
Appeal Decision

Site visit made on 6 July 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 01 August 2022

Appeal Ref: APP/Q1153/X/22/3294429

Blackthorn Stables, Haye Down, Tavistock, PL19 0NN

- 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 Mr and Mrs G and D McClaughlin against the decision of West Devon Borough Council.
 - The application Ref 4550/21/CLE, dated 8 December 2021, was refused by notice dated 28 January 2022.
 - 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 sought is Use of building as a single residential dwellinghouse.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 191(1)(a) provides for the making of an application to ascertain whether any existing use of buildings or other land is lawful at the time that the application was made.
3. The main issue in the appeal is to determine whether the Council's decision to refuse the application for a certificate of lawfulness was well-founded. The onus lies with the Appellants to make their case on the balance of probability.
4. Section 191(a) of the 1990 Act states that if any persons wish to ascertain whether any existing use of buildings or other land is lawful they may make an application for a certificate of lawfulness. Section 191(2) sets out that the use will be lawful if no enforcement action can be taken against it or that it does not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. There is nothing in the evidence to show that there is an enforcement notice in force with any bearing on the case. Therefore, the Appellants need to demonstrate that the use of a converted stable block as a dwelling is lawful, on the basis that no enforcement action may be taken in respect of the use. The time limit for establishing whether the use of the building as a single dwellinghouse has become lawful through the passage of time, set out in s171B(2) of the Act, is four years ('the relevant period'). The Appellants must, therefore, show that the use has been carried out continuously since at least

- 8 December 2017 ('the relevant date') and the use has not thereafter been lost.
6. The appeal follows the Council's earlier refusal of an application for a certificate for the same development. Information that was submitted with that application was taken into account by the Council when assessing the case that is now before me. Presumably as it was not, strictly speaking, part of the application that led to this appeal, I was not provided with this information. I informed the parties that it would be acceptable to provide this, and the Appellants subsequently submitted five near identical statutory declarations from different people.
 7. The appeal form sets out that they have been "forced to occupy the appeal site on a permanent basis" by the actions of a neighbour. However, as this is an application to establish the lawful use of the property this information has no bearing on my decision.
 8. The appeal site is a single storey building, with an 'L'-shaped plan form, together with associated land and buildings. It is accessed via a gate and short drive from the public highway. Amongst other things, internally I saw that it had three bedrooms, a kitchen, bathroom and storage space. What I saw was a Gravesham dwellinghouse¹, which is to say that it afforded those who use it the facilities required for day-to-day private domestic existence
 9. In their supporting statement, the Appellants set out that the building has been used as an independent dwelling continuously since "late 2016", whilst their application form states that the use commenced on 17 September 2016. Whilst September is not usually thought of as being late in the year, as both pre-date the relevant date the case does not turn on it. They assert that they have "lived and occupied" it since that time and continue to do so today.
 10. The main evidence put forward supporting their claims through the statutory declarations. Given the potential penalties for providing false declarations, substantial weight would normally be attributed to them. They say that they "are aware that Gerard and Debbie [the Appellants] have maintained the former stables on site for use as a dwelling since 2015" and that they are "aware that they have occupied as an independent dwelling the building known as Little Blackthorn". They say that they "believe" that the dwelling has been occupied continuously for a period of more than four years. They do not say, or are unable to say, that they have witnessed this to be the case.
 11. These declarations provide little evidence of the use of the site. What little is said lacks precision and does little to take the Appellant's case forward. Therefore, the weight that I can attribute to them, in respect of demonstrating that the use occurred for four years, is limited.
 12. The Officer's report, which the Council relies on to make its case, refers to an electricity bill that it says covers the period from 27 May 2016 to 26 August 2016. Although I do not have a copy of this, as the Appellant has not challenged it I take it to be the case. However, as a bill does not provide evidence of use, I give this very little weight. Furthermore, it pre-dates the late 2016/17 September 2016 dates that the Appellants give for the commencement of the use.

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

13. As the Council has very little evidence of its own, the court's decision in *Gabbitts v SSE and Newham LBC* [1985] JPL 630 is relevant. This sets out that evidence should not be rejected simply because it is not corroborated. However, it does make it clear that in order for a case to be made successfully the evidence does need to be precise and unambiguous.
14. Here, the Appellants' evidence is scant and their case lacks precision. What I saw was undoubtedly a Gravesham dwellinghouse; however, the evidence put forward does not demonstrate on the balance of probability that the building has been used continuously as a dwellinghouse for four years at the time that the application was made to the Council.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Use of building as a single residential dwellinghouse 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