
Appeal Decision

Site visit made on 19 October 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 November 2021

Appeal Ref: APP/D0840/X/21/3277224

The Chalet, The Carnes, Boat Cove Lane, Perranuthnoe, Penzance, TR20 9NW

- 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 A de Unger against the decision of Cornwall Council.
 - The application Ref PA20/11065, dated 11 December 2020, was refused by notice dated 18 February 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 for the existing use of the building for holiday purposes.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Procedural Matters

2. Some of the third party representations have incorrectly referred to the test to prove the lawfulness of a development as being 'beyond reasonable doubt'. The correct test is the lesser one of 'on the balance of probabilities'. Additionally, several local residents have commented on the appellant's original attempts to claim a residential use, but that is not the subject of this appeal.
3. For the avoidance of doubt, the planning merits of an 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, 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.

Main issue

4. I consider the main issue is whether the council's decision to refuse to grant an LDC was well founded.

The site and relevant planning history

5. The site is in an isolated location on the headland of Maen-du Point close to the south west coast path within the South Coast Western section of the Cornwall AONB. The site contains a small single-storey building, dating from the 1940's, which is set on a slightly elevated ridge accessed along an unmade trackway.

6. Various repairs and the enlargement of the chimney were carried out in 2016 and in 2017 the property was re-roofed and a service trench was excavated with water, telephone and electricity cables laid but not connected.
7. There is no relevant planning history although an application for an LCD for the use of an agricultural building as a dwelling (PA19/06721) was withdrawn prior to determination.

Reasons

8. To establish lawfulness for the use of the building for holiday purposes and to achieve immunity from enforcement action, it is necessary to demonstrate on the balance of probabilities that the use commenced 10 or more years before the date of the application¹, which in this case was 22nd December 2020 and has continued uninterrupted for a period of 10 years. Consequently it needs to be demonstrated that the use existed on or before 22nd December 2010. The onus of proof rests with the appellant.
9. The appellant stresses that the appeal relates not to the use of the building as a C3 dwellinghouse but for a lesser use described in the application as a holiday use. Accordingly, the appellant does not seek to show that the building provides the facilities for day-to-day living but that the use appears more akin to that of a camping barn or bothy.
10. There is no indication of the use of the building at the time it was first constructed. In Angela Palmer's statutory declaration dated 8 July 2014, it is confirmed that she knew the property from about 1970. She describes it as a summerhouse or hut, and there were no services connected to the property. In 1976 the property was let on an informal arrangement to a Mr Collins who used the building as a holiday hut for himself and his family, with an occasional overnight stay, although he never lived in the property. This continued until January 2013 when the property was closed up.²
11. The current owner acquired the property in July 2014 and the auction particulars describe the property as a timber chalet with three rooms (a kitchenette, living area and reception area), a useful outbuilding, and that no services were connected to the building. In the appellant's statutory declaration dated 4 September 2020, the property is incorrectly described as a 'three bedroomed detached timber chalet'. Plan AdU3 attached to the declaration shows three rooms, one of which is described as a bedroom and that there is an outside toilet and cesspit. The appellant later confirms³ however that there is no bedroom.
12. A statutory declaration by R de Unger (father of the appellant) indicates that when the property was purchased, he was aware that it had been used well in excess of 10 years for overnight camping by holiday makers.

¹ Some third party representations concentrate on the use of the property over the 10 years prior to the application, but this is a misunderstanding of s171(b)3 which refers to the period of 10 years beginning with the date of the breach of planning control

² The appellant's agent in the supporting statement for the LDC application refers bizarrely to the siting of a mobile home on the land (paras 3.1 and 5.3) which are presumably drafting errors.

³ Paragraph 3.3 Appellant's Response to the Council's Statement

13. Two statutory declarations attest that the building was used for overnight accommodation. Mr Phillips indicates that sleeping bags and camping lamps were used on 10 August 2016. Mr Powell refers the building being used as overnight accommodation for two fishing trips in 2016 and 2018.
14. In a statement of truth by Matthew Wall dated 19 April 2021, it is said that between 1999 to 2013, the chalet was occupied occasionally; in the summer it would be in regular use and he recalls seeing a car or people outside the chalet. Leslie Allen, in his statement of truth dated 23 March 2021, describes the domestic items in the property which he removed in September 2014 on behalf of the owner.
15. The appellant describes the facilities and contents of the property which suggest that the building was used in the manner identified by Mrs Palmer (as a summerhouse and between 1976 and 2013 as a holiday hut) and that life within the building would have been comfortable yet basic. The presence of a sink, cooker and gas fridge indicates that it was more than a temporary shelter from the elements or a store for fishing equipment but a place where meals could be prepared and the presence of lamps indicates use after dusk. The sales particulars also refer to a well defined garden which is on a terraced area.
16. The appeal relates to use of the building for holiday purposes and the appellant suggests such uses could have been described as 'holiday chalets', 'camping barns' or 'camping out' and refers to other appeals in support of the point that holiday uses are a lesser use than a C3 use.
17. The appellant asserts that the use by Mr Collins over 37 years from 1976 to 2013 was sufficient to accrue 10 years of use and achieve immunity from enforcement action. Notwithstanding this, no evidence has been supplied by Mr Collins or others who knew the property at the time to corroborate this and the appellant's case appears to be dependent on Mrs Palmer's statement that "he (Mr Collins) may have spent the occasional night there". The use of the word 'may' in the declaration is significant and implies a lack of certainty but nevertheless when considered in the context of the evidence as a whole, carries significant weight.
18. It is further asserted that the accrued lawful use was simply dormant or inactive from 2013 until the purchase and similar use in 2016 and the use has not been abandoned, and the appellant refers to the objective tests of abandonment established through caselaw⁴. I would agree that whatever the use of the property was, it was not abandoned as a result of any change of ownership or when it became unused in January 2013.
19. However, none of the evidence submitted by the appellant demonstrates that the building has been used regularly as overnight holiday accommodation. At best there has been occasional overnight use more akin to camping in the absence of sleeping facilities in the property.
20. Reference is made by third parties to the absence of any activity to suggest that the hut has been used for any purpose, both day and night. Others who regularly walk the coastal path state that they have not seen any activity other than work to repair the roof, enlarging the chimney and digging a service trench. Whilst some people may not recollect any activity, the absence of any

⁴ Castell-y-Mynach Estate (Trustees of) v SSW [1985] JPL40 and Hughes v SSETR (2000) 80 P & CR 397

activity appears to conflict with the evidence of the domestic paraphernalia contained in the property, the use of the access track and the garden area and the statutory declarations. Reference is also made in the representations to the temporary uses of land but this is not relevant to the use of a building.

21. The Parish Council considers that the property has been used intermittently for daytime leisure/holiday activities in the summer, although the extent of daytime use is unclear. The National Trust also question whether the building has been used as holiday accommodation for the past 10 years.
22. The appeal property is clearly not a holiday home in the normal understanding of the term. It is not a holiday let, nor is it occupied for more than a night or two at a time and only very occasionally, probably at a level that would be regarded as de minimis in the context of any enforcement action. Its predominant use appears to be a building in a leisure/recreational use and used very occasionally for basic overnight stays.
23. It is not necessary for an appellant's evidence to be corroborated by independent evidence so long as it is sufficiently precise and unambiguous⁵. I am satisfied that the appellant has shown on the balance of probabilities that the use of the building for holiday purposes commenced during its 37 year occupation by Mr Collins in 1976 or later and continued uninterrupted for at least 10 years such that it has achieved immunity from enforcement action, and that such a use had not been abandoned prior to the current owner's acquisition of the property.
24. Whilst the description of the use in the application is 'for the existing use of the building for holiday purposes' appears to be a reasonable description of the use, it needs to make reference to occasional overnight stays for greater precision of the lawful use. I therefore propose to use my power under s195(4) to substitute the description in the application for "Use of the building for holiday purposes with occasional overnight stays".
25. As the notes on the LDC point out, any use which is materially different from that described, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Conclusion

26. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the building for holiday purposes was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

P N Jarratt

Inspector

⁵ FW Gabbittas v SSE and Newham LBC [1985] JPL 630

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 December 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use had existed and continued uninterrupted for a period in excess of ten years and is therefore immune from enforcement action through the passage of time.

Signed

P N Jarratt

Inspector

Date 4 November 2021

Reference **APP/D0840/X/21/3277224**

First Schedule

Use of the building for holiday purposes with occasional overnight stays.

Second Schedule

Land at The Chalet, The Carnes, Boat Cove Lane, Perranuthnoe, Penzance, TR20 9NW

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 November 2021

by **P N Jarratt BA DipTP MRTPI**

Land at: The Chalet, The Carnes, Boat Cove Lane, Perranuthnoe, Penzance, TR20 9NW

Reference: APP/D0840/X/21/3277224

Scale: Do not scale

