



Appeal Decision

Inquiry and site visit held on 14 September 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/11/2021

Appeal Ref: APP/R3650/X/20/3253270

South Fork, Wrotham Hill, Dunsfold GU8 4PA

- 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 David Stedman against the decision of Waverley Borough Council.
 - The application Ref WA/2020/0245, dated 20 December 2019, was refused by notice dated 21 May 2020.
 - 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 a building for residential purposes continuously for a period in excess of 10 years (Sui Generis Use Class).
-

Application for costs

1. At the Inquiry an application for costs was made by Mr David Stedman against Waverley Borough Council. This application is the subject of a separate Decision.

Decision

2. The appeal is dismissed.

Preliminary matter and background information

3. All the evidence was affirmed at the Inquiry, which sat for one day.
4. In a previous LDC appeal¹, for use of the building as a dwellinghouse, the Inspector found that *"putting furniture and personal effects in an agricultural store/stable block and occupying it for residential purposes [did] not make the building a dwellinghouse on account of the lack of basic and fundamental facilities and the inherent limitations in the layout and design of a structure that clearly was not constructed with residential occupation in mind"*. The time limit in s171B(2) of the Town and Country Planning Act 1990 as amended ("the 1990 Act"), relating to the use as a single dwellinghouse, did not therefore apply. As both appeal parties had directed their evidence to the 4-year time period, the Inspector concluded that the parties would be prejudiced if he amended the description of development to something other than use of the building as a dwellinghouse. The appeal was dismissed.
5. S171B(3) of the 1990 Act confirms that, in the case of any other breach of planning control, such as the use of a building for residential purposes, no

¹ APP/R3650/X/18/3212576

enforcement action can be taken after the end of the period of 10 years beginning with the date of the breach. The appellant is relying on this provision and seeks to demonstrate that the use of the building for residential purposes continuously for a period in excess of 10 years (Sui Generis Use Class) is lawful. I will proceed on this basis.

Reasons

6. The **main issue** is whether the Council's reason to issue a LDC is well-founded. This turns on whether the appellant can show that the use of the building for residential purposes was lawful on the date of the application. The onus of proof is on the appellant to show, on the balance of probability, that the use of the building for residential purposes began on or before 20 December 2009, which is the material date. The use also has to be shown to have continued without significant interruption for 10 years thereafter, so as to be immune from enforcement action. Any continuous 10-year period is relevant.
7. The judgement in *Gabbitts v SSE & Newham LBC [1985] JPL 630* makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant a LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
8. The appellant refers to numerous documents to demonstrate use of a building for residential purposes. The documentary evidence includes bank statements, commercial invoices, DVLA and HMRC documentation and TV licences. These date from as far back as 2003. The claim is that this kind of evidence shows residential use of the building. However, many of these documents relate to business and agricultural related activities and accounts. Those that could contribute to showing residential use do not specifically identify the building and do not, individually or collectively, show the use of the building for residential purposes over a continuous 10-year period.
9. Sworn evidence and letters of support have been provided by the appellant, neighbouring occupiers and friends of the appellant. These describe the appellant as residing at the property for more than 4 or 10 years. Evidence provided by the appellant and his daughter also describes that he has resided at the property since 2003. The daughter's letter of support also goes into some detail relating to her visits to the property, telephone calls to her father and his unmaterialistic approach to living. This evidence may go some way to demonstrating the continuous use of the property for over 10 years, but it does not show the nature of the building's use for residential purposes.
10. The appellant's sister, a neighbour and a friend gave oral evidence at the Inquiry. This evidence also attests to the appellant residing at the property since approximately 2003. The neighbour confirmed that she had, on occasion, seen the appellant occupying the living/sleeping area when she visited. Similarly, the friend had seen the appellant going about the land and occupying the building when he visited. The appellant's sister also confirmed she visits the appellant daily to assist with his living arrangements and the farm.
11. The appellant, however, was unclear as to when he first used the building for residential purposes. In cross examination, he initially confirmed he had resided in the building since 2003. He explained that he had originally occupied a caravan, which was stationed in the open sided section of the building. He

further explained that, following a visit from the Council's enforcement officer, he removed the caravan from the land and moved into the building. The appellant has no specific recollection of when this move occurred, saying it might have been in 2008, but he thought it might have been any time before the next enforcement officer visit in August 2013. The appellant's evidence is therefore incomplete, imprecise and vague.

12. The Parish Council's response to the application (dated 19 June 2018) refers to their recollection being that the appellant initially occupied a caravan. This lends support to the appellant's version of events. The Officer's Report for application WA/2008/0467² also includes a photograph showing a caravan stationed in the open sided section of the building, which the appellant confirmed to be the caravan he lived in. These documents do not, however, provide any clarification as to when the caravan was removed or when the appellant began using the building for residential purposes.
13. The Council's witness claims that Land Registry documentation confirms that the appellant lived at a property in Billingshurst. There is no dispute that the appellant previously lived at Churchlands Farm, Kirdford, Billingshurst before he purchased the land. This is confirmed in the proprietor's details on Title Number SY364057. This document only shows that on 19 September 2002, the appellant's registered address was Churchlands Farm. The appellant claims Churchlands Farm was sold to finance the purchase of South Fork.
14. The Council further claimed that the appellant lived with his girlfriend for a time. The appellant clarified that while he visited, and sometime showered at his girlfriend's home in Pulborough, there were financial reasons why he could not live with her.
15. While the Council's witness conceded that the evidence shows the appellant's residential presence on the land continuously from approximately 2003, that evidence does not clearly or specifically show the nature or scale of the residential use.
16. It was a matter of agreement in the previous appeal that the appellant was residing in the building at the time that LDC application was made on 26 April 2018. It is not disputed that he has continued to reside in the building since that LDC was made.
17. If I were to accept that the appellant initially lived in a caravan stationed within part of the building, there is nothing to show that the rest of the building was not in agricultural use at that time. In fact, the Agricultural Report³ states that the building is "used for general storage and feed". At best, this shows the use of the building to be in a mixed use for agricultural and residential purposes in 2008. While this is before the material date, the appellant could give no greater clarity as to when the use of the building for residential purposes began other than at some time between 2008 and August 2013. This period straddles the material date. In the absence of any more definitive evidence as to the date the use of the building for residential purposes began, I find the appellant's evidence is imprecise and ambiguous.

² Appendix VC17 of the Council's Proof of Evidence

³ Appendix VC16 of the Council's Proof of Evidence

Deliberate concealment

18. The evidence does not demonstrate use of a building for residential purposes continuously for a period in excess of 10 years (Sui Generis Use Class). For completeness, I will consider the Council's arguments on deliberate concealment. The argument relates to the appellant's apparent confirmation under oath, during the previous Inquiry, that his verbal responses to the Council's enforcement officer, during 8 August 2013 site visit were lies. The Council claim that during that site visit the appellant said he did not live in the building.
19. *Welwyn Hatfield*⁴ found that the actions of the developer amount to "*positive deception in matters integral to the planning process ... [which] was directly intended to and did undermine the regular operation of that process*". The Council would need to show some connection between what the appellant had done to evade discovery and the statutory provision in s171B of the 1990 Act.
20. Notes of the Officer's visit on 8 August 2013, including photographs of the building, are contained in VC4. These include details of what facilities existed within the building, as well as a précis of information provided by the appellant. The note does not however specifically record that he said he did not live in the building or that he lived elsewhere. Notwithstanding the appellant's responses at that time, given the contents of the building, it would not have been unexpected or unreasonable for further site visits to be carried out by the enforcement officer before it was determined that no breach of planning control was occurring.
21. Furthermore, the Council was made aware of the claimed residential use of the building in April 2018 and could therefore have taken enforcement action from that date. While it may not have been expedient to do so until the previous LDC process had run its course, there was a period of 6 months between the dismissal of the previous appeal and the submission of the second LDC when enforcement action could have been taken.
22. The appellant did not attempt to conceal what use the building was being put to as the Council were permitted to inspect the building, which is evident in their photographs. Furthermore, there was nothing to prevent the Council making further inquiries following the August 2013 site visit. For these reasons, I find that the appellant did not act to positively deceive the Council with the intention of undermining the planning process.

Conclusion

23. The appellant has failed to show, on the balance of probability, that the use of the building for residential purposes occurred before the material date and has been used continuously, without significant interruption, for the requisite 10-year period.
24. For the reasons given above, the Council's refusal to grant a certificate of lawful use for the use of the building for residential purposes is well-founded and the appeal should fail.

M Madge

INSPECTOR

⁴ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

APPEARANCES

FOR THE APPELLANT:

Tom Morris	Of Counsel Instructed by Town & Country Planning Ltd
------------	---

He called:	David Stedman Gaye Botting Frances Lea Steven Domm
------------	---

Graham Lea	Town & Country Planning Ltd
------------	-----------------------------

FOR THE LOCAL PLANNING AUTHORITY:

Ruchi Parekh	Of Counsel Instructed by Waverley Borough Council
--------------	--

She called:	Victoria Choularton MRTPI, Planning Enforcement Team Leader, Waverley Borough Council
-------------	--

DOCUMENTS

- 1 HM Land Registry Title Number SY364057