The Planning Inspectorate

Appeal Decision

Site visit made on 18 May 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Appeal Ref: APP/C1760/X/20/3255897
The Manor House, Downs Lane, Over Wallop SO20 8JZ

- 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 Melvin Booth against the decision of Test Valley Borough Council.
- The application Ref 20/00747/CLEN, dated 28 March 2020, was refused by notice dated 21 May 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 the use of Manor House (garage block) as independent dwelling house use Class C3.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Melvin Booth against Test Valley Borough Council. This application is the subject of a separate Decision.

Background

3. The appeal relates to a building and the land around it, as defined by a red line on the application drawings. Land within the appellant's ownership and shown edged blue on the application plans contains a single storey bungalow referred to as Stepping Stones. Planning permission[1] was granted on 20 August 1999 for the demolition of Stepping Stones and the erection of a four bedroom dwelling. The permission included a single storey garage block attached at right angles to the end of the approved dwelling. An amendment was approved on 27 June 2000 to amend the design of the garage, which allowed the inclusion of living accommodation and a first floor within the roof space. The garage was subsequently built, but the original dwelling was not demolished and is still present. The garage is now known as The Manor House, and has been lived in by the appellant since 2002.

4. The 1999 permission was subject to a number of conditions. Of relevance to this case is condition 10, which requires that the garage shall be used only for purposes incidental to the enjoyment of the dwellinghouse and shall not be used for any business, commercial or industrial purposes whatsoever.

[1] Ref TVN.04054/1

5. There have been two previous applications[2] for certificates of lawfulness to use the garage block as a separate or independent dwelling. The first was not determined and a subsequent appeal was withdrawn. The second application was withdrawn.

Reasons

6. The application seeks to establish whether the use of the Manor House as a dwellinghouse was lawful on the date of the application. The onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development was lawful at the date of the application.

7. The appellant's case is that the Manor House has been used as an independent dwelling, unrelated to the use of Stepping Stones, for the relevant period, and occupied in breach of condition 10 of the 1999 permission for more than 10 years. There was a physical subdivision of the plot in 2002 and this has continued to date. He asserts that Stepping Stones is not currently occupied but has retained its own residential use. The site as a whole is no longer a single unit of occupation, although it is all in the same ownership and registered on one title. The red line application site reflects the unit of occupation associated with the Manor House.

8. The parties agree that the Manor House has been used as a dwelling, in breach of condition 10, for a period which exceeds 10 years. I saw on my site visit that the Manor House provides a kitchen, living room, WC, office, and a utility area as well as garaging on the ground floor. On the first floor, there are three good size bedrooms and bathroom. It provides all the facilities necessary for day to day living. Based on the evidence before me I have no reason to disagree that it is a dwelling and that it has been occupied as such for a period which exceeds 10 years. It is not clear from the evidence whether S171B(2) of the 1990 Act applies, or whether the building was originally erected as a dwelling. However, as the appellant can demonstrate the use of the building as a dwelling for in excess of 10 years, this is a moot point. However, that is not the end of the matter.

9. Case law[3] has established that a material change of use (MCU) can arise when a residential planning unit is sub-divided to form separate planning units. The appellant argues that S55(2)(f) means that the subdivision of a planning unit is not development. However, the provisions of S55(2)(f) do not relate to the subdivision of a planning unit but to the use of land for any other purpose within the same use class. It does not therefore mean that planning permission is not required for a material change of use through the subdivision of a planning unit. It will be necessary in such cases to establish whether there are two planning units, as a matter of fact and degree, and if so, whether they have been occupied separately for the required period.

10. The concept of a MCU is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. The concept of the

[2] Ref 18/03204/CLEN and 19/01525/CLEN
[3] Wakelin v Secretary of State for the Environment & St Albans District Council [1978] JPL 769

planning unit has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land or building. The tests for determining the planning unit are well established[4], and starting with the unit of occupation turn on the concept of physical and functional separation. As a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. Therefore, in order to demonstrate that the material change of use, involving the subdivision of the planning unit to create two independent planning units is lawful, it would need to be demonstrated that the Manor House has been used as a dwelling independently to Stepping Stones, continuously and for the required period.

11. The appellant states in his statutory declaration (SD) that he acquired Stepping Stones in 1998, rented it out for one year and moved into it in July 1999, with his wife and daughter. Following the grant of the 1999 planning permission and the subsequent amendment in 2000, he built the garage block, which was completed in 2002. Mr Booth began living in the garage in July 2002, initially on a temporary basis to allow Steeping Stones to be demolished while the replacement dwelling was constructed. He had intended to continue with the development but due to a change in circumstances it did not take place. The parties agree that the 1999 permission was 'begun' and that the approved construction could still be completed.

12. The residential occupation of the garage became permanent, and Mr Booth has continued to live there ever since, calling it the Manor House. The appellant states that he has used the store, which was previously a garage, as a garden store for the Manor House. An area between the former garage and Manor House was created for sitting out and was maintained as a private amenity space. Access to each dwelling and the parking area was shared. He and his partner parked in the area outside the Manor House since May 2014. Visitors have also parked in this area.

13. After Mr Booth moved into the garage, Stepping Stones was empty for roughly 6 months until the appellant's daughter occupied it independently for approximately 18 months until 2004/5. A further SD provided by Mr Booth states that after his daughter left, Stepping Stones became somewhat run down over the years and now lacks basic essentials. It is being used to store his children's toys and belongings, his ex-wife's furniture and clothing. The kitchen has been removed, as well as the sink and cooker. Heating and water supplies were also removed. Mr Booth states the building is also being used to store equipment and tools associated with his business, for which his company has paid an annual rent.

14. A further SD has been provided by a neighbour, Patrick Matthew Thomas of Somerly, King Lane, Over Wallop, whose garden backs onto the appeal site. Mr Thomas confirms that Mr Booth has lived in the Manor House since July 2002. A SD has been provided by Ms L M Hammerton, Mr Booth's former partner. She states that she stayed at the Manor House over the period from May 2014 until February 2019, parked her car in the area in front of the Manor House and carried out other duties associated with living on the premises. Although the

[4] See Burdle & Williams v SSE & New Forest [DC] 1 WLR 1207

SDs confirm that the Manor House was being occupied as a dwelling, they do not establish that it was being occupied independently to Stepping Stones. Indeed, the SD of Mr Booth indicates that once his daughter left in 2004/5, Stepping Stones was no longer being occupied as a dwelling, and was being used for storage related to the residential occupation of the Manor House.

15. The postman, Christopher Charles Russell, has provided a SD dated 26 February 2018, in which he states that he has delivered post to the properties for approximately the past 10 years. He has delivered mail and parcels to Mr Booth and his family and occupants of the Manor House, and has also delivered mail to the adjacent property known as Stepping Stones over the same period. While it is clear that each property has its own postal address, he does not state who the mail delivered to Stepping Stones was addressed to, and therefore it does not demonstrate that it was being occupied independently to Stepping Stones. Mr Booth states that the mail was for previous occupiers or was junk mail.

16. Extracts from council tax bills have been provided for 15 March 2013, 14 March 2014, 18 February 2016, 10 March 2017, 9 March 2018, all addressed to Mr Booth at the Manor House. Correspondence from the council's revenues team with Mr Booth and the planning officer indicates that there had been some confusion over the naming of the property. It confirms that the revenues team were only aware of two dwellings on the property from November 2019. Previous use of the address 'Manor House' actually referred to the building that had been on their records since 1993 and had been referred to as Stepping Stones until 2012. A copy of a letter from Mr Booth to the Council's council tax department dated 9 December 2019 has been provided, in which Mr Booth queries why Stepping Stones has received a bill for council tax, when it had a demolition order placed on it by the council's building control department in 2002.

17. Electricity bills have been provided for the period from 2007 until 2018, addressed to Mr Booth at the Manor House. He states that the Manor House has had a separate electricity supply since spring 2019. This is confirmed by third party representation, which indicates that a new power line was installed to the Manor House in 2019. Prior to that time, the appellant states that there was a temporary supply to the Manor House from Stepping Stones. The delay in providing an independent connection was said to be caused by Southern Electric, and the appellant states that he requested the new connection to the Manor House in 2000. Water bills from 2007 until 2017 have been provided, also addressed to Mr Booth at the Manor House, and Mr Booth states that the property has a separate water supply. Although the electricity and water bills indicate that the Manor House was being occupied as a dwelling, none of the bills provided indicate that Stepping Stones was being occupied by persons independent to the Manor House, such that a separate planning unit was created.

18. The appellant has provided a copy of a letter from a senior planning officer at the Council[5], and asserts that it proves that two separate dwellings have existed on the site since that time. However, while the letter notes that the occupation of the garage as a dwelling results in two dwellings on the site, it

[5] Dated 3 August 2000

does not state that Stepping Stones was being occupied independently to the garage.

19. Third party letters received in response to the application, indicate that Stepping Stones has remained in use by Mr Booth for the storage of his domestic paraphernalia. This accords with my observations on site and Mr Booth's own SD. They also state that land outside the red line, including land to the rear of Stepping Stones, has been used by Mr Booth for parking and for burning waste material. Mr Booth explains that these were all used in association with Stepping Stones. I have seen no evidence however that Stepping Stones has had a primary use that is unrelated to the Manor House for the required period.

20. The appellant asserts that the Manor House is physically separate from Stepping Stones, in that there is a gap between the two properties and they are separately constructed. I have no reason to doubt that, although they appeared to be joined, the buildings have been separately constructed. The appellant asserts that the Manor House has its own curtilage, but at the time of my visit there was no physical demarcation of individual gardens or curtilages. The aerial photographs provided by the Council do not indicate that separate gardens, parking or driveways have existed over the period 2000, 2005, 2013, present. The separate construction of the two buildings does not indicate that they are two separate planning units.

21. Having considered the evidence before me and my observations at my site visit, I conclude that there has been no MCU through the subdivision of a planning unit to create two independent planning units. It follows that a MCU to an independent dwelling house has not occurred or been carried on continuously for the required period.

22. The appellant refers to an appeal decision at The Cabin[6] in support of his case, where a certificate of lawfulness was granted for the erection of a fence around the curtilage of The Cabin, for which a certificate of lawfulness had been granted for use as a separate dwelling-house. The Inspector found that it was not the fence that resulted in a MCU of the land through dividing the land, but that the new planning unit was most likely created once the use of The Cabin as a separate dwelling became lawful. However, in this case I have not found that a separate planning unit has been established.

23. The appellant also refers to case law in *Whitehead*[7] that does not refer to the creation of a separate planning unit. However, in that case the use of a dwelling for a housekeeper was found to be an integral part of the main use of the planning unit as a single dwellinghouse. The appellant refers also to *Jennings*[8], where the Court of Appeal found that the physical alteration of part of a site through the erection of a new building does not necessarily result in a new planning unit. The case supports my conclusion that it needs to be considered whether a MCU has taken place. The appeal decisions[9] referred to by the appellant relate to granny annexes, rather than separate and independent dwellings. However, in this case the appellant is arguing that the two buildings are independent from each other and that two planning units

[6] Ref APP/G5180/X/13/2194225
[7] Whitehead v SoS [1992] JPL 561
[8] Jennings Motors Ltd v SSE & New Forest DC [1982] 2 WLR 131 [1982] JPL 181
[9] APP/F5540/X/132208455 and APP/B0230/D/3248323

have been formed. They do not therefore indicate that the appeal should be allowed.

Conclusion

24. The evidence does not clearly demonstrate, on the balance of probability, that the Manor House has been used as an independent dwellinghouse for the required period, and falls short of discharging the burden of proof.

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of Manor House (garage block) as an independent dwelling house use Class C3 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 and dismiss the appeal.

N Thomas

INSPECTOR