The Planning Inspectorate

Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/G2713/X/20/3263330
The Stable, Green Bank Farm, Green Balk, Great Broughton TS9 7ED

- 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 Derek McElvaney against the decision of Hambleton District Council.
- The application Ref 19/02735/CLE, dated 20 December 2019, was refused by notice dated 15 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 described as 'existing use of a former stable as an independent dwellinghouse'.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Derek McElvaney against Hambleton District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. The relevant test of the evidence is 'the balance of probabilities'.

4. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. In order for the appeal to succeed, the appellant needs to submit sufficient precise and unambiguous evidence to show that the stable building has been in continuous use as a self-contained residential unit for four years or more prior

to 20 December 2019, which is the date of the LDC application. The building therefore needs to have been in occupation on 20 December 2015 or before.

7. The appeal site was developed as a stable block in 2003. In his statutory declaration, the appellant, Mr McElvaney, says that the works to convert the building for use as a dwelling were carried out in October-November 2015. According to this statement, he and his wife, Mrs Maud McElvaney, moved into the building in the first week of December 2015 and have lived there continuously for more than four years. Mrs McElvaney's statutory declaration points to the same timeframe.

8. With his final comments, the appellant produces a further statutory declaration from Paul Grafton, the tenant of the property known as the Bungalow. Dated 10 March 2021, the statement is specific that Mr and Mrs McElvaney moved into the Stable, also known as the Cottage, at the end of 2015 and have lived there since, without interruption.

The evidence for occupation of the appeal site

9. Before looking at the evidence in detail, I note the Council's concern that the addresses given on the various documents are not consistent. However, from my examination of the evidence, it does seem that the terms 'Cottage', 'Stable', 'Cottage Stables' and 'Converted Stable' all refer to the appeal site.

10. Various receipts and invoices have been produced from October and November 2015 relating to the fitting out, which does not appear to be in dispute. One receipt from SCS is dated 31 December 2015, which falls within the relevant period. However, the fitting out and furnishing of a building does not, in itself, demonstrate occupation. To that end, the appellant produces a range of further documents in support of his case.

11. Amongst these are correspondence from BT addressed to Mrs McElvaney. The earliest letter is dated 4 July 2016 and confirms the setting of up of a BT account at The Cottage, some six months later than 20 December 2015, the key date. The first bill for the account is dated 26 July 2016. There is no indication of any phone or broadband usage, or any other utility service, at the address between 20 December 2015 and 4 July 2016. The later bills cover the end of the relevant four year period.

12. Of the other bills addressed to Mrs McElvaney, the earliest receipt from QVC is dated 22 August 2016, and later receipts cover the period up until December 2019 and beyond that date. The earliest credit card bill is dated 2 April 2016 and the bill of 2 January 2020 covers the end of the relevant period.

13. However, the main concern here is that there seems to be a gap in terms of the documentary evidence between the 2015 documents, relating to fitting out and furnishing, and approximately April 2016. There is little to show affirmatively that the building was occupied during that time.

14. A number of statements from friends and family have also been submitted, all dated within February 2020. Alan Malloy states that he has been inside the dwelling many times in the last four years and confirms that they have lived there throughout that time. Elaine Marshall states that she has visited Mrs McElvaney several times at Green Bank Farm and that in the last four years, she and the appellant have lived only at the Cottage. Michael Staples says that he has visited Green Bank Farm on many occasions, and that Mr and Mrs McElvaney have lived at the Cottage for more than four years.

15. In a single letter dated 10 February 2020, Peter and Joan Fawcett state that they have visited the farm on many occasions, and that Mr and Mrs McElvaney have lived solely at the Cottage in the last four years. Kevin Morrow reiterates that they have lived at the Cottage in the last four years.

16. Firstly, these are not statutory declarations, which lessens the weight I can afford them. Secondly, it is of concern that the statements refer to 'the last four years' rather than stating specific dates. As the letters are all dated within February 2020, the period 'the last four years' would begin in February 2016, which is later than the key date of 20 December 2015. I note that none of the statements make any reference to the specific month in which the McElvaneys moved into their new home. The vague, imprecise nature of these statements thus further detracts from the weight I can attribute to them.

Inconsistencies in the appellant's evidence

17. The Planning Policy Guidance (PPG) states that, in cases relating to an 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[1]. Therefore, although statutory declarations are to be given significant weight, they are not to be solely relied upon. This is especially the case when there are inconsistencies within the evidence as a whole that cast some doubt on details of the appellant's statement.

18. With his costs application, the appellant submits a Council Tax Demand Notice backdated to November 2015 addressed to him and his wife in relation to the property 'Converted Stables'. There can be no doubt that this bill covers the relevant period. However, for the first four years, a single residency reduction is applied. This is at odds with the evidence intended to show that the appellant and his wife moved into the dwelling together, and no explanation is given for this circumstance.

19. The Council have also produced, at their Appendix 1, a copy of a Council Tax Enquiry Form relating to a property known as 'Caravan', described as 'caravan on site' at Green Bank Farm. This document names Mrs McElvaney as the owner/occupier and says that she occupied the property on 2 January 2016.

20. At their Appendix 2, the Council submit a memo dated 20 January 2016, stating 'per Hazels visit from planning there is a static caravan on site' at the Green Bank Farm address, and that it was being occupied by Mrs Maud McElvaney.

21. The Council's Appendix 3 contains a memo noting a phone call from Mr McElvaney on 11 November 2020, with his address given as 'Converted Stables'. When asked if he had lived at this address since 2015, it is reported that he said no. No explanation is given for this circumstance.

22. Furthermore, Council tax records show that the appellant had been paying Council Tax in respect of 'The Caravan' since January 2016, following the start of occupation at the end of November 2015 or beginning of December 2015. The appellant's statement seeks to explain this with reference to a discrepancy in the names of the dwellings in question.

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[1] Paragraph: 006 Reference ID: 17c-006-20140306

23. The appellant asserts that there has been no caravan at Green Bank Farm for approximately 8-10 years. Mr Grafton similarly states that there has been no caravan in a liveable condition in the time that he has been resident at the Bungalow. However, it seems clear from the Council's memo that an officer visited the site in person and saw a static caravan there. However, both positions cannot be the case, and the appellant offers little explanation for these varying accounts.

24. In addition, Mr Grafton's statement says that he and his partner occupied the Bungalow from August 2015, as attested by the tenancy agreements. However, the appellant's statement of case seems to suggest that he moved straight from the Bungalow into the Stable, which he says happened by December 2015. Section three of the Council Tax Enquiry Form gives Mrs McElvaney's previous address as the Bungalow, but states that she moved out of this address approximately one month before Christmas 2015. Whilst their whereabouts prior to the four year period is not directly relevant to this appeal, the point is that the evidence lacks consistency, which lessens the reliance I can put upon it.

25. I have taken into account the appeal decisions[2] referred to by the appellant with regard to the weight to be afforded to statutory declarations, but these have not altered my findings on the evidence before me in this particular case.

Conclusion

26. For the purposes of an LDC application, it is only necessary for a property to be occupied for the relevant timescale, regardless of the numbers or identities of the occupants. To that extent, it is not relevant whether the building was occupied by one or more people at any given time. However, the discrepancies and vagaries noted above are significant enough to draw into doubt some of the evidence produced by the appellant in support of his case.

27. Moreover, the gap between the documentary evidence from December 2015 to April 2016 is of insurmountable concern. Ultimately, there is little to no evidence show that the building was actually being lived in during this time. Although the Council Tax bill is backdated to November 2015, Council Tax is liable to be paid on residences whether or not they are occupied, and so this evidence in itself does not confirm occupation.

28. As set out in the PPG, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced. Nevertheless, on the balance of probabilities, it has not been satisfactorily demonstrated that the appeal site has been continuously occupied as a residence for the four year period prior to the date of the LDC application.

29. I therefore conclude that the Council's refusal to grant an LDC in respect of the use of the appeal building for residential purposes was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Elaine Gray

INSPECTOR

[2] APP/N5660/X/12/2178832, APP/Q5300/X/14/2227207, APP/F5540/X/13/2207829, APP/B1930/X/14/2214297