
Appeal Decision

Site visit made on 13 June 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 01 July 2022

Appeal Ref: APP/P1133/X/22/3291063

Manor Croft, Broadhempston, Devon TQ9 6BD

- 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 Rich Keeling against Teignbridge District Council.
 - The application (Ref. 21/02181/CLDE) is dated 22 September 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 use of chapel as ancillary accommodation to Manor Croft.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 191(1)(a) of the Act provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful they may make an application for the purpose to a local planning authority, specifying the land and describing the use. The onus lies with the Appellant to make his case on the balance of probabilities.
3. The time limits to be used in proving that a use has become lawful are set out in section 171B. of the Act. For this change of use, it is necessary to show that the use has persisted continuously for 10 years at the date of the application to the Council ('the relevant period'). That is to say that the use began by 22 September 2011 ('the relevant date') and was not thereafter lost.
4. As the appeal looks solely at the lawful use of the land, the planning merits of possible future development at the chapel, referred to in third party representations, have no bearing on my decision.
5. The Appellant's case is that since 1985 the chapel has been used primarily and continuously as ancillary accommodation to Manor Croft. The Council did not make a decision on the application within the statutory period. Its Statement of Case sets out that it would have refused to issue a certificate and gives its reasoning for this.
6. Salem Chapel is a Grade II listed building that is set back from the road behind forecourt walls, with iron railings on top. An iron gate on the road frontage was

the main access when the chapel was in public use. Inside, the chapel is a large single space with a small gallery above the entrance.

7. The building lies between two houses, one of which is Manor Croft. A fairly high masonry wall separates the forecourt of the chapel from Manor Croft. This has a gateway set into it, allowing pedestrian access between the two. This gateway leads onto what is now garden area on the other three sides of the chapel. There is a low wall with a gateway between what might be termed the chapel's garden and the garden area to the rear of Manor Croft.
8. By reason of the high masonry wall and, to a lesser degree, the low stone wall to the garden of Manor Croft, there is physical separation between it and the chapel. However, both walls are breached by gateways that provide a link between the two buildings. There is also physical evidence that a door gave access from the chapel to the garden to its rear. I am told that the chapel was built by an owner of Manor Croft and that the gateways were put in place at that time to allow him direct access. It was clear from my site visit that the two gates had been in-situ for some considerable time. The chapel and Manor Croft are presently in the same ownership and it is reported by the Appellant that there has always been a single owner. Notwithstanding this, as the chapel was used by members of the public in earlier times, there would have been two separate planning units, had there been such a notion then.
9. I have not been told when the chapel ceased to be used for worship, but this would seem likely to have been by the early 1980s. Evidence for this is found in the planning history for the chapel that shows that an application was made for the change of use and conversion of what was described as a "derelict chapel" to community hall in 1982¹. That application was withdrawn, as were all but one of the other applications my attention was drawn to. The exception was an application made in 1985² for the change of use from disused chapel to meeting place for local drama group. Though I have not been given a copy of the decision, the evidence shows that this was approved. The Appellant states that the 1985 permission was not, however, intended to preclude the use of the chapel as ancillary accommodation.
10. Both parties refer to the chapel being used by the local drama society. A letter from BD, I have used that person's initials for reasons of privacy, states that his mother lived in Manor Croft from 1985 to 2021 and the drama society occasionally used it during that time. Whether this meant that the 1985 planning permission was implemented is unclear. However, even if it were not the case, the evidence points to a mixed use of the chapel for purposes associated with the use of the house and those associated with the drama society. In respect of the former, BD also says that during his mother's occupation of Manor Croft, the chapel was used as "ancillary accommodation to the house as domestic storage/playroom/studio".
11. Whilst the terms 'ancillary' and 'incidental' are often used interchangeably, they have different meanings and can be misinterpreted. The evidence shows that the uses that BD's mother put the chapel to, apart from the drama use, were incidental to that of Manor Croft. This is also the case with its most recent storage use. From BD's letter, which is the main piece of first-hand evidence

¹ Council Reference 82/02432/COU

² Council Reference 85/01858/COU

before me, it would seem that there was a degree of fluctuation in the use of the chapel between the drama and incidental uses.

12. There is no detailed evidence of the use of the chapel during the period from 1985 to the date of the application for a certificate. I have not been told definitively when it was last used for drama purposes, and do not know whether this was within 10 years of the date of the application being made. On the basis of the information before me, I cannot be sure that incidental use has been undertaken without interruption in that period. The Appellant states that due to the deteriorating physical condition of the chapel, safety reasons have led to it being used for incidental, rather than ancillary purposes. As I have said, however, the evidence does not show that the chapel has been used for ancillary purposes.
13. Whilst they are often of great value in determining questions of lawfulness, it is not necessary for an Appellant to provide statutory declarations or dated photographs in support of their case. Unchallenged evidence may suffice, as long as it is precise and unambiguous. However, the Appellant's case does not meet these tests. Whilst he states that the Council did not ask for further evidence, it is not required to do so as the onus lies with an applicant to make his case.
14. Although the Appellant has described the existing use as an ancillary use in his submissions, rather than the incidental use which I find has occurred, this is not fatal to gaining a certificate. S191(4) of the Act allows for the modification of the description of the existing use. This is, however, dependent on the Appellant providing evidence to show that on the balance of probability, this had been continuously undertaken for ten years without being lost thereafter. He has not been able to do so.

Conclusion

15. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of use of chapel as ancillary accommodation 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.

Roy Curnow

Inspector