the property for several weeks during November 2016 is undisputed. It was

[1] Ref UTT/0321/00/FUL
[2] Appendix 11 of the appellant's statement (email dated 30 November 2020)

held in the case of *Swale*[3] that there is a difference between an established dwellinghouse, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwellinghouse, and where there is no established use. To be immune from enforcement action under s171B(2), the use of a building as a dwellinghouse must be 'affirmatively established' over the four-year period.

13. Accordingly, the correct approach is to ask whether there was any time during the relevant four-year period when the Council could not have taken enforcement action against the use of the building as a dwellinghouse, even if it was available for use, because it was not actually occupied or used as a dwelling.

14. It seems to me, in this case, that the period when the annexe was unoccupied by tenants, or at least unoccupied by those not residing at The Chalet, in November 2016 was significant in this regard. This is because during that time, on the basis of the evidence before me, the annexe was undergoing a period of maintenance, and its use then would not have been at odds with the requirements of the aforementioned planning condition, that is to say as an ancillary building rather than a separate dwelling.

15. Indeed it is undisputed that the appellant, himself, was registered as the tenant of the annexe during that time, and there is no suggestion that he was not also in occupation of The Chalet as a main residence then. Although the appellant has referred to this period as a 'short gap', during which the annexe was being actively marketed, I am not persuaded that it would have been possible for the Council to have taken enforcement action against the use of the building, as a dwellinghouse, during that time in November 2016, and therefore at any time during the relevant four-year immunity period.

16. The subsequent re-letting of the annexe in December 2016 would therefore have represented a new chapter in its planning history, as a new period of non-compliance with the planning condition commenced, and at which time the 'four-year clock' would be restarted.

17. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."* For the reasons set out above, I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous.

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of existing use of residential annexe as a separate dwelling 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.

Roy Merrett

INSPECTOR

[3] Swale BC v FSS & Lee [2005] EWCA Civ 1568