



Appeal Decision

Site visit made on 30 November 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 10 December 2021

Appeal Ref: APP/B1740/X/20/3262856

Land at The Mushroom Farm, Rockbourne, SP6 3NS

- 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 and Mrs A Gater against the decision of New Forest District Council.
 - The application ref 20/10664, dated 7 July 2020, was refused by notice dated 9 September 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 a dwellinghouse.
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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 found to be lawful.

Background to the Appeal

2. The Mushroom Farm lies at the end of a short private drive, off a track, on the edge of the village of Rockbourne. At one time I assume it was a mushroom farm, but in 2011 planning permission was granted to demolish the old farmhouse and build a new one, which stands at the back of a rectangular site at the end of the private drive facing back towards the track. Between the house and the track was an open space and then two lines of sheds. The plans showed the back of the site, with the old house and an outbuilding and the area between them and the sheds hatched in green. The row of sheds on the western side of the rectangular site have now been replaced by a large barn/storage area, and all but one on the eastern side have been demolished. The survivor was noted on the plans as an existing office. It was separated from the new house by a large lawn with a pond in the middle.
3. The appellants continued living in the old house while the new one was built and then moved in demolishing the old house as required by the planning permission. They had moved by May 2012, but in the meantime converted the office building into a dwelling for Mr and Mrs Boulton, who are Mrs Gater's parents. Although, Mr Boulton has since died, Mrs Boulton still lives there. This new dwelling is now called The Lodge.

Reasons

4. There is no dispute that The Lodge has all the requirements for day to day living and so would be considered to be a dwelling in the Gravesham¹ sense. There is also no dispute that it has been permanently occupied for more than 4 years. However, the Council contend that the evidence suggests it has actually been used as overflow accommodation for the main house and not as a separate dwelling. Even if a building is kitted out as a dwelling and so passes the Gravesham 'test', it need not actually be used as an independent dwelling and it is the use of the building that is important. The appellant has presented a considerable amount of evidence that the use has been independent and I am obliged to accept that as long as it is consistent and convincing and the Council have no counter evidence to throw doubt on it.
5. Turning to that evidence there are statutory declarations from various members of the family and friends that all say the Boults occupied the building as an independent unit. There are also statutory declarations from a number of tradesmen who have worked on the building from time to time who say the same. The appellants also say they have a property in France and spend 6 weeks every winter in a motorhome in Spain. As they spend much of the time out of the country they cannot be said to be looking after the Boults in anyway. The Lodge also has its own private back garden, which is fenced-off and its own parking space. They also point out the green hatched area (referred to above) is the curtilage of the new house and the Council were keen to ensure this was made clear when granting the original planning permission for the new house. The Lodge is thus definitely outside the curtilage of The Mushroom Farm. All of this is strongly suggestive that the building is used as a separate dwelling.
6. On the other hand while there is evidence the building has its own electricity supply and phone line, I note the bills are all addressed to The Mushroom Farm, there is no evidence The Lodge has been used as a separate address. No council tax has been paid and the Council argue the arrangements on the ground suggest a shared use of the site. They are referring to the fact that The Lodge faces The Mushroom Farm (the new house) across the large lawn and pond area and there is no demarcation between them. The whole site is also in the ownership of the appellants. The Council are of the view the lodge is actually a 'granny annex' and not an independent dwelling at all.
7. While all the evidence the Council point to is correct it does not, in my view, counter the appellants' evidence in any way. The ownership of the land and the identity of the occupier do not suggest what use has been made of the building. The fact that a separate postal address has not been established is also not indicative of the use. It is entirely speculative to suggest that because the occupier is Mrs Gater's mother the planning relationship must be ancillary. It is also not unusual for separate dwellings to share a front lawn in that there is often no demarcation between frontages of properties on housing estates. The facts are The Lodge has a separate, private garden and parking, it is capable of being used as a separate dwelling and everyone says it has been. There is no actual evidence of any ancillary use or link between the lodge and

¹ Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142. Is the classic court case the sets out the minimum requirements for a dwelling.

The Mushroom Farm at all. It appears it was occupied by the Boults as an independent unit and is still occupied as such by Mrs Boults.

8. The Council refer to an enforcement investigation and subsequent application for a separate use that was withdrawn, but this refers to a different building in a different village.

Conclusion

9. In my view, on the balance of probability, the building known as The Lodge has been used for more than 4 years as a separate dwelling and I shall allow the appeal and issue an LDC accordingly.

Simon Hand

INSPECTOR



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 7 July 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 building has been occupied as a separate dwelling for more than 4 years.

Signed

Simon Hand

Inspector

Date 10 December 2021

Reference: APP/B1740/X/20/3262856

First Schedule

Use of The Lodge as an independent dwelling

Second Schedule

Land at The Mushroom Farm, Rockbourne, SP6 3NS

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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

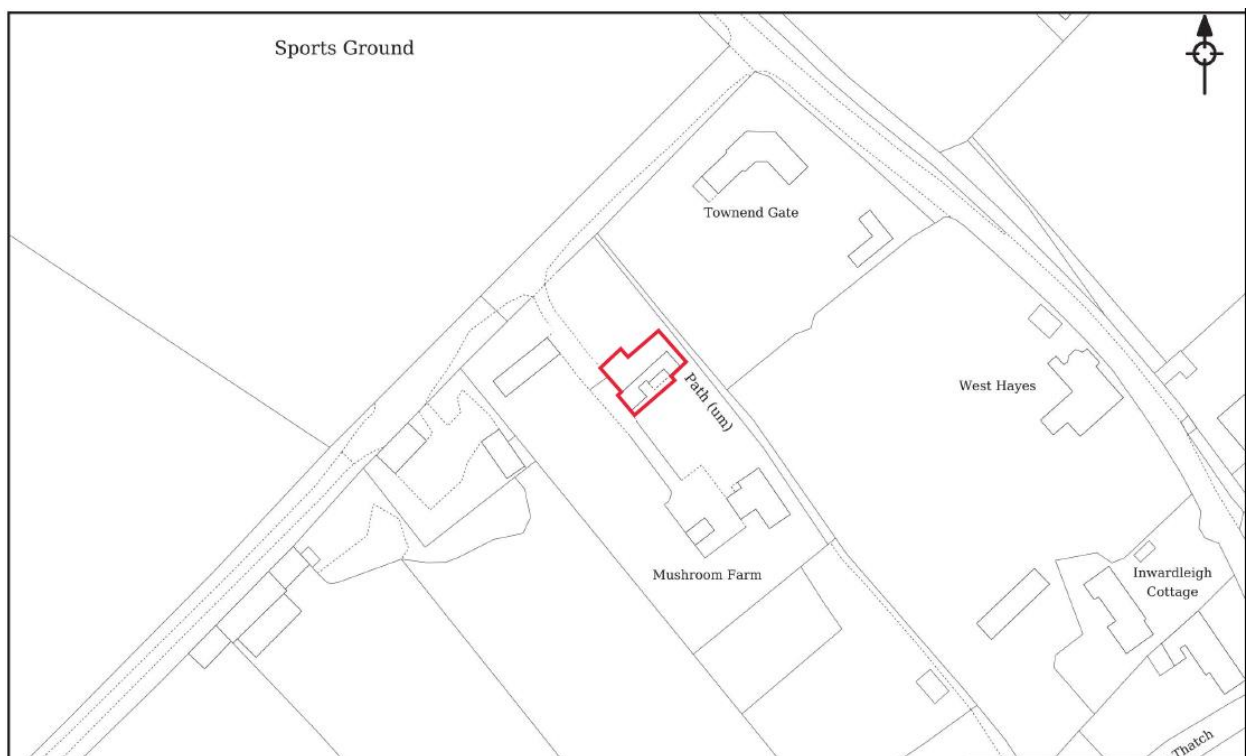
This is the plan referred to in the Lawful Development Certificate dated: 10 December 2021

by Simon Hand MA

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Scale: not to scale



The Lodge – outlined in red on the plan above.