The Planning Inspectorate

Appeal Decision

Site visit made on 9 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal Ref: APP/R3650/X/21/3273215
The Dairy, Lower Courts, Blackdown Lane, Haslemere GU27 3AZ

- 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 Ms D Stead against the decision of Waverley Borough Council.
- The application Ref WA/2019/2137, dated 17 December 2019, was refused by notice dated 25 March 2021.
- 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: Use of The Dairy as a lawful separate residential dwellinghouse.

Summary of Decision

1. The appeal is dismissed.

Procedural Matter

2. Both parties consider that the appeal is suitable to be determined by the written procedure. That being so, I do not consider that injustice or prejudice to a party arises.

Main Issue

3. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the use of the building concerned as a dwelling is well founded.

Reasons

4. In matters such as this the onus is on the appellant to demonstrate her case on the balance of probabilities. In order to do so, a continuous period of 4 years would be required to affirmatively establish the lawful use of the building as a dwelling. This need not be the most recent 4 year period preceding the date of the application, only a continuous period of 4 years, when enforcement action could otherwise have been taken. Thereafter, a gap in actual occupation may not be critical, unless there is evidence, for example, of an intervening use.

5. Alterations to the building concerned to provide for further ancillary residential accommodation was granted planning permission[1] in January 2003 (the planning permission). That was also subject to a planning condition restricting the occupation of the building to purposes ancillary to the host dwelling.

[1] Council Ref WA/2002/2103

6. The appellant has provided a sworn Statutory Declaration concerning the occupation of the building and a number of Assured Shorthold Tenancy Agreements (AST's).

7. The appellant asserts that the building has been used as a dwelling since 6 September 2009 when it was occupied by a Mr Dick's until 6 March 2010. It was then occupied by a Ms Liles from 24 March 2010 until 24 September 2010 and a Ms Poulter and Mr McLeod from 14 January 2011 until 2 January 2014.

8. The appellant herself then occupied the building from January 2014 until September 2015. It was then maintained as the appellant's registered address until January 2018, during which time she used the building when she was in the area, said to be often at weekends.

9. A Mr Allaway then occupied the building in February 2018 until September 2019. The building then remained unoccupied until atleast 20 December 2019, being when the Statutory Declaration was sworn, for reasons said to be relating to essential maintenance.

10. The Council highlight that the appellant states she managed all the tenants personally, yet she was unable to provide any signed and witnessed copies of the AST's. Three signed and witnessed AST's have since been provided, relating to Ms Poulter and Mr McLeod's occupation. In its appeal Statement the Council provides a table outlining that these AST's relate to these same occupants, but at different times. The accuracy of that table is not disputed by the appellant. The Council then suggests that the uniformity of the spacing in AST's indicates the building was only required, and thus used as a dwelling, periodically by these tenants.

11. The appellant states that a periodic use is conjecture on the part of the Council. She also states that whenever the building has been let, new agreements have been raised for each time period. This however casts considerable doubt in my mind, as if the same occupants lived in the building continuously for almost 3 years, why would there be 3 AST's, but only covering a combined period of around 2 years, with significant gaps in between, as opposed the original agreement rolling-over, or a continuous series of agreements. On that basis, the AST's support the view of gaps in occupancy and with it use of the building as a dwelling. The appellant asserts that they occupied the building continuously for almost 3 years, but the AST's do not aid to corroborate or demonstrate that on the balance of probabilities. Indeed, the appellant's Statutory Declaration states that these tenants renewed their agreement each year, but two of the AST's only relate to 6-month periods.

12. Whilst I then appreciate there might be some difficulties posed in retrieving documentation, the onus is firmly on the appellant to demonstrate her case on the balance of probabilities. Some AST's have however been provided, but there is then very little other evidence to corroborate the appellant's Statutory Declaration in this regard, which I consider is necessary in light of the imprecise or contradictory AST evidence concerning the occupation of Ms Poulter and Mr McLeod.

13. In July 2018 the Council served a Planning Contravention Notice (PCN) concerning the use of the building as a dwelling in breach of a condition of the planning permission, which restricted its use to ancillary purposes.

14. In response, the appellant provides an ambiguous answer in that the building was being used for 'residential purposes' and then describes the occupiers, aside from Mr Allaway, as being family in law, friends and friends of friends. In my view, whilst the response then states the building is self-contained, it connotes a use more akin to the ancillary use envisaged by the planning permission. However, I have little evidence that the Council sought further clarification, and, that occupants may have been family or friends does not then directly contradict the evidence of independent occupation contained in the appellant's Statutory Declaration.

15. The appellant has also submitted two Statutory Declarations from other parties, but as these do not attest to the specific periods focussed upon concerning continuity of actual use and occupation, they do not provide precise or unambiguous evidence to demonstrate the appellant's case on the balance of probabilities.

16. I however do not find that Council Tax records undermine the appellant's evidence, as these do not specifically attest to what was taking place on the ground. I also note the appellant's response about maintaining the building as her registered address in this regard as well.

17. Nevertheless, it remains the case that the appellant's own evidence must be sufficiently precise and unambiguous to justify the grant of a certificate. There is however considerable doubt in my mind surrounding the continuity of occupation and use of the building as a dwelling by Ms Poulter and Mr McLeod. The appellant's maintenance of the building as her registered address or for weekend use also does not affirmatively establish a continuous lawful use based on the limited evidence before me. Consequently, as a matter of fact and degree, the appellant has not discharged the necessary burden of proof to demonstrate on the balance of probabilities a continuous 4 year period of use of the building concerned as a dwelling such that enforcement action could otherwise not have been taken.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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

19. The appeal is dismissed.

Paul T Hocking

INSPECTOR