



Appeal Decision

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/D0840/X/22/3302550

Land South East of Willow Barn, Lower Bodwen, Redmoor, Bodmin, Cornwall, PL30 5AR

- 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 David Elphick against the decision of Cornwall Council.
 - The application ref PA22/01700, dated 18 February 2022, was refused by notice dated 28 April 2022.
 - The application was made under section 191(1)(a) the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of a building as a separate self-contained residential dwelling unit.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As this appeal is dependent upon factual evidence relating to past events, a site inspection was not necessary.
3. For the avoidance of doubt I should explain that the planning merits of any use or operations 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 as amended which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on relevant planning law and judicial authority.
4. The Council refers to the appellant's location plan, drawing 215335-SK-00-01, which shows the whole of the appellant's land ownership. They say that no evidence has been submitted to show the whole of this land to be in residential use but it should only show the subject building edged red as shown on application PA209/10944. As precision is required in the terms of any LDC and there is a need to avoid any ambiguity, I have considered the appeal on the basis of the use of the building as described in the application.
5. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

Main Issue

6. I consider the main issue is whether the authority's decision to refuse to grant an LDC was well founded and this is dependent upon whether the four year rule or the ten year rule set out in S171B applies.

The site and relevant planning history

7. The appeal site is about 0.4 hectare located in open countryside. Within the site is a single-storey dwelling named 'Tamwith.'
8. An application for the formation of a new access was approved in March 2015.
9. The appellant sought an LDC for the erection and occupation of a dwelling since July 2016. This was refused in March 2021 (PA20/10944) for the reason that "The Council was provided a statement by the applicant which states that the building was erected as a dwelling and whilst anecdotally two statements provided states that it was not deemed to require building regs and that the 'applicant moved into the shed' there is not sufficient information to question the declaration of the application by the application form and the statement he erected a dwelling and moved in" (sic).

Reasons

10. The time limits for the taking of enforcement action is set out in S171B. S171B(1) relates to operational development where no action may be taken after the end of a period of four years beginning with the date on which the operations were substantially completed. S171B(2) indicates that where there has been a breach consisting of the change of use of any building to use as a dwellinghouse, no enforcement action may be taken after the end of a period of four years beginning with the date of the breach. S171B(3) indicates that for other breaches of planning control, no action can be taken after the end of a period of 10 years. The relevant count-back date for either the 4 year or 10 year immunity period is 18 February 2022.
11. The appellant's case is that in September 2015, an agricultural building of about 6x10m was constructed with concrete blocks lifting the building off the ground and completed in timber with a dual pitched roof. In July 2016, the appellant moved onto the land using a caravan as temporary accommodation. Between July-September 2016, the building was converted to a dwelling and was materially complete in September 2016. Immunity from enforcement action is sought under S171B(2) for the use.
12. It is argued that an earlier application for an LDC wrongly stated that the building was erected as a dwelling and the appellant signed a letter prepared by the agent. However, the agent has since confirmed in writing that this was an error by not detailing that the building was originally built as an agricultural shed to facilitate the appellant's saffron business.
13. The Council accepts in its officer report for PA20/10944 that the building has been used as a dwelling since 2016 but questions whether the building was intentionally built as a dwelling or whether a change of use occurred. The Council has relied on the appellant's statement in connection with that application in which he stated, "I purchased the land in January 2015, I commenced working on the erection of a dwelling which is shown in red on the location plan, immediately after the purchase. Work was completed in 18 months and I occupied the dwelling. I have lived there continuously since that date". In view of this, it was considered that the 10 year rule applies. However this appears to be at odds with the views of the Parish Council who state that the Council's Building Control Service concluded on information supplied by the appellant that the building was exempt from building regulations indicating it

was not being presented as a dwelling at the time. The appellant's email to Building Control of 17 June 2016 stated that the building was not being used for residential purposes from which the appellant draws the conclusion that this confirms the building was being used agriculturally before conversion to residential use commenced in July 2016. However, drawing such a conclusion requires a substantial leap of faith as it is understood that the Building Control Officer did not visit the site and consequently, if there was an element of deception by the appellant, this would not have been revealed without a site inspection.

14. In considering both the evidence submitted for the application the subject of this appeal and the evidence presented in the previous LDC application, the Council remains of the view that as no change of use in the lifetime of the building had occurred the development should be assessed under S171B(3).
15. Some three statutory declarations have been made.
16. David Elphick's statutory declaration dated 16 February 2022 indicates that he signed the document trusting that the contents accurately conveyed the facts that he had provided to his consultant. He built a wooden shed which was materially complete in September 2015 in connection with his saffron growing business. He moved onto the land in July 2016 and used a friend's caravan whilst converting the shed to a self-contained dwelling, including kitchen, lounge, bathroom and kitchen. He has been in full-time residential occupation since September 2016.
17. Stephen Slater's statutory declaration refers to his involvement in site preparation for the shed and that it was used for agricultural purposes up to July 2016 when a start was made to convert the shed. He allowed David Elphick to live in his caravan until 11 September 2016.
18. Matthew Wilmott's statutory declaration confirms the sequence of events in respect of the shed and its agricultural use, and that he helped Mr Elphick during the conversion of the building.
19. I attach considerable weight to the statutory declarations albeit that they are somewhat light on the details concerning how the shed was used in connection with the saffron business and the nature and manner of help provided to the appellant in converting the building.
20. Against this are a series of inconsistencies that the Council raises about the evidence.
21. Critically, the contradictory statements by the appellant regarding the nature of the building being built either a house or a shed weighs heavily against the plausibility of the appellant's case. Additionally there is little evidence of substance about the saffron business which appears to have been the justification for the shed. Nor is there evidence about how the shed was used, or receipts for the materials employed in building the shed. There are contradictions in dates as highlighted by the Council and in particular, a letter dated 2 December 2020 which stated the appellant occupied the dwelling in July 2016 but it is now stated that the conversion was completed on 10 September 2016. Although there is a letter from the earlier agent confirming his error regarding the letter he provided for the appellant to sign, this would have carried greater weight had it been made as a statutory declaration. The

Parish Council records a caravan on the appeal site in May 2016, a couple of months before Stephen Slater implies his caravan was made available to the appellant. However, I acknowledge it is possible for the caravan to have been brought to the site in advance of the appellant's residential occupation of the caravan.

22. The letter dated 30 January 2020 from the then agent, I R Robertson, to the Council, included further information to support his client's claim that his dwelling was erected and had been occupied for a period in excess of four years. Reference is made to emails between the Council's Building Control section, confirmation of the address and confirmation that post had been delivered since mid-2016. Invoices from three businesses delivering materials 'in connection with the erection of the dwelling' dated 31 March 2016, 6 April 2016 and 13 April 2016 were attached to the letter. The Council draws attention to the TECBUILD invoice for timber to timber joist hangers, a breathable membrane used in roofs and concrete blocks, which suggests the building was constructed as a dwelling. If as the appellant states, the shed was materially completed in September 2015, it saw little if any agricultural use if by the following July it was being repurposed. I accept that the appellant may have purchased materials in advance of their need on site.
23. There is no evidence of a saffron business being established, other than 'some' bulbs were purchased for delivery in August 2015. The Council attaches significance to the point that if planted the bulbs had only 3 months in the ground for the appellant to have established that they would have been a success, although the appellant points out that 3 months is all that is required for the plants to flower. There is no evidence of 3000 mature bulbs being purchased, nor evidence of any sales or accounts. It has not been explained why a saffron business required a shed of the size claimed to have been built. Furthermore such a building would not have been permitted development as claimed by the appellant.
24. A number of representations have been submitted in support of the appellant but these appear to comment more on merits of residential use rather than to provide evidence to support an LDC.
25. The appellant states that it has never been the intention to contravene planning regulations but to provide a place to live when faced with homelessness. Nevertheless, there has been a flagrant breach of planning control and there is no evidence that the appellant saw fit to engage with the Council in respect of the need for planning permission for a dwelling, or for the agricultural building. It appears to me that the appellant has either been foolish or badly advised in respect of the period of immunity from enforcement action, or both. His failed attempt to obtain a lawful development certificate originally has been based on a misunderstanding of S171, which is surprising as he engaged a planning consultant for that purpose. In the current appeal I cannot escape from the view that the appellant has sought to alter the facts retrospectively to meet the requirements of S171B(2) rather than S171B(3).
26. I do not set aside the statutory declarations lightly but the evidence presented by the appellant to support the previous LDC application raises very considerable doubt on the veracity of the evidence submitted in this appeal. The applicant's version of events is less than probable based on the previous

evidence provided by the appellant and the inconsistencies between the information submitted for the earlier LDC application and the current appeal.

27. I find that the appellant has not shown on the balance of probabilities that the use of a building as a separate self-contained residential dwelling unit is immune from enforcement through the passage of time, the period for which is ten years as required under S171B(3).

Conclusion

28. 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 a building as a separate self-contained residential dwelling unit 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.

P N Jarratt

INSPECTOR