



Appeal Decision

Site visit made on 12 April 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Appeal Ref: APP/V2255/X/21/3286405

Iris Cottage, Elmley Road, Minster-On-Sea, Sheerness ME12 3SS

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development ("LDC").
 - The appeal is made by Mr Sid Beaney against Swale Borough Council.
 - The application Ref 21/503050/LDCEX is dated 1 June 2021
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as *'The occupancy of the existing dwelling in breach of Condition 4 of planning permission SW/90/12, by persons not employed or last employed in agriculture or forestry'*.
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Decision

1. The appeal is dismissed.

Background

2. The appeal relates to a single-storey detached dwellinghouse, approved by way of a planning permission granted in 1990, which was subject to an agricultural occupancy condition. The indication given is that the requirements of the condition have been contravened.
3. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence would need to show that any breach had continued since 1 June 2011. This would be the 'material date', being ten years prior to the date of the LDC application, and the burden of proof is one of balance of probability. As such, the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

4. The main issue in this appeal is whether the dwelling approved under planning permission SW/90/0012 has been occupied without compliance with the requirements of condition 4 thereto, such that, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended.

Reasons

5. Paragraph 3 of s171B of the 1990 Act indicates that, in the case of a breach of planning control such as here, where there is understood to have been a failure to comply with a condition imposed on a planning permission granted, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. S191(2) goes on to say that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time limit for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. The appellant has produced two statutory declarations (SD) to indicate that the dwelling at issue has been occupied and used for residential purposes since 2004, and the occupants have not been '*solely or mainly employed, or last employed in agriculture*' as the condition required. Paragraph 13 of Mrs Alma Driver's SD, in referring to the dwelling granted planning permission in 1990 by the Council, states:

"My daughter Sudi inherited control of Flynn's Bee Farms Ltd in 2004 and, with her husband Chris Austin, they commenced building the dwelling which is now known as Iris Cottage on the Company premises at Double J Farm."
8. I have not been presented with a copy of the 1990 planning permission and am therefore not sure of the actual date of the decision notice. Notwithstanding this, though, from their representations both main parties agree its relevance as being the definitive document. Back in 1990 the standard time limit condition required that the permission granted be implemented within five years of the date of the decision notice and, as such, the approved works would have needed to commence no later than some point in 1995. However, save for the indication from the paragraph quoted above no clarifying documentary evidence to this end has been given by either side. As such, from the evidence available to me, I have no reason to conclude other than by the time building works commenced in or around 2004 planning permission ref SW/90/0012 had already expired, unimplemented.
9. Accordingly, the construction works undertaken would have been unauthorised and, at the time, would have been likely subject to potential enforcement action. It appears, though, from the Council's evidence, that no investigations in this regard were initiated by the Council. Indeed, in its letter dated 13 January 2022, no information is given as to Iris Cottage other than reference to the 1990 permission and comments on the content of the SDs submitted in support of the appeal.
10. Given my findings, based on the evidence before me, the condition cannot have been breached as there would not have been any extant permission to implement when the construction works began. The condition would have previously died with the planning permission. It appears, though, that the dwelling was built regardless and has been effectively occupied since, being sold in 2017 to Mr Beaney, the appellant.

11. The appeal is therefore superfluous as the fundamental issue here is whether or not the dwelling itself is lawful given the passage of time. However, as my remit in this appeal is limited only to whether the requirements of condition 4 were observed it is not for me to make an assessment beyond this and conclude as to whether the dwelling might enjoy immunity from planning control. That must remain a matter between the two main parties.
12. For the reasons given above I conclude, on the evidence available, that the occupancy of the dwelling relating to the requirements of condition 4 of planning permission SW/90/0012 was not lawful on 1 June 2021 within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended.
13. Accordingly, I will exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR