



Appeal Decision

Site visit made on 13 May 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 6 July 2021

Appeal Ref: APP/D3830/X/20/3253538

Slaugham Garden Nursery, Staplefield Road, Slaugham RH17 6AG

- 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 L Nugent against the decision of Mid Sussex District Council.
 - The application Ref DM/19/4269, dated 8 October 2019, was refused by notice dated 3 December 2019.
 - 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 use of barn as a dwellinghouse.
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Decision

1. The appeal is dismissed.

Reasons

2. The application seeks to establish whether the use of the barn 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.
3. Section 191(2) of the 1990 Act provides that existing uses are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action, 4 years in this case, has expired. Accordingly, the appellant needs to demonstrate, on the balance of probabilities, that the change of use to a dwellinghouse occurred at least 4 years prior to the date the application was made (8 October 2019), that is on or before 8 October 2015, and was sustained for a full 4 year period.
4. The wider appeal site is described as a former horticultural nursery. The appeal relates to a metal framed barn close to the entrance to the site. The barn is covered with profiled steel sheeting and has a concrete floor. At the time of my site visit it was not occupied and there was evidence of fire damage following a fire in July 2019. The appellant has owned the appeal site since 1996. He claims that the barn has been in residential use since 2013 with two different tenants. Following the fire in July 2019 it was still used for residential purposes providing toilet, washing and cooking facilities when the occupier was sleeping

in a converted van adjacent to the barn. The barn was thus occupied when the LDC application was submitted.

5. The interior of the barn is accessed through sliding doors at one end. Internally, there is a large open space with a concrete floor, which is referred to as a main room on the submitted ground floor plan, although it was not furnished for habitable use at the time of my visit. Along one side the barn has been divided internally into separate rooms, firstly a sleeping area, a living room adjacent to that, with a small kitchen and then a WC and shower room with a hand basin. The kitchen contained a washing machine and an oven, with space for a sink although none was present. The rooms are not interconnected and are all accessed from the main room.
6. The layout closely resembles that shown on drawing No 0002, but at the time of my visit the room labelled as a shower room was being used for storage, with a shower being provided within the separate bathroom. The main room was being used to store items which did not appear to be for domestic use. To the left of the sliding entrance doors was a further internal subdivision creating what appeared to be an office space which was also being used for storage. There was evidence of fire damage, particularly to the sleeping area. I am satisfied that prior to the fire, on the balance of probabilities, the barn provided the facilities necessary for day to day living.
7. The appellant claims that between December 2013 and January 2015, the barn was occupied by Ms Lisa Turrell and her partner Mr Curtis Lyons, and they had animals on the property. There is a statutory declaration (SD) from the owner Mr Nugent. It states that Ms Turrell rented the barn, paid the electricity and BT utility bills herself, while Mr Nugent paid the water bill and TV licence. They entered into a Licence to Occupy. There is also a SD from Curtis Lyons. In this he states that between 10 December 2013 and 11 January 2015 he lived at the Barn as self-contained accommodation and maintained the land. The barn is not identified through a plan attached to either of the SDs. Mr Nugent states that there is significant correspondence between Ms Turrell and himself but this has not been provided with the appeal.
8. From 12 January 2015 Mr Dusan Vojnovic (also referred to as Mr Vojnovic in some of the documents) took occupancy. It is stated that at the date of the signing of Mr Nugent's SD on 24 June 2019, Mr Vojnovic was still residing at the barn, there was a tenancy agreement and rent was paid monthly, including all utility bills and maintenance. Mr Vojnovic's SD (also dated 24 June 2019) confirms this, and states that the barn was fully self-sufficient for a self-contained home. As part of the agreement with Mr Nugent he maintained the land and provided security, and that no other activity was carried out at the barn while he was living there.
9. A further SD has been provided from Mr Vojnovic on 24 April 2020. He stated that the barn was used as his sole residency until 26 October 2019, when he moved into another property owned by Mr Nugent in Crawley. Due to the smoke damage it was not possible to sleep in the barn, but his van did not have a shower or toilet, so he continued to use the facilities in the barn. He also continued to use the barn for cooking as well as electricity and the storage of personal belongings. As such, the barn continued to form part of his living accommodation and a number of his personal possessions were in the barn. He stated that he met the Council's planning officer on site on 1 November 2019

and stated that he had just moved into the flat. The SDs provide a detailed account of the use of the barn from 2013 to 2019, although they do not identify the building with reference to a plan.

10. Various documents have been submitted to support the application and the appeal. In relation to the occupation by Ms Turrell, a copy of a Licence to Occupy has been provided. It names the licensor as LF Nugent of Antrim House, High Street, Handcross and relates to the occupation of Slaughtam Garden Nursery by the licensee, Lisa Turrell from May 2013 until May 2018. It confirms that the licensor was responsible for meeting all outgoings in relation to the heating, light, electricity and buildings insurance. It also states that the licensee will be liable to the local authority for business rates in paragraph 4 of the terms and conditions. Paragraph 7 refers to the licensee being responsible for damage caused by its employees, while paragraph 8 states that the licensee shall occupy the premises in connection with its business. It does not mention the barn or its use for residential purposes.
11. In relation to the period of Ms Turrell's and Mr Lyons' occupation, copies of various bills have been provided and correspondence with utility providers. The appellant states that the water bill has always been paid by him and was initially set up as a business tariff, but then changed to a personal account. Statements from South East Water relate to 2009 and 2011 and it is not clear whether they are associated with the appeal or Slaughtam Place, which is listed as the property supplied. Correspondence with South East Water dated 16 January 2012 states that an Inspector to Slaughtam Garden Nursery in 2011 indicated that plants were being grown in part of the nursery. There are various water supply bills for Mr Nugent at Slaughtam Garden Nursery for the period from 9 December 2013 until 29 January 2015 but it is not clear whether these were for a business or domestic property.
12. A letter from BT with an account update dated 30 November 2014 refers to a business account for the preceding 24 months. A notice of pending broadband suspension from BT addressed to Lazy Days Natural Ltd at Slaughtam Garden Nursery has also been provided, dated 13 January 2015.
13. The appellant explains in the DAS that the electricity was initially set up in a business name and then changed to Ms Turrell's personal details. The monthly electricity bills from December 2013 until August 2014 are all addressed to Lazy Days Natural Ltd. From September 2014 until January 2015 they are addressed to Lisa Turrell at Slaughtam Garden Nursery but are still identified as a business account.
14. None of the bills indicate that it was a residential account, and it would not be unreasonable to assume that electricity, water supply and a telephone/broadband connection could be required for a commercial use of the site, whether for horticulture or some other business. In relation therefore to the period when Ms Turrell and Mr Lyons were said to be living in the barn, there is no independent contemporaneous evidence that shows it was being used as a self-contained dwelling. While it is clear that Ms Turrell was renting/occupying the land, the evidence indicates that it is more probable than not that the occupation was in relation to a business rather than residential use. Rather than corroborating the SDs, the contemporaneous documents cast doubt on the appellant's account of the use relating to this period.

15. Copies of documents have also been provided in relation to Mr Vojnovic's occupation of the property from 2015. A copy of letter is provided from Mark Scheidau of Antrim House, High Street, Handcross dated 12 July 2019 stating that Mr Dusan Vojnovic has been well known to him for many years and that he has been living at the barn, Slaugham Garden Nursery since early January 2015. A letter has been provided from Mr Ben Bignall dated 7 August 2019, confirming that Mr Dusan Vojnovic has worked alongside him for the last 5 years and lived at the barn all the time he has known him and still lives there now. The letters are signed but are not in the form of a SD and do not identify the barn with reference to a plan.
16. Copies of photographs of pages from a rent book have been provided. The tenant is named as Dusan Vojnovic, the collector is Faye Nugent (understood to be Mr Nugent's daughter) and the date of tenancy is given as 12 January 2015. The entries in the rent book indicate monthly payments over the period from then until 12 June 2019. A Licence to Occupy has been provided, also dated 12 January 2015. The licensor is named as LF Nugent of Antrim House, High Street, Handcross and the licensee is named as Dusan Vojnovic. It is in a similar form to Ms Turrell's Licence to Occupy, with references to business use, business rates and employees, rather than to a residential use of the barn itself.
17. An extract from a Government website confirms the new keeper of a car as Mr Dusan Vojnovic, giving his address as Slaugham Garden Nursery, dated 24 May 2019. A photograph of the front of the details of the registered keeper document of a vehicle has also been provided, with the same date, name and address.
18. Copies of bills for the supply of water from February 2015 until April 2018 are addressed to Mr L Nugent at Slaugham Garden Nursery and specify that it is a business customer water bill. Water supply bills from Castle Water and addressed to Mr L Nugent T/A Slaugham Garden Nursery are dated 7 March 2019 and 22 April 2019. In extracts from an email chain between Faye and South East Water's 'wholesale' email address, from June and July 2019, South East Water confirms that the property is no longer in the 'non household market', with a visit having taken place to inspect the residential premises and meet the tenant. A further water supply bill has been provided in Mr Nugent's name and addressed to Slaugham Garden Nursery for the period 18 June 2019 to 28 January 2020.
19. A copy of a TV licence has been provided, in Mr Nugent's name and addressed to Slaugham Garden Nursery, covering 2015, 2016, 2019 and 2020 until 31 December 2020. Email confirmation of the purchase of a TV licence for 2017 and 2018 by Mr Nugent has been provided with the same licence number.
20. Electricity bills have been provided in the name of Mr Nugent addressed at Slaugham Garden Nursery for the period from February 2015 to January 2017, and relate to a new contract for E.ON supplied business premises. Further electricity bills have been provided for July 2019, August 2019 and February 2020.
21. The utility bills were not in Mr Vojnovic's name as bills were included with his rent, and therefore they do not indicate whether he was living in the barn or not. Both the water supply bills until 2019 and the electricity bills indicate that they are business accounts rather than residential accounts. However, the

- correspondence with South East Water corroborates the appellant's claim that, at least from mid-2019, the property was being used for residential purposes. A TV licence does not indicate that the use was residential for all or any of the stated period, as it could have been required in association with a business use.
22. With regard to the building itself, an invoice for the fitting of carpet tiles to 'ground floor barn' has been provided, dated 11 March 2016. This does not indicate that the flooring was associated with a residential use. An invoice for 're-decoration of residential barn' has also been provided dated February 2017 for Slaugham Garden Nursery.
23. The submitted fire report indicates there was a caravan at the site, while references to the fire from third parties also indicate that there was a caravan or mobile home in the barn when the fire occurred. This is not referred to in the SDs, nor is its presence or use explained in the appellant's account of events. It is not clear whether the caravan was providing any of the living accommodation at that time. However, the fire report also states that the site was occupied at the time of the fire. A representation from a third party, whose husband attended the fire, also identifies that a person was present on the site at the time of the fire, and that he said he had lost everything, including his passport, in the fire.
24. Third parties living close to the site and regularly passing it were not aware of a residential use of the barn. While views into the site are restricted by the solid gates across the access, it seems likely that local residents would have observed vehicles entering or leaving the site if someone was permanently living in the barn, particularly as vehicles would have been stationary to allow the gates to be manually opened and closed. The post box was filled with junk mail indicating that no one was present at the site to empty it. This is anecdotal evidence to which I give limited weight.
25. Local residents have also pointed out that none of the occupiers were on the electoral register for the site, nor was the property registered for council tax. The residential use of the barn was not disclosed on planning application forms seeking permission for residential development of the site¹. Council officers were not aware of the residential use of the barn, despite visits to the site by planning officers in relation to the applications, which were submitted during the time of Mr Vojnovic's occupation of the building.
26. Nonetheless, the fire report, the registered keeper document and the change in status of the building for water supply purposes indicate that it is more likely than not that Mr Vojnovic was living at the address in 2019. However, the evidence for the period preceding 2019 is ambiguous and contradictory. Furthermore, it is not clear whether the caravan was providing any of his living accommodation at the time of the fire. Following the fire, at the time when the application was made, the van was providing his sleeping accommodation.
27. The weight I can give to the SDs is therefore undermined by inconsistencies and contradictions with the contemporaneous documents and other extrinsic evidence. These indicate a business rather than residential use, for at least part of the required period. Furthermore, the extent to which living accommodation was being provided by the caravan is unknown. In any event, on the basis of

¹ References DM/16/4406 and DM/17/4326, including a subsequent appeal.

the evidence before me, it is less than probable that the use of the barn as a dwelling has been sustained for the required period, and was not established prior to the fire.

Conclusion

28. The evidence does not clearly demonstrate, on the balance of probability, that the barn has been used as a dwellinghouse for the required period, and falls short of discharging the burden of proof.
29. 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 the barn as a 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 and dismiss the appeal.

N Thomas

INSPECTOR