



Appeal Decision

Site visit made on 19 June 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/C1435/X/22/3298870

Cottage, Land north of Wild Cherry Orchard, Lewes Road, Forest Row RH18 5JS

- 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 Baroness Paget Aisling von Wedel against the decision of Wealden District Council.
 - The application Ref WD/2021/3076/LDE, dated 14 December 2021, was refused by notice dated 21 February 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 described as: Single dwelling use.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. My decision relates solely to lawfulness. The planning merits of the development or planning policy considerations are therefore not relevant to my assessment. Accordingly, unless relevant to the main issue below, I am unable to consider representations objecting to the proposal on wider planning grounds or in respect of future or other developments.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

4. In matters such as this the onus is on the appellant to demonstrate their case on the balance of probabilities. For the purposes of certification, a continuous period of 4 years use, prior to the making of the appeal application on 14 December 2021, would need to be demonstrated in order to establish an independent residential use (a relevant period). My assessment is therefore very fact specific, based upon the evidence before me.
5. The site relates to a small building, often referred to as the Bothy. It was constructed in around 1990 with planning permission subsequently granted for

- what was described as a summer house, within the grounds of a property that has subsequently been severed and sold by the appellant.
6. The principal evidence is in the form of three statutory declarations. A statutory declaration is a formal statement made under the provisions of the Statutory Declarations Act 1835 to affirm that something is true to the best knowledge of the person making the declaration. A statutory declaration should be treated as sworn first-hand evidence. Accordingly, a statutory declaration by a family member does not automatically amount to a conflict of interest, or otherwise carry less weight.
 7. The evidence in the statutory declarations is that the Bothy was refurbished in 2014. It is then contended that the Bothy has been occupied permanently as a dwelling from November 2015, by a grandson, until March 2021. It was occupied as the grandson's only residence and lived in continuously between those dates. The Bothy was connected to its own metered mains water and electricity and had its own drainage. It is also described how the Bothy was occupied, in that, amongst other things, it contained a small gas cooker, shower and sink, bed, table and chair. The Bothy had its own access, and the grandson would only occasionally visit the appellant in her property, which is said to underline its independent use. The appellant then severed the site and sold the now neighbouring property in March 2021 which necessitated her moving into the Bothy. It has remained occupied since.
 8. Whilst the Bothy would have only provided a basic level of accommodation, particularly during the grandson's occupation, it does not make the version of events any less than probable. Even if some facilities were used in the appellant's former house, or meals shared, which is pure speculation on the part of the Council, it does not undermine the evidence of occupation and that the Bothy afforded those who used it the facilities required for day-to-day private domestic existence, and that it was the grandson's primary residence.
 9. A number of utility bills have also been provided. Varying consumption levels have been queried on the basis this may indicate that the Bothy was not being occupied at certain times. However, from my review, the electricity bills do not show significant periods of low consumption, and some are also based on estimates.
 10. Whilst there is not a full record of all utility bills, in considering the evidence in the round, which also includes letters concerning the occupation of the Bothy from those who have worked at the site, as well as invoices for building works undertaken, it does not make the appellants version of events less than probable.
 11. I appreciate the building was renovated or 'improved' in January 2021, where a shower was replaced with a bath and the kitchen replaced, amongst other things. However, this would have been after a relevant period had accrued and even if it meant the grandson had to entirely vacate the Bothy, as speculated by the Council, it would have been for a short period of time. In any event, the evidence is that the works took 7-10 days and was not vacated.
 12. Conversations between the appellant and neighbours as well as arising from an attempted visit by the Council have been brought to my attention to suggest that the residential use was being concealed. This is denied by the appellant. However, in the absence of a sworn statement detailing these accounts, I can

only place very limited weight on conversations and what may or may not have been said or implied. I also recognise that Council Tax was not paid, but this does not evidence that the Bothy was not continuously occupied for a relevant period.

13. I recognise that an interested party is concerned to ensure that any decision is based on truthful information. Despite issues that may have been experienced during conveyancing of the now neighbouring property, postal issues or in respect of the generally isolated location of the Bothy, there is little actual evidence before me that makes the appellants version of events less than probable. The evidence is sufficiently precise and unambiguous concerning the occupation of the Bothy, as opposed a different building. It is therefore not misleading. As the appeal application relates to certification, as opposed a planning permission, it is then not possible to place conditions to prevent the Bothy being extended, albeit planning permission may nevertheless be required.
14. The appeal application however only related to the use of a building as a dwelling, and so certification cannot go beyond this. Notwithstanding, there is then only limited evidence as to the extent and continuity of residential use of land surrounding the Bothy.
15. As a matter of fact and degree the appellant has demonstrated on the balance of probabilities the asserted use for a relevant period and so has discharged the necessary burden of proof. The Council accordingly would have been in a position to have previously taken enforcement action against a material change of use, and so a certificate of lawfulness should now be granted.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use 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.

Formal Decision

17. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is considered to be lawful.

Paul T Hocking

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 14 December 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured 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:

The appellant has demonstrated on the balance of probabilities the use of the building as a dwelling for a relevant period.

Signed

Paul T Hocking

Inspector

Date: 30 June 2023

Reference: APP/C1435/X/22/3298870

First Schedule

Single dwelling use

Second Schedule

Cottage, Land north of Wild Cherry Orchard, Lewes Road, Forest Row RH18 5JS

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: 30 June 2023

by **Paul T Hocking BA MSc MRTPI**

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Scale: DO NOT SCALE

