



Appeal Decision

Inquiry held on 24 May 2022

Site visit made on 23 May 2022

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Appeal Ref: APP/X1545/X/21/3279553

The Sail Lofts, The Hythe, Maldon, CM9 5HN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Catherine Knox against the decision of Maldon District Council.
 - The application ref LDE/MAL/19/00867, dated 9 August 2019, was refused by notice dated 23 October 2020.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is the use of the Sail Loft - Class C3 dwellinghouse and the Granary - mixed use as amenity/recreation room and workshop.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Procedural Matters

2. The Inquiry sat for one day and all oral evidence was affirmed at the Inquiry. At the request of the main parties I carried out an accompanied site visit on the 23 May 2022. The address within the banner heading above is taken from the application form and relates to the overall site owned by the appellant. One of the buildings within the site is known as the Sail Loft whilst the overall site is known as The Sail Lofts. I have dealt with the appeal on this basis.
3. During the Inquiry it was agreed by both main parties that the red line boundary of the application site is too widely drawn as large parts of the land within that red line are used for commercial waterside activities. Those activities are not included within the use/s for which a LDC is sought. Furthermore, the appellant confirmed that it was not her intention to include them within the LDC application. As such, a revised site plan¹ limiting the application site to the Granary, the Sail Loft, the summerhouse and a garden area was submitted at the Inquiry (the Sail Loft, summerhouse and garden edged red and the Granary edged green). I have dealt with the appeal on the basis of that revised site plan.
4. I note that the evidence before me refers to the planning merits of the case, that the Granary is a grade II listed building and that the application site is

¹ Core Document No: 4.12

within Maldon Conservation Area. Nevertheless, the planning merits and the statutory heritage designations are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority.

5. Section 191(4) of the 1990 Act allows the Council (or an Inspector on appeal) to modify or substitute the description of the development, so as to accord with the facts and evidence. In this case, the main parties agreed that in relation to the use/s of all or part of the Granary that the description of the development may need revising if I find that a planning unit associated with the residential use of the Sail Loft has been formed. This is because the use/s described within the appellant's evidence could relate to purposes ancillary to the residential use of the Sail Loft. There would be no injustice to the parties as they had chance to comment on this matter at the Inquiry and I return to this matter below.

Background

6. The overall site owned and occupied by the appellant is located between The Hythe and the River Blackwater. The appellant and her husband bought the property in April 2000. On the opposite side of The Hythe are several terraced houses. There is a jetty that projects into the river from the overall site and a few boats are moored at that jetty. Adjacent to the northern boundary of the overall site there are 4 buildings; the Granary; the Sail Loft; the summerhouse and a small building that was previously used as an office but now has toilet/shower/washing facilities within it.
7. The appellant and her husband have also owned 3 boats The Duchess, Testing Times and Deep Purple at different times. There is no dispute that between 2007 and 2010 Mr and Mrs Knox lived on The Duchess whilst it was berthed adjacent to the Granary. The Duchess was sold in 2012 and Testing Times was bought in November 2011 and sold in 2018.
8. There is extensive documentation before me relating to the terminal illness of the appellant's husband, but I do not consider that I need to refer to the detail of that documentation. The evidence before me indicates that his illness was diagnosed in around 2004, that between the end of 2009 and 2016 he was undergoing intensive bouts of treatment and that he passed away in 2018.
9. In 2000 planning permission² for, amongst other things, '*...conversion of existing office and sail loft to residence..*' was refused and the subsequent appeal³ in 2001 was dismissed (herein cited as the 2001 decision). Also in 2000 planning permission was granted for the '*proposed replacement of a floating jetty*' (the 2000 permission).
10. In June 2010 planning permission was granted for '*change of use of redundant building to holiday let, with no exterior alterations*' (the 2010 permission) and that permission was granted subject to a number of conditions. Those conditions include:
 - '*3. The use of the building hereby permitted shall be retained in conjunction with use of the site as a commercial waterside activity and shall not be used or separated as an independent unit.*

² Ref No: 00/00547/FUL

³ Ref No: APP/X1545/A/01/1062436

- *4. No holiday accommodation shall be used as a person's sole or main place of residence. The holiday accommodation shall be used for holiday purposes only. The owners/operators shall maintain an up to date register of the names of all occupiers of the holiday accommodation on the site, and of their main home addresses, including dates of arrival and departure from the holiday let, and shall make this information available at all reasonable times to the local planning authority. The holiday accommodation shall not be occupied by the same person or persons for more than 28 days in any period of 6 weeks.'*
- 11. There is dispute, between the main parties, as to whether the 2010 permission was begun and whether that has implications in respect of the 4-year or 10-year time limits cited in section 171(B) of the 1990 Act. Section 171B(2) of the 1990 Act states that *'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of four years beginning with the date of the breach'*. Section 171B(3) of that Act states *'In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach'*.
- 12. Both parties have cited the *Arun*⁴ judgment within their evidence. I acknowledge that the Council considers that *Arun* is distinguishable from this case in that it involved a change of use of the permitted extension by using it as a single dwellinghouse (which is a material change of use by reason of section 55(3)(a) of the 1990 Act). However, at paragraph 22 Lord Justice Auld states: *'... I am of the view that section 175B(2), on its plain words, read with section 171A(1) and the remainder of section 171B, applies the four year bar to a breach of a condition as to or limitation on a change of use, whether material or not, to a single dwelling house.'* At paragraph 25 it is stated that *'It follows that, in my view, the Judge erred in not appreciating that a breach of planning control consisting of the "change of use of any building to use as a single dwelling house" in s.171B(2) can occur as a result of a failure to comply with a condition attached to a planning permission and whether or not that failure results in a material change of use constituting development.'*
- 13. Consequently, for the 4-year time limit to apply, where a building is being used, in breach of a condition/s, as a single dwellinghouse the condition being breached must have the effect of preventing the change of use described in section 171B(2). In this case, the description of the development granted by 2010 permission is *'change of use of redundant building to holiday let, with no exterior alterations'*. Conditions 3 and 4 are quoted in full above and they restrict the use and occupancy of the Sail Loft. The reasons for the imposition of those conditions are that the use as a holiday let had been granted on the basis of the financial gain rewarding the commercial marine activities, the key and majority use, and to prevent the permanent residential use of the application site. The reasons also state that without those conditions the use would not comply with development plan policy CC12.
- 14. As such, the reasons for the conditions make it clear that only the use of the Sail Loft as a holiday let used in conjunction with the commercial waterside activities was acceptable. The conditions limit the residential and independent

⁴ *FSS v Arun DC & Brown* [2006] EWCA Civ 1172

use of that building. Therefore, in my judgement, they prevent a change of use to a single dwellinghouse, and the 4-year time limit applies even if I found the 2010 permission was begun. Consequently, it is unnecessary for me to determine whether the 2010 permission was begun or not.

15. There is no dispute that if a material change of use of the Granary for mixed use as amenity/recreation room and workshop has occurred that the 10-year time limit applies to that part of the development.

Reasons

16. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use of the Sail Loft as a Class C3 dwellinghouse and the Granary for mixed use as amenity/recreation room and workshop was lawful at the time the application was made.
17. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of a change of use. The broad criteria for determining the appropriate planning unit are set out in the *Burdle* judgment⁵. Whenever it is possible to identify a single main purpose of an occupier's use of land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.
18. Secondly, the judgment identified that it may be appropriate to consider the entire unit of occupation in the case of a composite or mixed use where an occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another and where those uses are not confined within distinct and separate parts of the site. Thirdly, it may frequently occur that on a single unit of occupation two or more physically separate and distinct areas of land are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental and ancillary activities ought to be considered as a separate planning unit.
19. The appellant considers that there are three planning units within her overall site and that there were material changes of use with regard to the use/s of the Granary in 2007 and the Sail Loft/summerhouse/garden in 2010. The Council maintains that at the date of the LDC application that there was a single planning unit across the overall site including the jetty. It also considers that the appellant's evidence regarding the use of the application site is not sufficiently precise and unambiguous to show that the Sail Loft was in continuous use as the main residence rather than one of the boats.
20. I will consider whether the development is immune from enforcement action and thereby lawful by virtue of section 191(2) of the 1990 Act. Section 191(2) of the 1990 Act states that '*For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*' There is no

⁵ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

evidence before me to indicate that there is an enforcement notice in force on the appeal site or the overall site.

21. The date of the LDC application is the 9 August 2019 therefore the appellant needs to show, on the balance of probability, that the change of use to a single dwellinghouse of the Sail Loft began before 9 August 2015 and continued for at least 4 years thereafter without significant interruption. Furthermore, if there has been a material change of use of the Granary to a mixed use that it began on or before 9 August 2009 and continued thereafter for at least 10 years without significant interruption.

Sail Loft

22. I observed that the existing partitions and rooms correlate with the approved floor plan, as submitted with the 2010 permission, with the only apparent differences relating to the location and amount of fitted kitchen units and French doors in the bedroom on the elevation facing the summerhouse. The Council provided a copy of its officer's report relating to the 2010 permission at the Inquiry. Within that report it is stated that *'much of the works have taken place inside the building including partitions and the kitchen area'*. The written and oral evidence of the appellant and Mrs Hawks also states that the internal works commenced in 2010.
23. As such, there is no dispute that the internal works as shown on the approved plans were commenced prior to the 2010 permission being granted. There is also no dispute that once the internal works to the Sail Loft were carried out that it afforded those who used it the facilities required for day-to-day private domestic existence. Within her oral evidence the appellant stated that the internal works were largely completed by September 2010, but some plumbing, decoration and furnishing was still to be finished. Nonetheless, even if the Sail Loft was available for residential use from September 2010 a change of use would not commence merely through the availability for use.
24. The appellant's oral and written evidence is that in September 2010 once her husband had seen a bed in the bedroom of the Sail Loft that he refused to sleep on The Duchess again. She maintains that from late September in that year to the date of the LDC application she has lived in the Sail Loft and has not resided on either The Duchess or Testing Times. She maintains that the move into the Sail Loft from The Duchess was due to her husband's ill health and issues related to him getting on and off that boat and difficulties in keeping the boat warm during the winter months.
25. The Duchess was sold and moved from its berth in 2012 and Testing Times was then berthed next to the Granary. It is apparent from the photographic evidence that these boats were of significantly different design with the former being a houseboat and the latter a motorboat. The appellant's oral and written evidence is that Testing Times did not have any holding tanks for the toilet which meant that the toilet could only be used when the boat was in the water, when the tide was in, and that facilities on it were limited. She stated that whilst they could use it for a holiday it was not suitable for living on.
26. However, the Council's evidence includes copies of electoral registration forms from 2012, 2014 and 2015 which were completed by the appellant or her husband. Those forms state that their address is motor vessel Testing Times at The Sail Lofts. In June 2012 email correspondence between Council Officers

indicates that the appellant rang the Revenues and Benefits Team to inform them that she and Mr Knox now reside on their new boat – motor vessel Testing Times on the same mooring as her previous boat.

27. Additionally, from July 2012 until at least 1 April 2017 the Sail Loft was registered for business rates as holiday accommodation. Digital notes of site visits and phone calls in relation to the business rates indicate that in July 2011 the site was visited and works were ongoing but hope to be finished soon and that Mrs Knox stated that she will notify the Council once completed and when the holiday let was advertised. In March 2012 there is a record of a phone call from Mrs Knox who asked if the Council had had a response from the Valuation Office as they had requested a revaluation.
28. The appellant has submitted a copy of an information sheet relating to the Business Rates revaluation that was to take place prior to October 2016 and that would come into force on 1 April 2017. In her oral evidence the appellant explained that on the bottom of that sheet is the typed reply that she states she applied to the form. There is a handwritten note on the top of the sheet which is 'Sent 17/7/15'. The note at the bottom states, amongst other things, that '*the holiday let was never marketed due to Mr Knox having long periods oftreatment which have prevented us living on our boat and instead using the holiday accommodation for his care.....sometimes we can return to normal and also adventure away...*'. There is little evidence to indicate why the Valuation Office revalued the Sail Loft in 2016/17 as holiday accommodation when the appellant states she completed the form with that note.
29. As such, the information supplied by the appellant and her husband to other departments within the Council and the Valuation Office are at odds with the written and oral evidence that she has submitted to the Inquiry. She stated in her oral evidence that they had planned on implementing the 2010 permission as they wanted to supplement their income from the moorings and had experience of running a bed and breakfast. They had estimated that the holiday let would generate £15,000 of income annually.
30. Within the submitted evidence there is a receipt for joining and participation fees for a tourism board quality assurance scheme in the appellant's name dated February 2010. In May 2010 there is another receipt for a partial refund from that tourist board scheme. The appellant explained that by May 2010 they had realised they would probably not be able to run the holiday accommodation in the short-term taking into account the health issues they faced. However, they hoped that they would be able to implement it in the long term which is why they continued paying the Council Tax and Business Rates. She also stated in her oral evidence that with regard to the electoral registration forms that they considered as long as they were registered somewhere at The Sail Lofts that was sufficient to allow them to vote. She admitted under cross-examination that she knew they did not have planning permission to live in the Sail Loft and that due to the issues arising from the 2001 decision and the 2010 permission they did not consider submitting a further planning application.
31. The Council have highlighted that no utility bills or official documents such as driving licences or passports have been submitted to support the appellant's case. However, a letter from a consultant dated 13 May 2014 includes an address for Mr Knox at the Sail Loft. In addition another letter dated 29

December 2010 from a consultant, relating to Mr Knox's medical treatment, is addressed to The Sail Lofts. Mr Knox's treatment records from September 2010, September 2011 and January 2016 also have an address of The Sail Lofts on them.

32. Statutory declarations submitted in support of the appellant by a previous neighbour, Mr Bearman, and Mrs Hawks indicate that they were aware that Mr and Mrs Knox had moved into the Sail Loft in 2010 and that they both lived there until Mr Knox's death and the appellant had carried on living there. Mrs Hawks, stated in her oral evidence that she had known the appellant for approximately 50 years and that she had helped move the furniture and belongings from The Duchess to the Sail Loft in 2010 when her husband, who is a builder, was nearing completion of the internal works.
33. Mr Hopkins, who represents the appellant, has also submitted a statutory declaration. He has stated that he was introduced to Mrs Knox and her late husband in the summer of 2015 by a planning consultant. On the 10 September 2015 he visited the Sail Loft for the purpose of considering the planning history and use of the site. He also states that he undertook a full site inspection and from that it was abundantly clear to him that Mr and Mrs Knox were residing at the Sail Loft as their sole place of residence with ancillary accommodation within the Granary. He goes on to state that he has visited the site on various occasion since that date and the nature of the use and the occupation of the site has not changed.
34. Mrs Hall, a third party, who lives in one of the terraced houses supports the Council's refusal of the LDC. She has stated that she has a long association with the appeal site as she used to keep a boat there. In her oral evidence she stated that it was difficult to determine where the appellant was living on the overall site as she could be seen going between the Sail Loft, the Granary and the boats – The Duchess and then Testing Times. In her written evidence she states that from her observations the use of the houseboat lessened over the period 2015 to 2017.
35. The appellant maintains that in the summer of 2015 a Council Enforcement Officer, Mr Loggie, made an unannounced visit to the property. She states that he inspected the whole of the property, sat in the kitchen and had a cup of tea and he was told they had been living in the Sail Loft. However, the Council have no record or notes of Mr Loggie visiting the site. Nevertheless, Mrs Hall in her oral evidence confirmed that Mr Loggie had been asked to visit the site to see if the appellant and her husband were residing in the Sail Loft in August 2015. She was told that he had advised them to obtain advice as they appeared to be living there. It is unclear as to why no further action had been taken at that time.
36. The information supplied to other Council departments and the Valuation Office is at odds with the appellant's written and oral evidence. There is no dispute that the appellant and her husband have resided on the overall site since 2007. The appellant's oral evidence given under affirmation, set out precisely and unambiguously when she and her late husband started to live in the Sail Loft and the reasons why that occupation began. Moreover, her explanations of why the information supplied to those other departments is at odds with her evidence are plausible especially given the circumstances surrounding her husband's health. Clearly, Mrs Knox's evidence is self-serving, in that it

- supports her case. The discrepancies in the evidence relating to the information supplied and her admission that she knew they did not have planning permission to live in the Sail Loft reduce her credibility as a witness.
37. However, the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject the appellant's evidence provided it is sufficiently precise and unambiguous. In this case, her evidence is supported by the written and oral evidence of Mrs Hawks and the statutory declarations of Mr Hopkins and Mr Bearman, the previous neighbour. Moreover, I can see no logical reason why Mr and Mrs Knox would have moved back onto a boat, be it The Duchess or Testing Times, even on a part-time basis, given the warmth and comfort of the facilities in the Sail Loft and the health issues they faced. Furthermore, The Duchess left the site in 2012 and Testing Times appears to have had limited facilities for day to day living when compared to The Duchess. It is more likely than not that the change of use to a single dwellinghouse had begun by the end of 2010.
38. Based on the written and oral evidence before me the appellant and her husband went on 3 holidays in 6 years the last being in 2015 with the longest period of any of them being 2 weeks. In my judgement the cited periods of vacancy can be treated as de minimis, and the Council would not have been prevented from taking enforcement action against the use of the Sail Loft during those vacancies.
39. Consequently whilst Mrs Knox's responses to the other departments and Valuation Office do little for her credibility, I do not find that they have a fatal effect on her appeal as those responses do not appear to have been accurate. Moreover, there is little that makes her subsequent version of events, as stated in her written and oral evidence, less than probable. When viewed in totality, as a matter of fact and degree the evidence presented indicates that on the balance of probabilities that the change of use of the Sail Loft to a single dwellinghouse took place before 9 August 2015 and that the use as a dwellinghouse (Class C3 of the Use Classes Order 1987(Class C3)) then continued for 4 years after the date of the change without significant interruption.
40. The appellant owns the overall site and she oversees the administration and general running of the commercial waterside activities. Nevertheless, there is no dispute that those tasks could be undertaken without her residing on the overall site. Moreover, the application site, as shown on the revised plan, includes the Sail Loft, the summerhouse and an area in use as a domestic garden. That area is physically delineated from the remainder of the site by walls, fencing and gates and those boundary treatments are indicated on the approved plans for the 2010 permission. Moreover, the function of the Sail Loft and its garden area has been to provide permanent residential accommodation and it is physically and functionally separate to the commercial waterside activities.
41. I consider that as a matter of fact and degree that the Sail Loft, the summerhouse, in combination with the delineated ground that is utilised as its garden area, is an area where physically and functionally interdependent activities take place even though the appellant owns a wider area of land. As

such, the residential use of the Sail Loft is a primary use in its own planning unit.

The Granary

42. This building is adjacent to the river and a timber walkway runs alongside its riverside elevation and its one side elevation. There is an external staircase and landing that is located between the Sail Loft and the upper floor of the Granary. The Granary has 2 storeys, and its ground floor is liable to flood. I observed that the main space on the ground floor appears to be utilised for storage of various pieces of equipment and domestic items. Other parts of that floor are set up as a workshop and for the storage of garden/landscaping equipment and chemicals. The upper floor has lounge and dining room furniture within it including a large television. There is also an area with a desk, chair and under a mezzanine floor there is a bed and a small room which has a shower/toilet and wash basin in. The mezzanine floor area is partitioned off and access is via a ladder. There is no dispute that the upper floor of this building does not afford those who use it the facilities required for day-to-day private domestic existence.
43. The appellant's written and oral evidence states that this building was repaired and renovated by the end of 2007. Between 2007 and 2010 she has stated that whilst they lived on The Duchess, they used the upper floor of the Granary as residential accommodation and a home office for the administration of their business. The statutory declaration of Mrs Hawks indicates that the Granary has been used for administration, entertaining and storage since it was renovated. That of Mr Hopkins states that from his inspections the upper floor of the Granary provided attractive ancillary accommodation to the Sail Loft. Mrs Hall's oral evidence stated that Mr Knox allowed the upper floor to be used for meetings in relation to regattas.
44. Under cross-examination Mrs Knox explained that the ground floor of the Granary was used on a regular basis by the berth holders, with permission, for storage purposes and to access and utilise the workshop. As an electrical engineer Mr Knox would carry out any electrical issues and other minor repairs for the berth holders. Annually mud is pumped from the berths and since 2018 Mrs Knox has paid for this to be carried out. However, the mud pumping equipment is and has been stored on the ground floor of the Granary.
45. The upper floor of the Granary is physically linked to the Sail Loft by the external landing and its use appears to have been largely ancillary to the residential use of the Sail Loft rather than a separate recreation/amenity room. That ancillary use appears to have been continuous from the time that the change of use to a single dwellinghouse of the Sail Loft occurred. Therefore, its use is and has been functionally and physically linked to that of the Sail Loft. There are no internal stairs between the 2 storeys of the Granary and whilst there is a fence around the timber walkway the use of the ground floor appears to have been largely ancillary to the commercial waterside activities.
46. Consequently, as a matter of fact and degree, and on the balance of probabilities in my judgement the 2 storeys of the Granary are split horizontally with the upper floor forming part of the planning unit associated with the residential use of the Sail Loft and the ground floor forming part of the planning unit associated with the commercial waterside activities. A material change of use to a mixed use of recreation/amenity room and workshop has not occurred.

There is no dispute that the commercial waterside activities use of the overall site is lawful and that they do not form part of the LDC application. Therefore, it is unnecessary to cite the ground floor of the Granary within the description of the use for which an LDC is sought. The description of the use of the upper floor should be modified so that it relates to purposes ancillary to the residential use of the Sail Loft.

Other Matters

47. The Supreme Court in the *Welwyn Hatfield*⁶ case concluded that positive and deliberately misleading false statements by Mr Beesley successfully preventing discovery meant that he could not rely on the time limits for taking enforcement action in section 171B of the 1990 Act. A third party, Mrs Hall, considers that the appellant has deliberately concealed the residential use of the Sail Loft and that therefore she should also not be able to rely on the time limits in section 171B of the 1990 Act. Mrs Hall's written representation with regard to the LDC application stated that *'in the summer of 2017, Mrs Knox stated to a fellow member of the waterfront community, who relayed this comment to me, 'We've got what we want, we set out to live here from the beginning.'*
48. The appellant did not accurately describe the use of the Sail Loft or where her main residence was in matters relating to Electoral Registration, Council Tax and Business Rates. Indeed, the appellant stated in cross-examination that she knew she did not have planning permission to live in the Sail Loft. I also acknowledge that a correct description of the use of the premises on those public documents might have alerted the Council to the breach of planning control. There was no specific attempt to bring the change of use of the building to a single dwellinghouse to the attention of the local planning authority. As stated previously, Mrs Knox's explanations of why the information supplied to those other departments is at odds with her evidence are plausible especially given the circumstances surrounding her husband's health. Therefore, I am not persuaded that the inaccuracies in those public documents was directed at deceit within the planning process.
49. The upper floor of the Granary was used for meetings in relation to regattas. Moreover, Mrs Hall confirmed that the Council's enforcement officer, Mr Loggie, undertook a site visit in August 2015 and became aware that Mr and Mrs Knox were residing in the Sail Loft. Therefore, the evidence does not demonstrate the development was deliberately concealed or that there was a planned course of deception designed to circumvent planning control and escape enforcement.
50. Overall, in my judgement the appellant's conduct did not amount to the degree of deception necessary to engage the principles set out in *Welwyn Hatfield*. The appellant's conduct has been shown to be misleading but she appears to have mostly pursued deliberate inaction, so as to achieve concealment. I conclude therefore on balance, that there was no concealment of the change of use of the property to a single dwellinghouse by positive deception in matters integral to the planning process. The *Welwyn* principle is not engaged, and the appellant is not deprived of the benefit of the 4-year limitation period in section 171B (2) of the 1990 Act.

⁶ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15; [2011] JPL 1183

Conclusion

51. Consequently, I find that a change of use of the Sail Loft to a single dwellinghouse took place before 9 August 2015 and that the use as a dwellinghouse (Class C3) then continued for 4 years after the date of the change without significant interruption. The Sail Loft, the summerhouse, in combination with the delineated ground that is utilised as its garden area and the upper floor of the Granary, form the planning unit associated with that dwellinghouse (Class C3) use.
52. In accordance with Section 191(4) of the 1990 Act I will substitute the description of the development within the application with '*the use of the Sail Loft as a dwellinghouse (Class C3) and the use of the upper floor of the Granary for purposes ancillary to that residential use*'.
53. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Steven Hopkins of Holmes and Hill LLP instructed by Mrs C Knox called:

Mrs Catherine Knox – appellant

Mrs Kim Hawkes

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Fraser of Landmark Chambers instructed by Maldon District Council (MDC) Legal Services called:

Mrs Devan Hearnah - Principal Planning Officer (MDC)

INTERESTED PARTIES:

Mrs Janet Hall

DOCUMENTS

FUL/MAL/10/00288 - MDC Officer Report – CD 5.14

Moore v SSCLG & Suffolk Coastal DC [2012] EWCA Civ 2101 – CD 6.1

PLANS

Revised Site Plan – CD 4.12



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 August 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red and green and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the Sail Loft to a single dwellinghouse took place before 9 August 2015 and that the use as a dwellinghouse (Class C3) then continued for 4 years thereafter without any significant interruption. The Sail Loft, the summerhouse, in combination with the delineated ground that is utilised as its garden area (the land edged red) and the upper floor of the Granary (the land edged green), form the planning unit associated with that dwellinghouse (Class C3) use.

Signed

D Boffin

Inspector

Date: 26 July 2022

Reference: APP/X1545/X/21/3279553

First Schedule

The use of the Sail Loft as a dwellinghouse (Class C3) and the use of the upper floor of the Granary for purposes ancillary to that residential use.

Second Schedule

Land at The Sail Lofts, The Hythe, Maldon CM9 5HN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated:

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

Land at: The Sail Lofts, The Hythe, Maldon CM9 5HN

Reference: APP/X1545/X/21/3279553

Scale: Not to Scale

