



Appeal Decision

Site visit made on 5 December 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/X1355/X/22/3302123

Morton Grange Manor Stables, Pithouse Lane, Little Lumley DH4 6QB

- 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 Kevin Wilde against the decision of Durham County Council.
 - The application Ref DM/21/03595/CEU, dated 12 October 2021, was refused by notice dated 17 January 2022.
 - 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 "An original stable building has been converted into a dwelling more than four years ago".
-

Decision

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

Preliminary Matter

2. During the course of the appeal, the plan depicting the area subject to the application was amended to exclude land along the eastern boundary adjacent to the carriageway, and to include the driveway serving the property. The Council was given the opportunity to comment on this amendment and I am satisfied that I am able to base my decision on this amended plan without causing injustice to either party.

Reasons

3. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development, require planning permission or because the time for enforcement action has expired (s191(2)).
4. There is a further proviso that the development must not contravene the requirements of any enforcement notice then in force. I have not been told that there was any extant enforcement notice relating to the property at the time of this application.
5. In this case the appellant is relying on the passage of time. Accordingly it is necessary to consider whether, on the balance of probability, the use of the property as an independent dwelling has continued for a period of four years or

more prior to the date of the application, that being 12 October 2021, so as to be immune from enforcement.

Planning Unit

6. Firstly I need to address the question of whether the use of the building, subject to the appeal (hereafter referred to as the 'appeal building'), for residential purposes could be regarded as resulting in a material change in the use of the land. It is important to have regard to the concept of the planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.
7. The appeal site includes part of a quadrangular building, which was previously used for a series of stables, and which has been converted to provide residential accommodation. Next to the appeal building is a gravelled forecourt area, used for car parking, and there is also an enclosed lawn to the side and enclosed courtyard inside the square of the building footprint, providing additional external amenity space. Some of the stables remain, these not having been included within the conversion works. These stables together with a paddock, immediately to the north, are owned by the appellant but do not however form part of the appeal site. To the south of the appeal site is a large, detached dwelling (hereafter referred to as the 'main dwelling'), in substantial grounds. Both the appeal building and the main dwelling share access via a common driveway. It would appear that the appeal site, stables, and the main dwelling, immediately to the south, previously formed a single unit of occupation.
8. There is no dispute between the parties, and it was evident from my visit, that the appeal building contains the facilities such as living space, cooking, washing and sleeping accommodation, that allow for its use as an independent dwelling. There is also significant internal storage space within the overall complex, and an adjacent fuel storage tank associated with the oil based central heating system there.
9. I have no reason to doubt that as things stand the occupiers of the appeal building would have no need to share any accommodation or make use of any facilities within the main dwelling. The aforementioned parking, garden and courtyard areas appear integral to the appeal building and separated from parking and garden space associated with the main dwelling. I have no reason to doubt that the appeal site occupiers have exclusive use of parking and garden space.
10. I conclude that the appeal building and main dwelling enjoy sufficient physical and functional separation, such that they form separate planning units. Accordingly I am satisfied that a material change of use of land has occurred which has yielded a new residential unit.

Continuity of Use

11. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned four-year period. The appellant

has provided various items of evidence in support of the application. These include statutory declarations from himself, as the present owner and occupier of the appeal building; from the previous occupier of the appeal building and from the present owner and occupier of the main dwelling.

12. The appellant sets out, within his statutory declaration, that he previously owned and occupied the main dwelling; that the stables were converted to residential accommodation in 2012, and that following intermittent use the appeal building was let by him to an unrelated person as their sole place of residence, where they lived continuously between January 2017 and July 2021.
13. The appellant states that over this time, with the exception of the entrance and driveway, the tenant did not share any of the residential facilities associated with the main dwelling, because with the appeal building being self-contained there was no need to do so; that the respective parking and garden areas serving the two properties were separate; that a separate heating system was installed in relation to the appeal building; that sole responsibility for the maintenance of the appeal building rested with the tenant, whilst, by verbal agreement, periodic utility bills were paid by the appellant, who was later reimbursed by the tenant.
14. The appellant states that following the tenant's departure in July 2021 he (the appellant) commenced occupation of the appeal building the next month, following a short period of refurbishment, from which time he has continued to occupy that building. The main dwelling was subsequently sold by the appellant to (and continues to be occupied by) a separate family, with that dwelling and the appeal building now being in separate ownership.
15. The tenant's statutory declaration is consistent with the account provided by the appellant in terms of the period of his tenancy, including the arrangements for maintenance and utility bill payments. A copy of a tenancy agreement associated with this rental is provided, along with various invoices in connection with services provided at the property.
16. The declaration provided by the present owner and occupier of the main dwelling is also consistent with that of the appellant, with regards to his purchase and occupation of that property.
17. The statutory declarations appear to me to be precise and unambiguous. Given that any person who lies about the information contained in a sworn document could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give these significant weight.
18. Furthermore the tenancy agreement provided corroborates that the tenant's period of occupation commenced in January 2017, and copies of various invoices addressed to the tenant that his tenancy lasted until the summer of 2021. A separate email from a fuel supplier confirms that heating oil has been supplied to the tenant at the appeal building since January 2017.
19. The Council's position is essentially that because the utility supplies to the appeal building were paid for in the first place by the occupier of the main dwelling (when the two buildings were in the same ownership) this establishes a link between the two. There was no attempt to separate the two properties, with title only being separated in 2022, and it says that the tenancy period

from January 2017 cannot therefore be counted as part of the immunity period. Its views are reinforced by the lack of registration of the appeal building on the Council tax and electoral roll registers. The Council therefore says that the appellant has failed to demonstrate the necessary continuity of use of the appeal building as an independent residential dwelling.

20. It seems to me that despite the reimbursement of the landlord by the tenant for their utility bills, not disputed within the Council's statement, and the lack of registration of the appeal building as an independent dwelling, this did not detract from the actual use of the appeal building as an independent dwelling in practical terms over the requisite immunity period. My views in this regard are not altered by a lack of registration of the property for Council tax or electoral purposes. From the evidence provided, with the exception of the entrance and driveway, there was no interdependence on facilities between users of the main dwelling and users of the appeal building. Land ownership title is not a key test as to the question of independent residential use.
21. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."*
22. For the reasons given above, I consider as a matter of fact and degree, that a credible account of the residential use of the appeal building and explanation for the continuity of the use has been set out. I consider it more likely than not that the appeal building has continued to be used as an independent residential dwelling over the requisite immunity period, having been used as such since January 2017, with only a *de minimis* break in occupation in summer 2021 (as set out above). Even if I had considered the break in occupation to be material, which I do not, this would have made no difference to my overall finding because any 4-year period of continuous use before the application date would have been sufficient to accrue lawfulness. I find the evidence to be sufficiently precise and unambiguous, in the absence of any significant contradictory evidence, to justify the grant of a certificate on the balance of probability.
23. 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 in respect of "An original stable building has been converted into a dwelling more than four years ago" 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 as amended.

R Merrett

INSPECTOR

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 12 October 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

On the balance of probability, the appeal building has been used as a self-contained dwelling for a continuous period of 4 years or more.

Signed

R Merrett
Inspector

Date 24 January 2023

Reference: APP/X1355/X/22/3302123

First Schedule

"An original stable building has been converted into a dwelling more than four years ago"

Second Schedule

Land at Morton Grange Manor Stables, Pithouse Lane, Little Lumley DH4 6QB

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: 24 January 2023

by **R Merrett Bsc(Hons) DipTP MRTPI**

Land at: Morton Grange Manor Stables, Pithouse Lane, Little Lumley DH4 6QB

Reference: APP/X1355/X/22/3302123

Scale: Not to Scale

