
Appeal Decision

Site visit made on 12 October 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/H0928/X/20/3264566

Brathen, The Thorpe, Greystoke, Penrith CA11 0TJ

- 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 & Mrs Michael Mole against the decision of Eden District Council.
 - The application Ref 20/0689, dated 16 September 2020, was refused by notice dated 16 November 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 as a single dwellinghouse.
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Summary Decision: the appeal is dismissed.

Procedural Matters

1. On the Council's formal Decision Notice, the address to which the application relates is spelt 'Braethen'. However, the appellants spell the address as 'Brathen' on both the application and appeal forms, and throughout their appeal documentation. I have adopted the appellant's spelling as being correct, and have referred to the property as such in the Header above. It is evident that there is no confusion as to the outbuilding to which the application relates. I am therefore satisfied that the misspelling of the address on the Council's formal Decision Notice is of no legal or practical consequence.

Reasons

2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the use would have been lawful on the date on which the application was made.

3. The outbuilding to which this appeal relates is within the curtilage of Brathen, a converted barn now operating as well-established bed and breakfast accommodation. There is now no dispute that the outbuilding has been substantially complete in excess of four years.
4. In *Gravesham BC v SSE & O'Brien* [1983] JPL 306, it was held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. I noted that, at the time of my site visit, the outbuilding did afford all the facilities required for day-to-day private domestic existence and in that respect met the 'Gravesham' test.
5. But that is not the end of the matter. In *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202, the Court of Appeal held that 'It was not correct to say either that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. Rather in each case, it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation'. It therefore seems to me that the main issue in this case revolves around the character of the use to which the outbuilding itself has been put, and whether (a) the character of that use was that of a dwelling and (b) that use subsisted continuously and without interruption for a continuous period of four years.
6. In that context, the Statutory Declaration submitted by Mrs Christine Mole indicates that the property was occupied for 97 nights in 2016, 168 nights in 2017, 57 nights in 2018 and 52 nights in 2019¹. The majority of bookings during that period were either 1 or 2 night stays. Aside from a single booking of 141 nights over the period November 2016 to March 2017, the longest holiday let was a single instance of a 10 night booking.
7. It is also apparent that the outbuilding has been used in conjunction with the main building known as Brathen. The reviews on TripAdvisor provided as part of the Council's evidence consistently refer to the outbuilding as 'The Shed', with Brathen itself being referred to separately as the 'main building' or the 'B&B'. Although 'The Shed' is described as self-catering accommodation, many reviews refer to breakfast being provided by the hosts (the appellants in this case). One review specifically refers to breakfast being taken in 'the main house'. Another reviewer indicates that five of their party of seven stayed in the main building, with the remainder staying in 'The Shed'.
8. It follows that the use of the outbuilding during the four years prior to the date on which the LDC was submitted has been primarily that of short-term holiday lets. There is no evidence before me of any other use of the property between those holiday lets. The character of the use is therefore one comprising periods of intense activity, a rapid turnover of occupiers with frequent new arrivals/departures and the associated noise disturbance/traffic movements, interspersed with periods of no activity or relatively little activity limited to preparation/maintenance of the holiday accommodation. This is markedly different to use as a dwellinghouse, which is typically characterised by an infrequent turnover of occupiers and a more regular pattern of activity.

¹ Due to the restrictions imposed by the Coronavirus pandemic, the outbuilding was used for just 7 nights in total during 2020. That figure was clearly not representative of normal usage and for that reason I have not taken the use during 2020 into account.

9. In addition, I must take into account the association of the use of the outbuilding with the main building. I accept that this may not be a feature associated with every short-term holiday let of the outbuilding. But there is clear evidence that this does occur on at least some occasions. As such, use in association with another building is not a characteristic that is normally associated with use as a dwellinghouse.
10. I consider that, as a matter of fact and degree, the characteristics of the use of the outbuilding as short-term holiday accommodation are materially different to use as a dwellinghouse. Not only has the use of the outbuilding as a dwellinghouse not taken place continuously for a period of four years: on the evidence before me, use of the outbuilding as a dwellinghouse has not occurred at all. In that respect, it is not necessary for me to determine which Use Class, if any, the lawful use of the outbuilding falls into. For present purposes, it is sufficient to find that, on the balance of probability, the use of the outbuilding as a dwellinghouse has not taken place.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Brathen, The Thorpe, Greystoke, Penrith CA11 0TJ 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.

Formal Decision

12. The appeal is dismissed.

Paul Freer
INSPECTOR