



Appeal Decision

Site Visit made on 26 July 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Appeal Ref: APP/J0405/X/20/3258751

Laurel Cottage, Ivinghoe Aston, Ivinghoe, LU7 9DF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Philip Rayiru against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application ref 19/03725/ACL, dated 20 October 2019, was refused by notice dated 13 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 existing use of land as garden area, incorporating the use of a converted stable building as a separate residential unit.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The onus is on the appellant to make out his case to the standard of the balance of probabilities. If there is no evidence to contradict the appellant's version of events or make it less than probable, and his evidence is sufficiently precise and unambiguous, it should be accepted.
4. An LDC application must relate to a specific existing or proposed use, operation or activity. In this case the appellant seeks to establish that there has been a change of use of land to use as a garden incorporating the use of a stable as a separate residential unit. The use of land as a garden falls to be considered under section 171B(3) of the Act and the use of the converted stable under section 171B(2). The use of the word 'incorporating' in the description of the existing use for which a certificate is sought establishes a link between the two elements.

Main Issue

5. The main issue in respect of both use of land as a garden and the use of the stable as a separate residential unit, is whether the Council's decision to refuse the application for an LDC was well-founded.

Change of use of land to use as a garden

Reasons

6. Under the terms of section 171B(3) of the Act where there has been a breach of planning control consisting in the change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It is for the appellant to establish that the land has been in use as a garden for at least ten years since the breach commenced prior to his application being made.
7. At my site visit I observed that the land is mainly laid to mown grass with planting around the edge. In addition, an extensive part of the site has a gravelled surface and there were cars parked on it. The gravelled area also served as access to the grassed area from the highway including a gap wide enough to enable a vehicle to pass between the gravelled and grassed areas.
8. The appellant relies in part on a sworn affidavit by a person who states that the area to the west side of house has been used as a garden since June 2008, when she first visited and stayed on the site in her caravan. In a statement the same individual provided photographs of the land from 2009 to 2014. In the photograph from July 2013 a car and caravan are shown on the land which is the subject of the appeal.
9. A statement from another user of the caravan site explains that she stayed at the site twice in 2009 and spoke with the appellant's partner about her selection of garden plants.
10. An aerial photograph provided by the appellant seeks to show that flower beds were on the land in Spring 2009. The stable building is shown on the land, along with other features but these are not identified. Another photograph from 2009 shows the gravelled access and planting. A photograph which is entitled July 2010 also shows flower beds, the stable building and four touring caravans and three photographs show planting beds in November 2018.
11. A statement from an occupier of a neighbouring property refers to the garden being established over ten years prior to November 2018.
12. The information provided by the appellant shows that the application site has had some of the characteristics of a garden since Spring 2009. However, the same information shows that the site has also been used for the siting of caravans. The timeline provided by the appellant refers to the site being designated as a Caravan Club Certified location from November 2009 until September 2017.
13. The Council has provided limited evidence with regard to the use of the site. In its report it refers to the submissions by the appellant in support of his application and does not contradict his reference to contact by the Council in 2009 and 2010, which included a site meeting in December 2009. In a letter following the site meeting the Council made reference to aerial photographs, a

survey plan submitted by the appellant in 2006 and a planning application in 2007 which it said all pointed to the site not being in use as a garden at those times.

14. There is reference to regularisation in the Council's letter of 11 February 2010 which suggests that the site was in use as a garden at that time. However, this date is within the 10 year period running up to the submission of the application in October 2019, therefore it does not support the appellant's case.
15. Considering the Council's evidence as a whole it does not clearly contradict the appellant's version of events. However, the onus is on the appellant to provide evidence which is sufficiently precise and unambiguous.
16. The use of the site as a caravan site introduces a level of ambiguity into the evidence bearing in mind that there is very limited information in the form of a statement that children played on the site, to show whether the use as a garden also continued during these periods. The mowing of the grass is not clear evidence of use as a garden, and it is reasonable to assume that this level of maintenance would have been necessary for the caravan site to function. The presence of mown grass and tended flowers also does not, in this case, given the ambiguity associated with the caravan site use, precisely demonstrate use as a garden.
17. The inclusion of land which is hard-surfaced and used for car parking is also at odds with the description of the use of the land as garden land, particularly as it is not clear what association there was between the hardstanding/parking area and the caravan site use. Had it been demonstrated that the area of land outside the hardstanding/parking area had been used as garden land for ten years or more, then I could have amended the plan to refer to the smaller area but that has not been shown in this case.

Use of stable as separate residential unit

Reasons

18. Under the terms of section 171B(2) of the Act where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. It is for the appellant to establish that the converted stable has been in use as a single dwelling house for at least four years since the breach commenced prior to his application being made.
19. At my site visit I was able to view the interior of the building and confirm that it has all the necessary facilities for day to day living and could be occupied as an independent residential unit.
20. The appellant says that the conversion of the stable building for use by family and friends began in 2008 and that in October 2014 the first tenant moved into it. He has provided a signed letter from Mr K who confirms that he was the tenant of the building from December 2014 to January 2017, he appears to be the second tenant on the appellant's site history timescale.
21. Mr K's letter does not have the same standing as a Statutory Declaration. However, it is corroborated by statements in the form of signed letters from three individuals who confirm that Mr K was a tenant between December 2014

- and March 2016, between Spring 2015 and Summer 2016 and between Summer 2015 and Autumn 2016. Whilst also not of great weight these statements provide some evidence of Mr K's occupation during the majority of the time when he says he occupied the converted stable.
22. The appellant has also provided a signed letter by Mr D. Mr D states that he assisted the appellant in refurbishing the building and upgrading the kitchen in the early months of 2017. His letter is dated 28 November 2018 and he says he was a tenant from February 2017.
23. Mr D appears to be the third tenant to stay in the converted stable according to the appellant's site history list. The same list which is dated 14 October 2019 states that Mr D was still a tenant at that time. This was only 6 days before the date of the application, and it is therefore reasonable to assume that Mr D was resident at the time of the application.
24. The appellant has also submitted copies of electricity bills from January 2009, July 2015 and January 2018 all of which are addressed to him at 'The Barn – Laurel Cottage'. However, as the bills are addressed to the appellant himself, even assuming The Barn is the converted stable, they do not provide evidence of how the building was being used. He has also submitted an estimate for electrical services in November 2009 and an invoice for plumbing work in December 2010. These documents are addressed to the main house 'Laurel Cottage' and there is no reference to the converted stable. Again, they do not evidence the use of the building as an independent residential unit.
25. The information provided by Mr K and Mr D indicates that two separate tenants occupied the converted barn from December 2014 to October 2019. The evidence in relation to utilities and services neither supports nor contradicts this.
26. The Council has not provided any evidence to contradict the version of events described by the appellant, but it does consider that the signed letters by the tenants should be afforded no significant weight as they are not sworn affidavits. Whilst the letters from the tenants do not provide any personal sanctions to the individuals concerned should their evidence prove to be flawed, they do support the appellant's case and have in part been corroborated by third parties.

Other Matters

27. The appellant refers to an email from the Council, which was sent in August 2019, in which it is said that use of the garden has been continued for 10 years and is therefore immune from enforcement action. The appellant has entitled this document 'Confirmation of garden area by H**** H*** AVDC' (* to ensure that personal details are not revealed) in its document list. However, this is not a formal decision by the Council. The same can be said for the Enforcement Team Case Notes dated 10 February 2010 which have been obtained by the appellant.
28. The appellant has used the Council's complaints process to progress his concerns regarding how his applications have been dealt with and has submitted his appeal which has enabled the Council's formal decision to be reviewed as part of that process. However, whether or not the Council officers have acted properly, or the appellant has legitimate grounds for complaint, I

must make my determination on the basis of the evidence provided by the appellant.

Conclusions

29. Drawing all of the strands of evidence together I find that the appellant has established the use of the converted stable as an independent residential unit for more than four years in a precise and unambiguous way. However, he has not demonstrated, on the balance of probabilities and in a precise and unambiguous way that the use of land as a garden has been carried out continuously for a period of ten years prior to the date of his application. As the two acts of development are linked in the description of the existing use for which the certificate was sought, taken overall the Council's decision was well-founded.
30. 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 land as garden area, incorporating the use of a converted stable building as a separate residential unit was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Sarah Dyer

INSPECTOR