



Appeal Decision

Site visit made on 26 April 2021

by Thomas Shields DipURP MA MRTPI

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

Decision date: 15 June 2021

Appeal Ref: APP/B3410/X/21/3267378

Poppyfields, Lichfield Road, Wychnor, Staffordshire, DE13 8FH

- 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 Wendy Stevens against the decision of the East Staffordshire Borough Council.
 - The application Ref. P2020/00835, dated 6 August 2020, was refused by notice dated 1 October 2020.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is use of the building called "Cabin" as a C3 dwellinghouse.
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Appeal Site

1. The timber building subject of this appeal, now referred to as "the cabin", lies within a countryside field. It was erected as a timber shed used for the storage of tools and machinery in connection with the land for forestry purposes and granted full conditional planning permission for such on 8 January 2015.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse a LDC was well founded.

Reasons

3. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Since no enforcement notice was in force at the date of the application it is clear that s192(b) is satisfied.
5. Turning to s191(2)(a), I saw during my visit to the appeal site that the cabin now occupied by the appellant has all of the facilities necessary for day to day living such as cooking, washing, toilet and sleeping facilities, such that it amounts to a "dwellinghouse" consistent with the judgment in *Gravesham*¹,

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

and thereby also a material change of use amounting to “development” as defined at s55 of the Act. In this regard the Council does not argue otherwise.

6. The burden of proof therefore in satisfying the requirement at s192(a) is on the appellant to establish, on the balance of probabilities, that the residential use of the cabin commenced at least 4 years² before the date of the application, hence before 6 August 2016 (“the material date”), and continued for a period of 4 years without any significant interruption.
7. The appellant evidence is that she has lived in the cabin since 2015, firstly with her partner, Leigh Shackles, and then latterly by herself following his death. Her evidence is set out in her statutory declaration (SD). She states that following the grant of planning permission for the building as a storage shed in 2015 she and her partner removed the tools and equipment. She further states: *“We then made improvements to the cabin, putting in a kitchenette, cooker and hob, a pull-out bed, wood burner, toilet and a generator to make it habitable and moved in”*.
8. The only precise date that can be ascertained from this part of the appellant’s evidence is the date of the planning permission which was granted on 8 January 2015. No date is given for when the tools and equipment were moved out, or for when the conversion “improvements” referred to were made, or, following conversion improvements, the date they actually took up full time residence. Significantly, there is no date provided to confirm that occupation and use of the cabin as a dwellinghouse commenced prior to the material date.
9. Her evidence goes on to state that a full postal address was provided by Royal Mail in 2015-2016. However, that is also imprecise with regard to whether it occurred prior to the material date. Moreover, provision of a postal address does not provide evidence of continuous residential occupation and use of the cabin. There are no energy bills since electricity is provided by solar panels. No copies of water or any other bills or invoices have been provided.
10. Her SD further states that main visitors to them at the cabin were her friend Tracey Bourke, who has submitted a statement, and her partner’s son Reece Shackles, who has submitted a SD. They both confirm visiting the appellant and her partner at the site since 2015. Although neither state they camped or otherwise stayed there overnight they both consider that the cabin was the appellant’s main home. Whether the appellant or her partner were absent from the cabin for any significant period is not referred to in their submissions.
11. The appellant in her SD (paragraph 6) confirms that she has had some periods of absence from the cabin. One period following the death of her partner, another period during coronavirus “lock-down” restrictions, and a third period following her mother having a health issue. However, with particular regard to the material date no evidence is provided of the start date and duration of these absences. Consequently, it is unclear whether the claimed 4 year use was continuous without significant interruption.
12. The Council’s submitted evidence is a copy of a delegated officer report (OR) and a statement. They together refer to enforcement records in 2018 which are reported to demonstrate that the appellant and her partner were living on a

² 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.

boat, and to a witness statement from a Police Community Support Officer, said to relate to a conversation with the appellant in June 2020 during which it is alleged she stated she had only been living there for 2 weeks. However, none of the documents and enforcement records the Council refer to have been submitted in evidence for me to examine, and they relate to particular matters that are disputed by the appellant. Consequently, I am unable to attach any significant weight to the Council's evidence.

Conclusion

13. With regard to the determination of LDC applications (and appeals) for existing use the PPG³ reiterates the approach to be taken as established by earlier Court judgments. Hence, 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 probabilities.
14. There is little detailed contradictory evidence submitted from the Council or from third parties to counter the appellant's case. However, the appellant's own submitted evidence is by itself far from being sufficiently precise and unambiguous in establishing, on the balance of probabilities, the commencement of a 4 year period of use as a dwellinghouse, or that any such period was continuous without significant interruption.
15. For all 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.

Formal Decision

16. The appeal is dismissed.

Thomas Shields

INSPECTOR

³ Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)