



Appeal Decision

Inquiry held on 12 July 2022

Site visit made on 12 July 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Appeal Ref: APP/J9497/X/21/3286589

Roberts Acre Farm, Bridford, EXETER, EX6 7HH

- 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 J Roberts against the decision of Dartmoor National Park Authority.
 - The application ref 0308/21, dated 12 May 2021, was refused by notice dated 13 August 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 the change of use of part of a building (formerly used for agriculture) to a C3 use as a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A statement of common ground (SOCG) has been submitted,
3. The appeal relates to a part of a building only, known as the Old Parlour, and not to the adjoining dwelling known as the Sheepshed at the side or Oakstone to the rear, or to the more recently constructed single-storey, lean-to store/plantroom attached to the gable end of the Old Parlour.
4. With an application for an LDC the onus of proof rests with the appellant and standard of proof is on the balance of probabilities.
5. All evidence was given on oath.

Main Issue

6. I consider the main issue is whether the authority's decision to refuse to grant an LDC was well-founded. As part of this consideration it is necessary to examine the facts to establish whether the building represents a new building or a conversion of the existing structure, whether planning permission existed for the works; and whether following its completion, there was an intermediate material change of use and which was subsequently converted to a dwelling.

The site and the relevant planning history

7. The appeal site is one of a wider group of existing and former agricultural buildings. It backs onto two existing residential units known as Oakstone and

Home Cottage and an unauthorised adjoining dwelling known as the Sheepshed.

8. The most relevant planning history for this appeal includes permission 0266/07 which was granted on 29 May 2007 for alterations to farm buildings including alterations to the roof.
9. Permission 0113/10 was granted on 26 August 2011 for the change of use of the existing holiday cottage known as Oakstone and an adjoining redundant agricultural building to a live/work unit, subject to a s106 agreement.
10. The parties agree that the Old Parlour has been used as a dwelling since December 2012. Application 0156/20 for an LDC for the use of The Old Parlour and the Sheepshed as dwellings was refused on 28 August 2020 on alternate grounds that (a) they were new buildings that had not been in residential use for a continuous period of 10 years; or (b) they were existing buildings and had been used as a dwelling for a continuous period of 4 years.

Reasons

New Building or Conversion

11. Appendix 9 of the Authority's case contains photographs of the Old Parlour and Sheepshed in 2010, although the appellant believes the photographs to date from 2007. These illustrate a utilitarian single storey 'L' shaped building which is described by the appellant as consisting of cob, stone and concrete block having a metal, corrugated roof.
12. The building the subject to the appeal is substantially different in appearance from the original building by way of its shape, height, materials and window/door openings. A first floor has been introduced, the roof has been raised, it has the physical characteristics of a dwellinghouse and has been used as such by the appellant and his family for a period in excess of 4 years prior to the application but for less than 10 years.
13. There are elements of the original building remaining although the extent of this is disputed by the parties.
14. The Authority has submitted measured laser survey drawings dated 13 June 2022 (Appendix 26) and compared these to the existing and proposed elevations indicated on the drawings in permission 0266/07. It is acknowledged that there are discrepancies in the existing and proposed drawings relating to that permission but the surveyor considers that the surveyed dimensions are within 3% of the intended dimensions (Appendix 27).
15. The Authority refers to information from the Building Control Officer in which it is noted that the work appears to be more extensive than the original applications for conversions.
16. At Appendix 29 the Authority has indicated in solid green overlay, the extent of original walls remaining and areas of uncertainty. This assessment was carried out by Mr Aven based on information from the Building Control Officer, the Authority's officers during a series of site visits and from the laser survey. The detailed changes are set out in Mr Aven's evidence and include:
 - i) On the SE elevation the wall has been increased in height by between 1.0 and 3.0m; a second floor created; window and door openings

altered, horizontal timber cladding introduced and photovoltaic panels installed on the roof.

- ii) On the NE elevation the entire wall has been demolished and rebuilt increasing its height by 1.5m, a first floor introduced; horizontal timber cladding installed; openings have been changed in size or position; rooflights installed; the NE Gable has been increased in height by 1.1m and incorporates a large bedroom window which rises above the lean-to structure of the plant room. Although the external visible parts of the NE gable end elevation are rendered, within the lean-to the gable end is constructed of blockwork although it is not clear from the evidence the extent to which the blockwork represents original work.
 - iii) The NW elevation of the Sheepshed indicates lines in the render indicating the extent of the original wall and how it has been extended upwards, and the entire roof replaced in form, pitch and height. As the roof of the Sheepshed continues over the Old Parlour, it is reasonable to draw the same conclusions about the Old Parlour roof. The NW elevation of the Old Parlour has changed with the roof being raised by 1.2m, and various other changes made such that if any original wall remains, it represents a very small proportion.
 - iv) The NW internal boundary between the Sheepshed and Old Parlour is an entirely new partition wall.
17. The appellant challenges the conclusions drawn by the Authority and is critical of them for not calling the Building Control Officer to give evidence that could be subject to cross examination and relying only written submissions. I note that the same criticism could be made of the appellant for not calling his own Architectural and Building Consultant, Martin Cox.
18. I attach substantial weight to the Authority's evidence regarding the changes that have occurred to the original building. It is evident that these works are far more extensive than would normally be considered to represent works to convert an existing building. Having regard to relevant caselaw¹ I find as a matter of fact and degree, the resulting building is not a conversion but is physically a 'new' building and the original building has for all intents and purposes, ceased to exist, albeit that some elements have been retained.
- Did the work benefit from planning permission?*
19. The Authority accepts that the works carried out were similar to those approved in the 2007 permission (0266/07) for extensions to the farm buildings and roof. However, the appellant accepts that the works authorised by that permission may not have commenced within the time limit and consequently lapsed. This view is also expressed by the appellant's planning consultant, Mr Little.
20. However, reference is made to Mr Cox's statement attached as a note to the appellant's supplementary proof of evidence in which he sets out his recollections of the building control history of the site since his involvement from August 2010, when he says Mr Roberts (the appellant's father) had started work in reliance on the 2007 permission.

¹ Hibbitt v SSCLG [2016] EWHC 2853 Admin and Oates v SSCLG [2018] EWCA Civ 2229.

21. There is a contradiction in the evidence submitted by the appellant in respect of whether the 2007 permission had lapsed and consequently it has not been shown on the balance of probabilities that the initial works carried out to the farm buildings lawfully commenced the implementation of that permission. Furthermore, although the works carried out may generally be similar to the 2007 permission, it is a moot point whether the completed structure remains within the scope of the approved works. Nevertheless the building works have existed for sufficient time for them to become immune from enforcement action.

Uses following substantial completion

22. Mr Cox prepared the Building Regulation application for the live/work unit (arising from the enforcement activity of the Authority subsequent to the breach of occupation of Oak Stone Cottage) but with a layout showing only the live/work unit solely within the work area. He points out that no Building Regulation officer in their visits to the site ever referred to the works being unlawful through the creation of two residential units. Irrespective of this, and indeed to the unusual circumstances arising from the long delay in the issue of the Building Regulations certificate and the changed description of development, any failures or inconsistencies on the part of Building Control are of little assistance when considering the lawfulness of the use in the planning context. It is not unknown that sometimes there can be a breakdown of communication between the LPA and the Building Control Authority.
23. The appellant contends that there was an intermediate material change of use arising from the 2010 permission for the live/work unit and the change of use of the Old Parlour to a dwelling, consequently the four year rule should apply to establish lawfulness. The live/work permission comprised the site in its totality including Oakstone Cottage and Home Cottage and an area of external curtilage. The use of the site was described as a combined residential/light industrial use in the s106 agreement, dated 25 March 2011. The authority's contrasting position is that the dwelling was constructed as a single and continuous process of development completed in about December 2012.
24. The internal works to convert and use the Old Parlour as a separate dwelling were not carried out until 2012 and the appellant accepts that these were different to the 2010 permission. The roofing contractor, Adrian Kennedy, in his statutory declaration confirms the date of the roofing works.
25. The appellant states that the area subject to refurbishment was used by Mr Dart in association with his residential occupation of Oak Stone Cottage for his fencing contractors business, and that this was a light industrial use, materially different to the previous agricultural use of the site, and which implemented the 2010 permission².
26. In her statutory declaration of 5th November 2021, Michele Sablon-Roberts (the appellant's mother) states that the roof was finished in November 2011 (based on her late husband's diaries) but the building continued to be used for agricultural storage. She refers to renting out part of the barn and yard area to Matthew Dart between January and June 2012 and submits copies of invoices to this effect. The invoices do not specifically identify the Old Parlour and the Authority's position in that the evidence is imprecise and that any

² I note, however, that the LDC application is for change of use of part of a building (formerly used for agriculture) to a C3 dwelling use and no reference to a light industrial use is referred to.

- intermediate token use for agricultural storage or similar does not make it an agricultural building.
27. The Authority infers from the statutory declarations of Jerry Wotton and Jack Frost that the building operations and the internal fitting out were undertaken as a seamless and continuous building operation and not as two independent phases of development separated by a period of industrial use. The building regulations plans were deposited on 17 January 2011 for the formation of the Old Parlour and the Sheepshed (not the live/work unit), some 10 months in advance of the roofing work being carried out and a year before the claimed intermediate industrial use.
28. There is a degree of inconsistency in the appellant's evidence when looking at the statutory declarations and those submitted with the earlier LDC application 0156/20 which contradict the assertion that the building operations were undertaken in two discrete phases; that the 2010 permission was implemented; contradictions in the building control record and by inspection of the building. These contradictions are set out in detail in Joanna Rumble's evidence for the authority and I attach considerable weight to it.
29. I appreciate that the appellant has sought to regularise the lawfulness of the development with the Authority but I am left with the firm view that the appellant's position has shifted over time to overcome the Authority's responses to the development. The appellant's recollections of events is largely second hand as he accepts that it was Mr Roberts senior who was responsible for the work. There are contradictions in the statutory declarations and evidence has not been sufficiently precise and unambiguous to establish that the residential use of the Old Parlour arose from the conversion of an existing building. Any use of the building as a barn or by Mr Dart was transient, small-scale, insignificant and temporary pending the fitting out of the dwelling³.
30. I have had regard to the caselaw and appeal decisions referred to by the parties in reaching my conclusions.
31. I conclude that the appellant has not shown on the balance of probabilities that the residential use of the building arose from the conversion of an existing building but that it resulted from the construction of a new building. Any intermediate use was insignificant in the context of the creation of the dwellinghouse. Its use as a dwellinghouse commenced less than 10 years before the application for the LDC was made and is therefore unlawful as no planning permission exists for such use.

Conclusion

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use of part of a building (formerly used for agriculture) to a C3 use as a dwelling as 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.

P N Jarratt

INSPECTOR

³ R(John Williams and Others) v Forest of Dean DC [2018] EWHC 2409

APPEARANCES

FOR THE APPELLANT:

Mrs A Sutherland LLb(Hons) PG DipLPC, Solicitor, who called:
Mr J Roberts, appellant
Mr I Little, HND, Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Tim Leader of Counsel, who called:
Mr J Aven BSC MRTPI MRICS, Deputy Head of Development Management DNPA
Ms J Rumble BSc(Hons) DipTP MRTPI, Planning Officer DNPA

INTERESTED PARTIES:

None

DOCUMENTS

- 1 Letter of notification of appeal (DNPA)
- 2 E-mail of 30 June 2022 from Case Officer at PINS regarding a supplementary proof of evidence (Appellant)
- 3 DNPA opening
- 4 Appellant's opening
- 5 Folder of Statutory Declarations (DNPA)
- 6 Appellant's closing