



Appeal Decision

Inquiry held on 10-11 May 2022

Site visit made on 11 May 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Appeal Ref: APP/L1765/X/20/3264178

Beech Tree, Calcot Lane, Gravel Hill, Curdridge, SO32 2BN

- 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 Roger Packer against the decision of Winchester City Council.
 - The application ref 20/00849/LDC, dated 28 April 2020, was refused by notice dated 23 June 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 conversion of a building and use for residential purposes C3.
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Decision

1. The appeal is dismissed.

Reasons

2. A small number of facts in this case are not in dispute. Mr and Mrs Packer own a house in Fareham in which they lived together. Mrs Packer is a keen horsewoman and in 2000 they bought the appeal site which comprised paddocks of about 14 acres an existing stable block and storage sheds or barns. The Packers initially travelled to and from their home to the site everyday to deal with the horses and maintain the paddocks. Several cuts of hay are taken every year and various agricultural machines such as a tractor, hay baler, grass cutter etc are kept at the site. At some point the new stable block subject to the appeal was built. It is a 'U' shaped building that still looks like a block of stables, albeit with windows. This was subsequently converted into a dwelling.
3. There is no dispute that the stables, now called Beech Tree, are capable of being lived in and that Mr and Mrs Packer attended the site almost daily and were there all morning and so were using the facilities of Beech Tree. Since March 2020 when the first pandemic related lockdown began Mr and Mrs Packer have lived there more or less continuously. Almost everything else is in dispute and this revolves mostly around conflicting accounts of what happened from the appellants, their friends and the neighbours.
4. Documentary evidence is restricted to bills for water, electricity, sewage disposal, TV licence, telephones. These show the site has been used for many years. Specifically the electricity bills show continuous use from March 2014 to December 2019. The rest of the bills are spread out through the same period. The earliest bill is one from BT for June 2013. However, none of these bills

need be specifically for the use of Beech Tree as a dwelling. The use of the building in the mornings as a day room, the other stable block and the 2 barns on site, all with electricity, electric gates, CCTV cameras etc, and the occasional gatherings at the site shown in photographs, all could account for the utility usage demonstrated by the bills. No evidence was provided either way as to whether the bills revealed usage typical of a dwelling or just a stables, so the bills do not really help, other than that they do suggest more than just a rest room use, as they include a telephone line and a TV licence

5. The appellants' case is that they applied for planning permission for the stables that later became Beech Tree in 2001. This was granted but the stables were not built until 2006. In 2009 their younger daughter suggested converting the stables into a house for her to live in and this work was carried out by Mr Packer and Brian Driver, a local plumber, and was completed by September 2009. The daughter, Joanne, moved in and stayed there with her small child until February 2013 when she emigrated to Australia. Some months later Mr Packer decided to move in, leaving his wife in the family home in Fareham. Mr Packer has lived there ever since. Mrs Packer drove to the site every day to deal with the horses and to ride. The horses were not Mr Packer's concern, but he maintained the land. The appellants knew that planning permission was required to convert the stables and so deliberately kept quiet. Mr Packer lived a very low key life, and any non-compostable waste was disposed of locally. He liked tinkering with old cars and that was an occasional pastime at the site.
6. Two local residents presented a different story. Mr and Mrs Taylor live next door, albeit their house is a few hundred meters away downhill from the appeal site, but their fields border the appellant's. They are of the view that there was regular activity in the mornings, consistent with the original routine of the Packers, to drive from Fareham to the site, deal with the horses, maintain the land and tinker with cars. But from the afternoon onwards there was nothing happening. This changed markedly in 2020 when it became obvious the building was occupied continuously.
7. Mrs Menjou also lives nearby and was a regular riding partner of Mrs Packer's for almost the whole period under discussion. Mrs Packer regularly confided in Mrs Menjou the troubles she was having with Mr Packer. He suffers from depression and breathing difficulties that sometimes make sleeping difficult. It was clear from their talks that Mr Packer lived at home in Fareham with Mrs Packer, he often had to sleep in the spare room, and would not always get up in the mornings making Mrs Packer late to the site. She could not come on her own as Mr Packer refused to be left alone in the house. He often fell asleep in front of the TV and then didn't sleep well at night.
8. It is well known that where the evidence for an LDC is sufficiently precise and unambiguous and is unchallenged, it is not necessary to provide independent corroborating evidence. In this appeal there are two alternative narratives that cannot both be true. The outcome thus turns on which narrative I find most plausible and that in turn is influenced by which is most consistent and internally coherent, or to put it another way, which is most precise and unambiguous.
9. Firstly the question of the stables themselves. Mr Packer's original written statement says that planning permission was granted in June 2001 for a stable block. These were then built on the northern boundary of the site. That is

they are original stables that are still used for horses. In 2006 more stables were built that are the appeal building. The intention was to replace the old stables, but instead in 2009 they were converted into a house. However, in subsequent statements and at the Inquiry it was clear the 2001 planning permission was implemented by constructing the appeal stables. Mr Packer maintained in several written statements this was in 2006, but plans submitted with an application for a bungalow, that were eventually withdrawn showed the stables in place in 2003. In response to my questions Mr Packer said they were considering starting a livery on site and so needed to increase the stabling capacity. But once built, they were unable to get permission for a livery and so converted them into a dwelling. The planning history shows two attempts to remove a condition to enable a livery at the stables refused in 2003 and 2005. It does seem therefore the stables were built in 2003, not 2006. Mr Packer agreed when questioned this might have been the case as he couldn't remember. Nothing turns on when the stables were actually built, but it is indicative of the way Mr Packer's case was presented.

10. The first occupant was Joanne Albers, the Packers' younger daughter. It was for her the stables were originally converted. She now lives in Australia but provided a written statement confirming the story. This is a very short document that merely says she lived there from September 2009 until February 2013 when she moved to Australia. In fact the full story is that Mrs Albers was already married to an Australian but was unsure about emigrating and lived at Beech Trees, with her daughter, while she vacillated. According to Mrs Packer she couldn't settle and moved back to Australia twice during the period she was at Beech Trees, before finally emigrating.
11. It was suggested that her period of occupancy, at 3 years and 5 months was so close to 4 years, that had Mr Packer been tempted to make anything up, it would have been easy to simply extend her occupancy and claim the 4 years there and then. The fact that he didn't suggests the rest of his evidence is more trustworthy. In fact it now seems as if Mrs Albers wasn't living at Beech Trees the entire time anyway but spent some of it in Australia. Mrs Menjou in a rather throw-away comment suggested Mrs Albers actually lived in Fareham as she (Mrs Menjou) remembered a conversation about replacing the kitchen in her house, but she couldn't be sure. But it does seem to me there is doubt about the continued occupancy of Mrs Albers up to February 2013. It also later transpired that Mrs Albers has returned to the UK and visited the site but that also was not in her written statement nor mentioned by Mr Packer.
12. Mr Driver was also unable to attend as he is seriously ill but in any event his evidence is straightforward that he helped in the conversion works in 2009, installing a wood burning central heating system and all the plumbing for the kitchen and bathroom etc. However, this is also throws up an odd inconsistency. Mr Packer said he couldn't move in straightaway when Joanne Albers left in February 2013 because of problems with the wood burner. He told the inquiry Joanne had never used it due to fears for her baby daughter, and relied on electric heating, so the chimney had become blocked and alterations were required to prevent a backdraft. It was not explained why the conversion of the stables for his daughter included a central heating system she wouldn't use. Mr Packer originally said he moved in, in April 2013, but later amended this to June 2013, the delay caused by the log burner issue, but this is another inconsistency.

13. Alex Prentice provided a written statement but could not attend as he was on holiday. He works for Mark Barton, a farrier, and essentially said that he had been told Mr Packer lived there. His first-hand experience was on occasions arriving at 8.00am before Mrs Packer got there and Mr Packer would let him in. He said he got out of bed to do so. He also helped Mr Packer a couple of times in the evenings with metalworks for a car he was restoring. Mr Packer told him he had marital problems and health issues hence living apart as Mrs Packer preferred living in a town.
14. Mark Barton did give evidence and his was very similar, although he did admit that he didn't know Mr Packer got out of bed, that was an assumption, which I assume is the same for Mr Prentice. This happened to Mr Barton on three occasions. He also confirmed he had shod Mrs Packer's horses every 6 weeks or so since before 2013. Usually they were both there in the morning. Very occasionally he turned up later in the day to deal with a horse, about 6 or 7ish and Mr Packer was still there.
15. This evidence is mostly consistent with the alternative view that the Packers always arrived and left together and usually by lunchtime. Mrs Packer would sometimes stay late or return later to deal with the horses so it is not surprising Mr Packer was there also. The early mornings and later evenings are a better fit with the Packers' version, it does sound as if Mr Packer was there on his own. But that was only a handful of times in 7 years (2013-2020).
16. Les Horne, an agricultural engineer, gave evidence that he would visit 3-4 times a week in the summer but only once a month in winter to service and repair the agricultural machinery. The visits would be pre-arranged and he would drive in if the gates were open or toot his horn to get them opened. He saw washing up, and Mr Packer mentioned having a sleep in the afternoon. He told Mr Horne he lived there. This evidence is not particularly helpful one way or another.
17. Andy Peters also gave evidence, he is the Packers' son-in-law, marrying their elder daughter from whom he is now separated. He visited Mr Packer at the site regularly as they remained friends, especially as they had a shared interest in car renovation. His evidence was clear that his visits were at any time of day, often in the evening and at least fortnightly. For the whole period Mr Packer was there he clearly lived there and often said he did, referring to going to bed etc. Mr Peters didn't actually witness Mr Packer staying overnight, but that is perhaps not surprising and does not diminish his testimony. He latterly worked for Waitrose and might pop by after an evening shift to drop of some groceries. This evidence strongly supports the Packers' version of events.
18. Mr and Mrs Taylor both gave evidence. There was a lot of discussion as to exactly when they walked their dogs or checked their sheep, but essentially it was in the early mornings, 7.30ish or 9ish depending on who was doing it and in the early evenings, particularly at dusk in the winter. The boundary between their land is heavily screened on the Packers' side, by buildings, tall fences, a hawthorn hedge and a conifer hedge. It was suggested there were no real views into the site, but in fact it is possible to see through the conifers towards Beech Trees. The hawthorn hedge was much lower originally and this gave views of the back of the old stables, but also, through the louvred windows in the stable walls, of Beech Trees. Mrs Taylor walked her dog through woodland some way away from the appeal site, but it was possible to obtain distant

views of the site from these woods. I walked this route and no views were available in the early summer but I have no doubt these views would be less obstructed in the winter when the vegetation has died down. Mrs Taylor also pointed out the tree screen and undergrowth had grown up considerably in the last 10 years. It was also suggested they would have to make quite an effort to actually see anything, but they admitted that they did make such an effort, particularly after 2015 and the easement issue which I shall discuss below.

19. Their evidence was consistent, that it was clear the site was occupied in the mornings, but in the afternoons it was quiet with nothing going on. In the evenings no lights were visible. They contrasted this with the obvious evidence of occupation since March 2020, with cars parked there and lights showing. This is consistent with the Packers' evidence that they were both staying there during lockdown. There was some discussion that domestic noise could not be heard from the Taylors' house at the site so why should the Taylors hear what was going on at Beech Tree, but the point was they heard it from the field boundaries, not from their property. I agree that observation of what was going on at the site was not easy from the Taylors' land, but it is possible, and I have no reason to doubt that their experience is as claimed.
20. The Taylors have a number of easements across the Packers' land and in 2015 they needed to lay a new water pipe. They provided quotes from solicitor's letters that Mr Packer would not let contractors onto his land after 1pm because after that the site was secured and the Packers had returned to Fareham. Mr Packer's explanation is that he was just trying to be difficult to spite the Taylors, because he was cross at the way Mrs Taylor demanded access to his land. This Mrs Taylor denies, but in any event it is not a particularly convincing explanation, given the 1pm finish time just happens to be exactly the time the Taylors claim the site was usually vacated by.
21. Mrs Menjou also gave evidence, which while essentially hearsay was not disputed by the appellants until the inquiry. In his written rebuttal, Mr Packer admits the contents of the conversations as recorded by Mrs Menjou are accurate, but that they all refer to a time before 2013. Mrs Menjou was clear this was not the case, and they were ongoing across the whole period. Mrs Packer was vague as to whether the conversations were pre 2013 or not but was clear she did not talk about those specific matters to Mrs Menjou. She says she did not mention that Mr Packer lived at Beech Tree because she knew it was illegal, but interestingly she later asked Mrs Menjou to support the application for an LDC. Mr Packer would not necessarily know what his wife talked to Mrs Menjou about but the two ladies in question would. I shall therefore need to consider the medical records that Mr Packer supplied.
22. Without going into detail, it would seem the medical records more or less confirm Mrs Menjou's version of events. The various ailments she records talking to Mrs Packer about did occur across the period in question and not just before 2013. Mr Packer put in the first set of medical records to the Inquiry in March 2021. But Mrs Menjou's witness statement is dated May 2020 so she could only have known about these issues from Mrs Packer. I have no reason therefore to doubt Mrs Menjou's account of those conversations, that Mrs Packer, over many years made it clear that Mr Packer was living in Fareham.
23. A lot of time was spent discussing the padlocked gate; indeed it was suggested this was a central plank in the Council's case. The entrance to the site is off a

narrow country lane with high banks on the eastern side where the site lies. There is a small uphill pull-in in front of the gates, which are solid wood on a metal frame with thick vegetation on either side so there are no views into the site. At right angles to the gates is a metal side gate, some 2m tall, with a short wire fence linking it to the thick hedgerow on the roadside. The gates are electronically operated, but they would have been fairly easy to push open so they were padlocked by Mr Packer for security. There are two separate issues with the padlock, firstly, why was it on the outside when Mr Packer was inside and secondly why was it only there after 1-2pm every day.

24. On the first issue, Mr Packer explained he let himself out of the side gate and padlocked the main gates from the outside, returning via the side gate which was separately padlocked. This was so it would be obvious to would-be intruders that the gate was locked. This carried on for about 6 years until around 2019 when a magnetic lock was installed which provides considerable security without the need for a padlock at all. The problem with this theory is that the magnetic lock is inside the gate and so does not provide the visual deterrence of the external padlock.
25. The second issue is that the Taylors are clear that the site was regularly padlocked in the afternoons. There was some dispute about whether the gate can be seen from the road, but it is clear it is easily visible when heading down the lane towards the Taylors' house, which they would be doing in the afternoons and evenings and this is the crucial time. In the mornings it was likely to be unlocked as the Packers were there attending to the horses and the land. In the afternoon it was likely to be locked as they would have gone home. The Taylors say they were keen to check because of the dispute with Mr Packer over the easement, he said he was never there after 1pm and I get the impression they wanted to catch him out. In any event they had become much more sensitive to what was going on at their neighbours, and this does not seem unbelievable to me. Mr Packer says it was unlocked a lot of the time in the afternoons unless he was out.
26. This is where the two strands of the padlock story intertwine. If I assume Mr Packer is correct, and went through the effort of padlocking the gates externally every day, then given he was keeping a low profile in Beech Tree it would have made sense to have padlocked himself in once Mrs Packer left at lunchtime to securely advertise his non-presence. Instead he argues that he didn't and the Taylors are wrong. Whatever the truth of the matter, I do not think it is vitally important. The simplest explanation is that the Packers locked the gates when they were not there and regardless of the Taylors' observations there is no dispute the gates were padlocked at night.
27. I also need to consider the internal coherence of the Packers' evidence. As noted above there are a number of inconsistencies throughout their evidence, some fairly minor, but some of greater importance. The whole back history of the stables and the occupation by Mrs Albers for example. Mrs Packer also provided a different version of events to her husband. He 'forgot' she stayed with him at Beech Tree when he came out of hospital following an operation, and that she often stayed at Beech Tree, whenever she wanted to. They also differed about the details and times of his depression. Mr Packer forgot his daughter came back to England for her brother's wedding and he gave contradictory evidence about lights on the outside or inside of Beech Tree.

28. Allied to this is the inherent believability of their story. The medical records show that Mr Packer is not a very well man, yet their response to that was for him to go and live alone, in an isolated stable conversion, miles from anywhere and to keep such a low profile that no-one knew he was there. I do not find that to be particularly credible. When asked if he told his Doctor he had moved to the country he said he didn't think it was important, which is also somewhat unbelievable as he moved there specifically for his health. I was also asked to believe that when his daughter lived at Beech Tree she too carried out the padlock routine. Finally, Mr Packer has CCTV cameras covering the entrance gate but provided no evidence from them which could surely have resolved the padlock issue if nothing else. When asked why not he said he had never thought about it. Essentially, I am being asked to believe that the Packers maintained a consistent charade for 7 years that Mr Packer wasn't living in the Beech Tree, while he did everything he could to minimise his presence, by secretly disposing of his waste in bins in lay-bys, padlocking himself in at night, keeping the curtains drawn so no lights showed and so on.
29. Even if Mrs Albers occupation was continuous, which I doubt given her trips to Australia, there was a break in occupation from February to June 2013 which starts the clock again. The LDC application is dated April 2020, success therefore rests on demonstrating 4 successive years of continuous occupation between June 2013 and April 2020. Despite the best efforts of Mr Peters, I do not find the evidence supports such a contention. I'm happy to believe Mr Packer may well have stayed overnight from time to time, perhaps for months at a time if his relationship with Mrs Packer was at a low ebb, or they may both have stayed at Beech Tree together from time to time, but their evidence is too contradictory and uncertain for it to outweigh the more consistent, contrary views of the local residents that generally there has been no permanent occupation of the site.

Conclusion

30. The evidence does not show that on the balance of probability the building known as Beech Tree has been continuously occupied for 4 consecutive years as a dwelling and the LDC cannot be issued.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr W Beglan of counsel

He called
Roger Packer
Margaret Packer
Mark Barton
Andy Peters
Les Horne

FOR THE LOCAL PLANNING AUTHORITY:

Esther Drabkin-Reiter of counsel

She called
Mrs Nicola Clayton MA
Mrs Henrietta Taylor
Mr John Taylor
Mrs Rosemary Menjou

DOCUMENTS

1. Details of the Inquiry
2. Council's openings
3. Appellant's list of appearances
4. Various court cases
5. Bills and other documentary evidence
6. Council's closings
7. Appellant's closings