The Planning Inspectorate

Appeal Decision

Site visit made on 15 February 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Appeal Ref: APP/X1545/X/21/3283042
Sewells Barn, Sewells Farm, Little Braxted, Witham, Essex, CM8 3ET

- 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 Ms L Yeates against the decision of Maldon District Council.
- The application ref LDE/MAL/20/01078, dated 21 October 2020, was refused by notice dated 16 December 2020.
- 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 continued use of Sewells Barn as an independent dwellinghouse for in excess of four years.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for full costs has been made by the appellant against the Council in respect of the appeal. This application will be the subject of a separate Decision.

Preliminary Matters

3. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for a Certificate of Lawful Use (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out her case to the standard of the balance of probabilities.

Main Issue

4. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

5. The appellant seeks to establish that the use of the appeal site as an independent dwelling is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not seeking to establish that the use of the appeal site does not involve development nor that it does not require planning permission. Her contention is that the time for enforcement action has expired.

6. Under s171B(2) of the Act, 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 the period of four years beginning with the date of the breach. In order to achieve success, the appellant needs to show that the existing use as described in her application has been carried on without interruption for a period of four years before 21 October 2020.

7. The appellant says that Sewells Barn has been occupied as an independent dwelling since 2009.

8. The appellant submitted four Statutory Declarations (SDs) in support of her application to the Council; three from her family and one from herself. The SDs are signed in the presence of a solicitor and refer to the Statutory Declaration Act 1835.

Witness 1

9. Witness 1 is the son of the appellant and the brother to Witnesses 2 and 3. He says that he moved into Sewells Barn in 2009 and moved out in January 2016 and between 2009 and December 2014 he paid rent to the appellant. Witness 1 says that he had a landlord/tenant agreement with the appellant not to pay rent between January 2015 and January 2016 when he moved out. A copy of this agreement has not been provided.

10. Witness 1 provides copies of utility bills and letters. These include a letter dated April 2014 which relates to the replacement of a water meter. It is not clear whether a water bill dated 2015 and a letter dated 2010 are addressed to Witness 1 or to the appellant. Electricity bills dated 2013, 2014 and 2015 provided by Witness 1 are addressed to the appellant. A bank statement provided by Witness 1 show payments to SKY digital in 2010 and a bill from SKY seeks payments in 2016, relating to Witness 1's change of address.

11. Information provided by the appellant in the form of bank statements show that payments were made by standing order on a monthly basis to her by Witness 1 between January 2014 to December 2014. However, there is no evidence of payments between 2009 and December 2013 when Witness 1 says he was also paying rent to the appellant.

12. During the seven years that Witness 1 lived in Sewells Barn there is evidence of him making payments on a monthly basis to the appellant for only one year.

Witness 2

13. Witness 2 is the son of the appellant and the brother to Witnesses 1 and 3. He says that he moved into Sewells Barn in 2009 and moved out in 2018 and that during that time he paid rent from 2012 to December 2016.

14. He says that when he was at university between 2009 and 2012, he regarded Sewells Barn as his home and lived there independently during the holidays. Witness 2 says that Witness 1 paid rent during the time when he was at university. However, this is the time period when there is no evidence of payments to the appellant in the form of the bank statements.

15. Witness 2 says between December 2016 and when he moved out in 2018, he did not pay rent in accordance with a landlord/tenant agreement. Again, a copy of that agreement has not been provided to me.

16. The bank statements provided by the appellant show that payments were made by standing order on a monthly basis to her by Witness 2 between Jan 2014 and December 2016. However, there is no evidence of payments between 2012 and January 2014 when Witness 2 says he was paying rent to the appellant.

17. Thus, during the nine years that Witness 2 occupied Sewells Barn there is evidence of him making payments on a monthly basis to the appellant for only two years.

18. He says he lived independently from the appellant and that despite the fact that they worked for the same business they did not travel to work together.

19. Witness 2 refers to utility bills which are addressed either to the appellant or Witness 1. Witness 2 does not refer to who paid these bills and whether he contributed to them through rent.

20. Two documents relating to a subscription to SKY are addressed to Witness 2 and relate to payments in August 2016 and June 2017. These provide support for Witness 2's statement that he had a subscription between 2016 and 2018.

21. Witness 2 says that neither Witness 1 and 3, nor himself were dependent on the appellant at Sewells Farmhouse.

Witness 3

22. Witness 3 is the daughter of the appellant and the sister of Witnesses 1 and 2. She says that she moved into Sewells Barn in September 2018, but she describes Sewells Farmhouse as her childhood home. She says that the works to convert the barn into a habitable dwelling were carried out in 2009 and that Witnesses 1 and 2 moved into Sewells Barn upon completion of those works. In this respect Witness 3's evidence concurs with that provided by Witness 1 and Witness 2.

23. Witness 3 says that she paid rent to the appellant calculated from when she moved in. Although in agreement with the appellant there was a delayed payment of rent from when she moved in in September 2018 until July 2019.

24. The appellant's bank statements show that payments were made by standing order on a monthly basis to her by Witness 3 between July 2019 and September 2020. The same document records a substantial payment in July 2019.

25. Witness 3 produces a utility bill marked 'first electricity bill' dated 21 December 2019. It is addressed to Witness 3 at Sewells Farm not Sewells Barn. Further bills dated 23 March 2020 and 16 July 2020 have the same name and address. The bills reference a particular meter number which also appears on the photograph of the electricity meter. I was able to confirm at the site visit that this is the meter attached to Sewells Barn.

26. On the basis of this evidence, the bills show that Witness 3 was charged for electricity recorded on the meter at Sewells Barn between 21 December 2019

and 16 July 2020. However, this evidence does not cover the period 21 October 2016 to 21 October 2020 which is the relevant time period.

27. Witness 3 has provided a copy of an HM Land Registry Transfer of part of registered title(s) (the transfer of title) which relates to some but not all of the application site. The transfer of title is between the appellant and Witness 3. The document refers to a right of access across the transferred land, a septic tank on adjoining land and connection to a shared water supply. It also restricts the use of the transferred land to use as a single private dwelling in the occupation of one family.

28. The transfer of title document Plan 1 shows the access to Sewells Barn retained by the appellant and Witness 3 has access rights over it. Plan 2 attached to the same document identifies a significant part of the parking area in pink which the transfer document describes as an area where the appellant can park motor vehicles.

29. The arrangements for car parking which are set out in the transfer of title document are incompatible with the appellants description of how the courtyard parking area is used (see below). At the site visit the parties agreed that the gravelled courtyard area is used for car parking for both Sewells Barn and Sewells Farmhouse and there was a footpath through the hedge providing access to Sewells Farmhouse.

30. The transfer of title document is evidence of a form of legal separation of Sewells Barn from the surrounding land and Sewells Farmhouse. However, in common with the utility bills it only covers part of the relevant time period. It is dated 10 July 2020 which is only 3 months before the application for the LDC was made.

The appellant

31. The appellant states in her SD that she has lived at Sewells Farm since March 1989. She says that she was the landlord for Sewells Barn and that Witnesses 1, 2 and 3 paid rent to her; she does not specify the time period over which rent was paid. However, she says that both Witness 1 and Witness 2 stopped paying rent for approximately one year and two years respectively when they commenced saving for their own properties. She says that she also had an agreement with Witness 3 to delay payment of rent between September 2018 and June 2019 until July 2019.

32. The appellant says that the access off Witham Road is common to both Sewells Farmhouse and Sewells Barn and that there is a hard-surfaced courtyard which is used for parking. This parking area is described by the appellant as being split so that parking for Sewells Farmhouse is in the first part of the courtyard beside the footpath leading to the house and the remainder for use in connection with Sewells Barn.

33. There is no differentiation on the ground between the two areas of parking and they are both within the appeal site. However, neither my observations nor the transfer document provide evidence of how this space has been used over the relevant period.

34. The appellant's evidence of how Sewells Barn was used from 2009 to 2018 coincides with Witnesses 1 and 2. She says that their occupation was independent of Sewells Farmhouse. Similarly, the appellant's evidence matches

up with that provided by Witness 3 who moved into Sewells Barn when Witnesses 1 and 2 had moved out with no break in the continuity of occupation.

35. The appellant has provided a utility bill marked 'your first water bill' which relates to payment for services to 'Cattletroughs, Sewells Farm…'. The appellant says that this address is the same place as Sewells Barn. The charge period is shown as from 14 December 2016 to 27 May 2017.

36. The appellant has also provided bills referring to water usage between 12 December 2014 and 15 June 2015, 13 June 2016 and 14 December 2016, and 28 November 2018 and 27 May 2019, a letter regarding the installation of a new water meter in April 2014 and another relating to high water usage dated 6 January 2010. A further copy of a bill refers to no water usage between December 2017 and May 2018.

37. The appellant has provided evidence that there were separate accounts with utility providers for Sewells Farmhouse and Sewells Barn. She explains that her contact details are on the utility bills for both the farmhouse and the barn but that she paid them in respect of Sewells Barn from the rent payments which she received.

Supporting letters from the cleaner and the gardener

38. The cleaner says that she has known the appellant's family for 60 years. She started cleaning both Sewells Farmhouse and Sewells Barn on a weekly basis in 2010. At that time, she says that Sewells Barn was already occupied by Witnesses 1 and 2. She recalls Witness 1 moving out in 2016, Witness 2 moving out in 2018 and Witness 3 subsequently moving in. She says that Witnesses 1, 2 and 3 have lived independently in Sewells Barn with no reliance on Sewells Farmhouse.

39. The gardener confirms that he has been employed by the appellant since 2001. He refers to his job which is to maintain soft planting and the hedge which divides Sewells Farmhouse and Sewells Barn and the gravelled courtyard. He says he knows the family and confirms that Sewells Barn has its own parking area within the gravelled courtyard and a private patio and lawned area. He says that Witnesses 1, 2 and 3 have lived independently in Sewells Barn with no reliance on Sewells Farmhouse.

Assessment of the evidence of use as an independent dwellinghouse

Planning history

40. The witnesses and the appellant say that Sewells Barn was converted to a habitable dwelling in 2009 and they all refer to photographs and a plan. There are no dates on the photographs and the plan which is titled existing/proposed floor plans is dated 2020.

41. The planning history section of the Council's Officer Report lists two applications being approved for change of use from agricultural to domestic use in 1990, one of which appears to relate to listed building consent (Ref. 90/00323/FULF and Ref. 90/00324/MAL/LB) (the 1990 permissions). The appellant confirms that these consents relate to the barn, and she has provided a copy of the plans which were approved under Building Regulations for the works.

42. The appellant was resident at Sewells Farms when the consents were sought and granted for the works to convert the barn to domestic use, and she refers to them in her evidence. Therefore, it is reasonable to assume that the appellant had some knowledge of the need for consent for works to the barn. However, there is no reference to the works associated with the conversion of the barn into a dwelling in the Council's Officer Report and the appellant has not produced evidence of consent having been granted.

43. The absence of evidence in respect of when the works to convert Sewells Barn to living accommodation were carried out does not in itself cast doubt on the appellants arguments that the barn has been used as independent living accommodation. However, this information could have determined the length of time that the use has been in existence and evidence of planning permission would have put the use on a formal footing, potentially negating the need for an LDC.

44. The Council refers to a planning application which was submitted in 2016 for the demolition of a barn and the erection of a dwelling (Council Ref. 16/00450/FUL) (the 2016 application). The application related to a different barn to that which is the subject of the current appeal.

45. The appellant does not dispute that she is named as the applicant for the 2016 application nor that in the planning statement reference is made to a large timber barn being used by her children as a dwelling incidental to the main dwelling. Notwithstanding the level of involvement in this planning application and the fact that it does not relate to the appeal site, this evidence undermines the evidence provided by the appellant that Sewells Barn has been used independently since 2009 and introduces a degree of ambiguity into the use of Sewells Barn at the time when the 2016 application was made.

Payment of rent, utility services and bills and Council Tax

46. Drawing together the evidence before me in respect of rent, based on the statements made in the SD, rent was being paid by Witness 1 between 2009 and December 2014, by Witness 2 between 2012 and December 2016 and by Witness 3 between September 2018 and November 2020 (being the date of the SD). It follows that no rent was being paid to the appellant for over nearly two years between December 2016 and September 2018.

47. Turning to the evidence of payments of rent, this is in the form of the appellants bank statements. These show that payments, which are said to be rent, were made by Witnesses 1 and/or 2 between January 2014 and December 2016. This evidence covers only a three-year period of the eight/nine-year period during which Witnesses 1 and 2 and the appellant say rent was paid.

48. Witnesses 1 and 2 both refer to the existence of a landlord/tenant agreement which allowed the suspension of rent payments from a particular date whilst they continued to live in Sewells Barn. However, I have not been provided with a copy of this agreement, or any form of tenancy agreement between Witnesses 1 and 2 and the appellant.

49. The witnesses say that they paid rent to the appellant but the evidence to support this contention is sketchy.

50. The appellant and the witnesses set out that there were times when rent was not paid. Whilst there is reference to witnesses saving for their own homes, there is no explanation by the appellant about why she did not charge rent during those periods. There is also no explanation regarding why the appellant paid utility bills or for the services of the cleaner and gardener.

51. The record of utility bills across the time period when Sewells Barn has been used as living accommodation is incomplete and whilst the appellant says that she paid bills using rental payments there is no evidence of this. Furthermore, the appellant says that she paid utility bills and for the costs of a cleaner and gardener from the rents that were paid to her by Witnesses 1, 2 and 3. However, on the basis of the evidence she must have been meeting those costs herself for nearly two years.

52. Taken together I find that the evidence relating to rental payments is incomplete and that the formal arrangements between the appellant and Witnesses 1 and 2 in terms of their payment of rent are unsubstantiated. In relation to Witness 3, although her evidence of payments to the appellant for rent is complete, she has also produced no evidence of a tenancy agreement or other formal arrangement with the appellant.

53. The Council has carried out investigations and has established that Sewells Barn is not registered for Council Tax. The appellant does not dispute this but provides no explanation for why this is the case. The Council also confirms that there are no separate arrangements for the collection of waste from Sewells Barn.

54. The description of the way in which post is delivered also suggests that Sewells Barn does not have a separate postal address. The utility bills are all addressed to Sewells Farm and the reference to 'Cattle Troughs, Sewells Farm' could be explained by the provision of services to the barn when it was in agricultural use. The appellant likens the situation to a block of flats, but in that case, post would normally be addressed to the occupiers of the individual flats notwithstanding the use of a single post box. In that respect, I do not find the two circumstances directly comparable.

55. The separate services in the form of electricity, water and the cesspit, and the associated boiler and fuse box could all be attributable to the use of Sewells Barn as domestic accommodation for which permission has been granted (the 1990 consents). For that reason, they do not clearly demonstrate that Sewells Barn has been occupied as an independent dwelling.

56. In the same way the payment of rent, had that been clearly demonstrated, or contributions towards household bills is not determinative of a separate use. It is reasonable to assume that the same payments would be made by adult children in terms of their use of space within a family home including self-contained domestic accommodation.

57. The appellant has referred to other appeal decisions in her submissions. These relate to Stitches Farm, Lower Chase, (Appeal Ref: APP/X1545/X/11/2147310) (Stitches Farm), Manor Farm (formerly Roman Farm), Old Heath Road, Southminster (Appeal Ref: APP/X1545/C/16/3145308) and The Annexe/The Walnuts, 61 Broad Street Green Road, Great Totham (Appeal Ref: APP/X1545/X/17/3184314) (The Walnuts). She also refers to other decisions made by the Council in relation to applications for LDCs.

58. She argues that the appeal decisions demonstrate that evidence in the form of payment of rent, tenancy agreements, Council Tax registration and utility bills is not essential to prove a lawful use as an independent dwelling. She says that the Council's approach to decision making on LDCs is flawed in this respect.

59. Nevertheless, as will be seen from the foregoing the appellant's SD and the witnesses SDs go into some detail regarding the payment of rent and utility bills. The appellant appears to be both relying on such information and arguing that it is unnecessary in order to demonstrate that Sewells Barn has been occupied independently of Sewells Farmhouse. This demonstrates a lack of consistency in the appellant's arguments.

60. The Council has referred to the Stitches Farm case in its Officer Report. It takes the view that it is materially different to the appeal case because supporting information was provided in the form of formal tenancy agreements and the flat was registered for Council Tax.

61. However, it is clear from the Inspector's decision that he took the view that the use as a separate dwelling was established over the time period during which there were no formal tenancy agreement nor registration for Council Tax. He describes the use becoming consolidated when other people occupied the flat at which point tenancy agreements were entered into and Council Tax paid, but he accepted that in land use terms there was no change in character at that point.

62. I concur with the other Inspectors view that evidence in the form of tenancy agreements, Council Tax payments and utility bills is not always necessary to demonstrate that an independent dwelling has been established.

63. However, the onus remains on the appellant to provide evidence which is precise and unambiguous. In this context it is appropriate to turn to the evidence which is before me in relation to matters other than rent and utility payments.

Other evidence

64. In view of the limitations of the evidence and the absence of tenancy agreements it is possible, as the Council suggest, to reach a conclusion that Sewells Barn has only been used in conjunction with Sewells Farmhouse since 2009 when the appellant says the conversion works took place.

65. However, adopting such an approach sets aside the evidence which has been provided in terms of how Sewells Barn has been used. The appellant and the witnesses are in agreement that since the accommodation was first occupied by Witnesses 1 and 2 it has been continually used separately from Sewells Farmhouse. The accommodation provides all of the facilities required for day-to-day private domestic existence and the floorspace is expansive providing comfortable living accommodation.

66. There is a high degree of consistency between the appellants statement and the witness statements which could demonstrate a shared understanding about how Sewells Barn and Sewells Farmhouse has been used. However, as a consequence, the statements are lacking in terms of evidence personal to the individual. For example, there is no information regarding whether all of the witnesses' belongings were moved into Sewells Barn or whether items were also stored in Sewells Farmhouse. The witnesses say that they were not

dependent on the appellant or Sewells Farmhouse but there is no evidence to support this assertion.

67. The photographs provided by the appellant and the witnesses are the same photographs in each case, even to the extent that they are annotated identically. The photographs are undated, and they do not include any of the occupiers of Sewells Barn. The photographs do not provide any evidence to show that the occupation of Sewells Barn was independent of Sewells Farmhouse.

68. Save for the evidence provided by the gardener and the cleaner there is no evidence other than from family members. For example, there are no statements from visitors to Sewells Barn or guests of the occupiers or photographs of the living spaces or external space being used for leisure activities or entertaining separately from Sewells Farmhouse.

69. The statements made by the gardener and the cleaner relate to the occupation of Sewells Barn by family members. Whilst they refer to the occupation of Sewells Barn independently of Sewells Farmhouse, they do not provide any evidence of this. Furthermore, as written statements the evidence provided by the gardener and cleaner are of limited value compared with SDs which contain sanctions in terms of telling the truth.

70. The Parish Council has confirmed that it fully supports the appellant's statements, but it does not provide any information to support its position.

71. The evidence which has been provided by the appellant and the witnesses to support their arguments that Sewells Barn has been used independently of Sewells Farmhouse is thus limited and incomplete. For that reason, the change in the character of the use of Sewells Barn from a building used in connection with the occupation of Sewells Farmhouse to an independent dwelling has not been clearly demonstrated.

The car parking area

72. The gravelled area between Sewells Barn and Sewells Farmhouse has been shown to be in shared use for car parking. The evidence does not demonstrate that the parking area has been in use as a separate dwelling which is what the certificate seeks to establish.

73. Section 193(4) of the Act provides that an LDC may be issued for whole, or part of the land specified in the application. Consequently, had I concluded that a certificate should be granted I could have excluded the gravelled area between Sewells Barn and Sewells Farmhouse from the land to which the certificate relates.

Conclusion

74. In order to achieve success on appeal the appellant needed to show that Sewells Barn has been used as an independent dwellinghouse. The information which has been provided in relation to the planning history of conversion of the barn lacks clarity and does not provide any certainty regarding when the building was converted from domestic use to a separate dwelling.

75. The appellant and the witnesses agree that family members lived in the barn from 2009. The evidence of the payment of rent to the appellant by the

witnesses, the provision of services and the payment of utility bills is partial. However, the appellant argues that following the approach which has been adopted in other appeal decisions, evidence of these and other payments such as Council Tax could be regarded as unnecessary.

76. I do not have the detailed evidence before me, which was before the other Inspectors, some of which was heard under oath, but based on their decisions they were persuaded of the appellant's respective cases. My decision turns on the evidence before me. In this regard, setting aside any conclusions I have reached about the adequacy of the evidence on rental payments and utility bills, I find that the other evidence provided by the appellant is limited to statements of fact with little or no evidence to substantiate them.

77. The Council has provided very little evidence to contradict the arguments which have been made by the appellant. However, this does not remove the responsibility from the appellant to provide evidence which is precise and unambiguous. In this case, based on my assessment of the evidence which has been submitted I find that the appellant's evidence is incomplete, inconsistent, and limited to the extent that it does not meet these requirements such that the balance of probability does not rest in favour of the appellant.

78. 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 use of Sewells Barn as an independent dwelling house for in excess of four years 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.

Sarah Dyer

Inspector