



Appeal Decision

Site visit made on 1 September 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15th September 2021

Appeal Ref: APP/P2935/X/21/3274673

Land South of 4 Station Cottage, Station Cottages, Longhirst, Northumberland, NE61 3HY

- 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 Alan Green against the decision of Northumberland County Council.
 - The application Ref 21/00069/CLEXIS, dated 8 January 2021, was refused by notice dated 8 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 as residential.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. There seems to have been some confusion during the LDC application process regarding the extent of the application site. I have taken it to be the land shown edged red on the plan attached to the application which accords with the description of the site contained within paragraph 3.11 of the Appellant's Statement of Case: *"The field boundaries are delineated by a fence that is apparent and is in a West to East direction, the application site is located North of this fence line (effectively an inverted T)."* Parts of the representations received refer to the field or paddock area to the south of this fence and the original barn building, but this land does not form part of the application site and has not been considered as such as part of this appeal.

Main Issue

3. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force.¹ No evidence was submitted regarding an enforcement notice relating to this property at the time of the application or during the appeal.

¹ Section 191(2) of the 1990 Act

4. In order to succeed in this appeal the appellant must show that the site has been used for the purposes for, and incidental to the enjoyment of, residential land associated with Station House for a continuous (i.e. substantially uninterrupted) period of 10 years prior to the date of the application. If a local planning authority has no evidence itself, nor from others, to contradict or otherwise make the appellant's version of events less than probable, provided the appellant's evidence alone is sufficiently precise and unambiguous, the appeal should be allowed and the LDC granted. The test to be applied in weighing the evidence is on the balance of probabilities.

Reasons

5. The appellant's case is that the access road and land edged red on the site location plan have been used for residential purposes associated with Station House since 1970. The gist of their argument is that the land is in the same ownership as Station House and has been used by its occupiers and also the occupiers of 4 Station Cottages (with permission) for access, turning, parking, the storage of building materials and a kitchen garden.
6. During the site visit I saw an additional building to those shown on the Site Location Plan submitted with the application. There is a metal clad or constructed building in the south west part of the site which is referred to in the Appellant's statement of case as the "recently erected building" and behind that building is the area referred to as the kitchen garden. There are two buildings in the south east part of the site, a large wooden shed without a door which during the site visit contained various things, including a car, and a large metal clad or constructed building which adjoins the field further to the south on the other side of the fence going east/west across the site. The access road is hard-surfaced until it reaches the front of the wooden building and it then becomes loose surface with grass and scrub in front of the two metal buildings. Several vehicles were parked on the site, although only the car parked on the edge of the garden next to 4 Station Cottage looked as though it had been used recently. The car parked in front of the residential conversion building in particular was very overgrown with long grass and other plants around it and moss growing on parts of it.
7. The 'kitchen garden' area is accessed by going along either side of the newly erected building, which has been built directly in front of it. However, during the site visit the whole of this part of the site was extremely overgrown and it was not in fact possible to gain access to the area behind the building (as it would have required substantial cutting back due to brambles and other wild bushes and plants at the rear of the building). It was possible to see that there were small trees and other shrubs planted to the rear of the building but they did not appear to be particularly mature trees, nor that anyone had been in that area for quite some time due to its extremely overgrown and unkempt nature. There was also a small wooden shed which may have been the hen-coop referred to by the appellant but there were no hens. In addition, there was a large pile of building materials and debris in the south west corner. I am unable to date the planting of the kitchen garden area based on the evidence before me although I note that there is contradiction in the evidence submitted as to when this occurred. The third parties and Parish Council state that it has only been set out in this way much more recently than in excess of 10 years.

8. The appellant states that the land was used by the occupiers of Station House, 4 Station Cottages and as parking for the previous occupiers of Elmwood. This may be correct. The appellant's case is also that it has been used by the 'residential conversion' (presumably to facilitate the building works as it did not appear to have been occupied) and that part if it was used by DA Johnstone Plant Hire as a car park for their employees for the 4 years immediately preceding the commencement of the conversion work. These latter two uses would not be part of a residential use. The residential conversion does not appear to be complete or occupied and use by an offsite commercial enterprise for employee parking is not a residential use, irrespective of who owns the land.
9. The Council's case is that they have information which contradicts the appellant's description of the use and that the application was therefore not clear and robust enough to prove the residential use. The Council refer to the statement submitted on behalf of the appellant regarding planning application reference 18/00817/AGTRES (relating to the building to be converted to a dwellinghouse under permitted development rights) which unequivocally stated that there was a clear linkage between it and the adjoining field and that it was being used for agricultural storage. This statement, made in 2018, seems now to be contradicted by the appellant whose case is that the barn was previously used as an outbuilding associated with Station House despite the fact that the residential conversion of it was only permitted if it was previously in agricultural use. Whilst I accept that the field described as being in agricultural use at that time is the adjoining field (i.e. the field to the south of the barn building) the statement does also refer to '*adjoining land*' and it is unclear as to whether there was a differentiation in the permitted planning use at that time between the field to the south and the appeal site here.
10. The appellant and one of the third parties agree that the hardcore on the application site was laid by DA Johnstone but differ in the date, the appellant stating that it was approximately 10 years ago whereas Mr Clarkson states it was in July 2017. The appeal does not turn on this point but there is a contradiction nevertheless.
11. Evidence was submitted that the site land only came into the same ownership as Station House in 2014 which has not been disputed by the appellant. It does not therefore seem likely on balance that the site was used as a single planning unit for purposes incidental to the dwellings at Station House and 4 Station Cottages prior to this date as it was in fact in the same ownership as a different property, Elmwood. This affects the extent of the planning unit to be considered as case law is clear that ownership is one element to be considered when defining a planning unit (although this is not a definitive factor alone). In relation to the LDC application, the appellant has not explained how or on what basis he was using the site land prior to his ownership in 2014. The period between 8 January 2011 and the purchase date of 27 March 2014 falls within the 10 year period necessary to prove use for residential purposes (prior to the application date of 8 January 2021).
12. Mr Clarkson, who has lived at 4 Station Cottages throughout the 10 year period and can see the site from his property, does not agree that it has been used for residential purposes although he accepts that it has been used for the turning of vehicles. He accepts that the road is used for access and that one vehicle can be parked on the application land in connection with 4 Station Cottages.

13. It is clear that the third parties do not disagree with all of the information provided by the appellant regarding the use of the land, for example they do not dispute that the road was used for access and the turning and some parking of vehicles. However, this type of use is not sufficient in itself to prove the necessary residential use associated with Station House.
14. The information supplied by the appellant regarding the use of the land by DA Johnstone as a car park for their employees immediately prior to the residential conversion of the former barn, and its use for the storage of building materials, is clearly not consistent with a residential use. In addition, there is no firm evidence regarding the date when the kitchen garden area was planted or used, and the information previously submitted with the application for the conversion of the original barn building clearly states that it had an agricultural use at that time (2018). The aerial photographs submitted from Google Earth appear to show some vehicles parked on parts of the appeal land between 2007 and 2020, but only provide snapshots in time on a particular date, and do not prove a continuous or consistency of use of the land overall for residential purposes. In addition, it is not possible to date the planting of the kitchen garden from the images.
15. The appellant has therefore not proven the necessary 10 years uninterrupted use of the appeal site for residential purposes associated with Station House.
16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of residential use 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.

Zoë Franks

INSPECTOR