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# Appeal Decision

**by Gareth Symons BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 February 2022**

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**Appeal Ref: APP/Y9507/X/21/3278669**

**Sutton Park Farm, Polly Glovers Lane, West Meon, GU32 1JS**

- 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 Ben Hampshire against the decision of South Downs National Park Authority.
  - The application ref SDNP/19/05568/LDE, dated 20 November 2019, was refused by notice dated 5 July 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 a dwelling C3 residential use.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The consideration of the appeal is based on legal grounds only that also requires looking back in time from the date of the LDC application which was 20 November 2019. On this basis, seeing the site now in the early part of 2022 would have been of no assistance in reaching my decision. Moreover, the appeal parties have submitted sufficient evidence on which to base my findings. Consequently, it was not necessary to visit the appeal site.

## Main Issue

3. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken against them because the time for taking enforcement action has expired. The relevant time limit in this appeal under s171B(2) of the 1990 Act is the period of four years beginning with the date of the breach. The application for the Lawful Development Certificate (LDC) was made on 20 November 2019. The appellant needs to show, therefore, that the C3 residential use of the appeal building started at least no later than 20 November 2015. Moreover, the dwelling use must have continued substantially uninterrupted over the relevant four years period.
4. The burden to make out the case rests with the appellant and the test of the evidence is the balance of probability.

## Reasons

5. The appellant advises that the stable building subject of the appeal was built in 2005 and converted shortly thereafter into a one-bedroom self-contained dwelling. The appellant states they lived in the building from Christmas 2005 up until September 2010. From then the building has been tenanted.

6. It appears from the evidence that the appeal building was in situ by the end of 2005. It may by then also have been fitted out with the means of self-contained living. However, although the appellant's statutory declaration states that they moved into the building at Christmas 2005, supported also by the declaration made by the appellant's carpenter, the Council has drawn attention to notes made by Council officers investigating various breaches of planning control over the years. One of those dealing with the erection of stables and a field shelter refers to them first being observed on 31 January 2006. Given that the stables and the field shelter were seen at the end of January 2006, by which time the appellant claims they were living there with all the means of self-contained living, it surprises me that the Council did not detect then that the stables were being at least lived in.
7. Three neighbours also objected to the LDC application made to the Council. Two have submitted appeal evidence. One neighbour who submitted their comments in September 2021 refers to living at their nearby address for over 15 years during which time the appellant has operated his business from the site. The neighbour's time at their address therefore goes back to around 2006 thus covering several years that the appellant says they were living in the stables. The neighbour says that most days they have observed the appellant arriving and departing the site and to their knowledge he has lived elsewhere the entire time. The gates to the field have also always been locked at night and there has never been any sign of activity during the evening or at night.
8. Another neighbour also states that at no time have they seen or heard evidence of the stables being used for primary accommodation. Their property backs onto Polly Glovers Lane which serves as the access to Sutton Park, and they have not witnessed traffic movement suggestive of the stables being used as a residential unit. When walking their dog or riding their horse they have also frequently observed the gates to Sutton Park being locked with a padlock and chain and the site unoccupied.
9. It maybe that the neighbours have had issues with the appellant carrying out his business from the land. If that is so, it seems to me that if the building had been lived in continuously for over 15 years by 2021, the neighbours would have drawn the residential use if it was occurring to the attention of the Council much sooner, given what appears to have been various enforcement investigations and issues at the site over the years. It has not been explained how the neighbours' comments may contradict previous comments or complaints made to the Council. The neighbours evidence casts further doubt on the appellant's version of events.
10. A series of annual tenancy agreements from 2010 through to 2020 have been submitted as well as a declaration made by the tenant who is named in most of the agreements. In their declaration this tenant states that it has been submitted in support of the LDC application and that "I live in the dwelling at Sutton Park Barns" and that after the appellant moved out of "the Stables" at Sutton Park Barns, they moved out of their mother's house and moved into "Sutton Park Barns" and since September 2010 they have lived continuously in the dwelling. However, the appellant has confirmed that the appeal building is known as "Stables Cottage". Neither the statutory declaration or any of the tenancy agreements refer to "Stables Cottage", and there are no plans with any of this evidence to show which building they relate to. Furthermore, the tenant's declaration purports to be a statutory declaration made under the

Statutory Declarations Act 1835. However, it does not appear to have been witnessed by and signed in the presence of a solicitor, commissioner for oaths or notary public. For these reasons, this evidence is not sufficiently detailed and unequivocal, and I attach it limited weight.

11. The Council has also referred to a Planning Contravention Notice (PCN) served on the appellant by the Council in July 2019. The breach of planning control being investigated was an alleged running of a machine hire business, unauthorised forestry operation and a B8 use. The land covered by the PCN includes the stables building. In relation to a request on the PCN for names and addresses of any other person (other than the applicant) with an interest in the land, the details of the tenant of Stables Cottage were not provided. The agent apparently confirmed that the tenant's details were not given as the PCN related to noise, workshops and other commercial activities.
12. However, the PCN question was not directed at who might be involved in the activities. It asked about persons with an interest in the land. It is clear to me that if there was by then a long-standing tenant occupying the land who was paying rent to the appellant, irrespective of whether they had a relationship to the activities being investigated, they were a person who would have had a formal interest in the land who should have been declared. To my mind this lack of information casts further doubts on the case made now that the appeal building has been occupied residentially.
13. Furthermore, visits by Council officers following up a possible need to pay Council Tax on the stable building in February and July 2017 also found that the site was gated and padlocked with no one appearing to be at the site. Although notes and calling cards were left and letters sent, none of these elicited responses that now could show the building was being lived in.
14. Letters to and from Winchester City Council in 1999 and 2000 covering storage of items such as vehicles, machinery and timber, and a part completed Community Infrastructure Levy form from 1999, do not shed any light on the residential use of the appeal building. The photographs showing the internal arrangements of the building are undated and at best could only be snapshots in time. They fail to show that the building was lived in as a self-contained dwelling over a period of four years.
15. In view of the above, there is evidence from the Council and neighbours that contradicts the appellant's case. Moreover, the appellant's evidence is not sufficiently precise and unambiguous to discharge the burden of proof on them to show that over any four-year period, from 2005 up until the date of the LDC application, the C3 residential use continued substantially uninterrupted.

## **Conclusion**

16. For the reasons given, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a dwelling C3 residential use 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.

*Gareth Symons*

INSPECTOR