



Appeal Decision

Site visit made on 25 January 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 April 2022

Appeal Ref: APP/G2245/X/20/3258138

Little Buckhurst Barn, Hever Lane, Hever, Edenbridge TN8 7ET

- 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 Russell Barnett & Isobel Fox against the decision of Sevenoaks District Council.
 - The application Ref 20/00847/LDCEX is dated 19 March 2020
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is applied for is described as '*Use of the building as a dwellinghouse*'.
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Decision

1. The appeal is dismissed.

Background

2. S171B(2) of the 1990 Act as amended says that where there has been a breach of planning control involving the change of use of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
3. On this basis the appellant must successfully demonstrate, on the balance of probability, that the breach of control commenced four years before, ie prior to 19 March 2016 ("*the material date*") and has continued since.
4. Although the address on the application form states 'Little Buckhurst Barn', a dwelling which the appellants bought in 2012, the actual building at issue is one known as 'Little Buckhurst Stables', a detached converted stable block that has been significantly extended and altered to facilitate a residential use. This detached building sits some distance to the rear of the former, and once part of the same planning unit it has now been effectively severed from the main dwelling's site by wooden fencing and a small gate.
5. The building is single storey, but with some limited roofspace accommodation, and now accommodates two bedrooms (one with an en suite shower room, a large kitchen/dining room, a snug, and a 'family bathroom'. The building has its own independent vehicular access leading from Hever Lane, and the location plan's red line rings what might be considered the dwelling's curtilage.
6. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. With the test of the evidence being on the balance of

probability the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

7. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990. Accordingly, it must be assessed whether, as a matter of fact and degree, the building has been in used as a single dwellinghouse during the relevant four year period prior to the submission of the LDC application.

Reasons

8. In this particular instance the Council has refused to grant a LDC because it considers that the appellant has not, on the evidence advanced, sufficiently demonstrated that the building located on land to the rear of Little Buckhurst Barn (LBB) has been used as a separate residential dwelling for more than the requisite four years.
9. In planning terms a dwelling or dwellinghouse is defined as a self-contained building or part of a building used as residential accommodation, and usually housing a single household. In the case of *Gravesham BC v SSE & O'Brien* [1982] 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. Here it is clear that the building contains all such facilities.
10. It is generally accepted that works began on the conversion and alteration of the building during 2014, with evidence adduced to this effect including receipts for kitchen installation and details of plumbing/heating facilities. In their Statutory Declarations (SDs) the appellants say that these works were completed in December 2014, and they claim that they subsequently moved from Little Buckhurst Barn into the converted building to the rear in January 2015. These dates are corroborated by other persons, including Isobel Fox's mother, Mrs Rosemary Fox, who have provided supporting evidence.
11. Mr & Mrs Shapland live close by in the dwelling, 'Little Buckhurst', which sits adjacent to LBB, and have since 2008. They have submitted a SD which provides a chronological account of relevant events surrounding Little Buckhurst Barn and Little Buckhurst Stables (LBS). The SD says that the appellants took ownership of LBB in 2012 and they lived there for a while but, prior to the works to the stables commencing in 2014, they apparently told the Shaplans that, due to the lengthy commute, they would be moving back to their property in London. Referring to the 2014 works, they say that Mr Barnett would return from time to time, with him indicating to the Shaplans that he was improving the stables as, with space for both work and storage, he could operate his building development business from there. They make reference to the old concrete and metal exterior being reclad with timber and then painted black, which I noted at my site visit.
12. The Shaplans say that, in the middle of 2015, the LBB dwelling was rented out to someone who appears not to have been the most neighbourly of tenants, yet the appellants were seemingly not present to oversee this tenure. The tenant apparently caused damage to the dwelling and, in late 2017, after he had vacated

the premises, the Shaplands allege that the appellants showed them the extent of the damage caused. In fact, the appellants refer to this matter in their Supplementary Planning Statement, where it is indicated that the said tenant took occupation in July 2015 and was evicted in July 2017 leaving the property in a state of disrepair. The Shaplands then go on to indicate that sometime in 2018 the appellants did appear to be present more and it was assumed they had come to live at the premises, full time.

13. Turning to continuity, in the judgement of *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 it was held that a use can only become lawful if it continues throughout the relevant immunity period, such that the Council could have taken enforcement action at any time. This was subsequently applied in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 where it was held that there is a difference between an established dwelling, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwelling, and where there is no established use. Accordingly, to be immune from enforcement action under s171B(2), the use of a building as a dwellinghouse must be affirmatively established throughout the four year period.
14. Correspondence from Sutton and East Surrey Water indicates that a water connection with the building was made in 2015, EDF energy confirm an electricity connection, and also a Sky television installation was made in March 2016. A letter has also been produced from MHX computer systems which says that Ms Fox's "*home office, located in a converted barn at the back of the premises behind the stable block*" was visited in September 2016, with a view to a reconfiguration during her maternity leave.
15. Isobel Fox's personal SD confirms that her daughter, Tiggy, was born in late 2016, and a baptism certificate provided shows she was christened locally in August 2017. Medical records, and other documentation relating to Tiggy are addressed to Ms Fox at LBB. Her SD, dated 19 February 2020, also states "*We continue to see our neighbours as infrequently as when we lived in the thatched barn*"; the thatched barn presumably referring to LBB. Whether or not this was an attempt to rebut a comment in the SD of Dr N A Brummitt and Dr A C Araujo whereby it is said "*I do not recall ever having seen either of them at Hever Station taking the train into London in the morning or returning in the evening*" is not clear. However, I give less weight to such recollections and, likewise, an alleged conversation at the local golf club which amounts to only hearsay, whereas the comprehensive account provided by the Shaplands, given their proximity to the building at issue, I have afforded significant weight.
16. The jigsaw appears to have been completed by Peter Hendry, who took the tenancy of LBB in August 2018, and confirms that the appellants lived next door at LBS throughout this time. This would show that the manner of occupation had by this time materially changed.
17. Although the appellants state in paragraph 12 of their SD, dated 9 May 2019, that we have resided continuously at Little Buckhurst Stables since January 2015, I am not convinced from the evidence provided that this was the case. There is a comparative lack of detail in the appellants' evidence from this particular date up until August 2018, when Mr Hendry took occupation of LBB, and this would tend to be corroborated by the Shaplands. The damage seemingly done by the tenant

to LBB, discovered in 2017, strongly suggests that the appellants were not residing at the dwelling, at least certainly not to any significant degree, otherwise the tenant's behaviour would have surely been discovered sooner. Although the appellants in their Supplementary Planning Statement make brief reference to the eviction and the resultant damage which left the property "*completely uninhabitable*" they do not indicate why they were left unaware as to the tenant mistreating the property. However, in contrast, the Shaplands' SD would tend to throw some light on this matter.

18. In the circumstances it seems credible that if the appellants had been residing at LBS during the two years between July 2015 and early summer 2017 they would have been in a position to have guarded against the internal damage done to LBB which the appellants say was to such an extent that an approach was made to the Council regarding Council tax liability due to the dwelling's internal condition.
19. Too much emphasis appears to have been placed on the fact that conversion works took place in 2014 – although it is not readily apparent from the evidence when all the facilitating works and fittings were completed - with the assertion that the building's residential use commenced in January 2015. There is also little account by the appellants of how, and to what extent, the building was used up to and beyond the material date, which is crucial to this appeal. Further, the statements in support of the appellants claims would appear to be too consistent, whereas one would normally expect varying gaps in the memories of witnesses.
20. On the basis of the evidence adduced I conclude that a breach of planning control has occurred, namely the unauthorised use of the building for residential purposes. However, the fitting out of a building for an intended residential use is different to that of the actual use being seen to have begun. In this particular instance, whilst it is clear that a whole series of works were carried out to the former stables building in 2014, it is not obvious as to when exactly these were finished with a sufficient degree of continuity of use reached to warrant a settled residential occupation.
21. Instead, taking all the evidence together, both in support of the proposal and that which counts against it, the picture given, at least until early summer 2017 just prior to the LBB's tenant eviction, is one of a casual use which, certainly by the time that Peter Hendry took occupation of LBB in August 2018, had evolved to such a degree that a material change of use had by then taken place. Accordingly, I find that, on the balance of probabilities, the said breach had not, by 19 March 2020, acquired immunity from enforcement action.
22. For the reasons given above I conclude, on the evidence available, that the use was not lawful on 19 March 2016, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
23. Accordingly, I will exercise my powers under section 195(3) of the Act as amended.

Timothy C King

INSPECTOR