



Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/D0840/X/22/3294325

Carn Meor Coppice, The Carn, Camborne, Cornwall TR14 9NG

- 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 Miss Laura Rhodes against the decision of Cornwall Council.
 - The application ref PA21/01489, dated 12 February 2021, was refused by notice dated 7 February 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural matters

2. I was unable to visit the Appeal Site, as the Appellant could not ensure safe access. However, I am satisfied that the detailed written submissions and the photographs helpfully provided by both parties form a sufficient evidence base for the determination of this appeal.
3. The application for the LDC was dated 12 February 2021, as is acknowledged in the Council's delegated Officer Report. It is unclear why the Council's subsequent Appeal Statement contends that the application date was in fact 12 February 2022: this may have been a misinterpretation of the observation, contained within the Officer's Report, that the date on which the application was being determined was February 2022. In any event, it is clear that the correct application date is 12 February 2021, and I shall proceed on that basis.

Main issue

4. S.191(2) of the Town and Country Planning Act 1990 explains that development is lawful at any time if (a) no enforcement action may then be taken in respect of it, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no enforcement notice currently in force. The dispute between the Appellant and the Council, and the main issue for this appeal, is whether the time available to the Council for taking enforcement action against the development had expired before the date of the application for a LDC.

Reasons

5. The time limits for taking enforcement action are provided at s.171B of the 1990 Act. In summary, they are (1) four years for building operations; (2) four years for the change of use of any building to a single dwellinghouse; and (3) ten years for any other breach of planning control.

6. The Appellants case is that the development at issue is “the erection of a dwellinghouse” which concerns building operations, so the time limit for enforcement action is four years. The Council contends that since the building was constructed to facilitate the unauthorised residential use of the land, the building and the use should be considered together as a whole, in which case the breach of planning control falls within the ten-year time limit set by s.171B(3).
7. It is worth noting at the outset that the four-year time limit for operations and the ten-year time limit for use can sometimes result in anomalous situations. This was recognised by the Supreme Court in its judgment on the *Welwyn Hatfield*¹ case. Noting that protection from enforcement in respect of a building and its use are potentially very different matters, Lord Mance observed that a parallel situation involving different time periods applies to the construction without permission and the use of a factory, or any building other than a single dwellinghouse.²
8. Case law has established that an enforcement notice attacking an unauthorised material change of use can require the removal of operational development - even if it is ordinarily immune from enforcement through the passage of time, or even if it is ordinarily excluded from the requirements of planning control altogether – provided the operational development is “integral to” or “part and parcel of” the unauthorised material change of use.³
9. It is of course important to be clear that this is not a case where the Council has issued an enforcement notice. It is a case where the Appellant has applied for a Certificate of Lawfulness, in respect of operational development, rather than a change of use. Helpfully, the relevance to LDC applications of the case law concerning enforcement action against a change of use was considered by the High Court in its judgment on the *Breckland* case.⁴ It held that:

In cases comparable to Murfitt and Somak, where it appears to a local planning authority that the operational development for which a certificate of lawfulness is sought may be subject to enforcement proceedings as an integral part of an unauthorised use, then it may properly find that it is not satisfied of the lawfulness of the operational development under section 191(4).
10. In this case, there is no dispute that the land on which the dwellinghouse has been constructed was in horticultural rather than residential use. Had the Council taken enforcement action, it could legitimately have alleged the unauthorised material change of use of the land from horticultural to residential, and required the removal of the dwellinghouse as “part and parcel” of that unauthorised change of use. Put another way, the construction of the dwellinghouse is so much an integral, indeed key, component of the residential use of the site that it would be artificial to consider it separately.
11. I therefore conclude that the construction of the dwellinghouse and the unauthorised material change of use of the land should be considered together,

¹ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

² Lord Mance went on to say: *There is a potential answer to this apparent anomaly, one which would apply as much to a dwellinghouse as to any other building. It is that, once a planning authority has allowed the four year period for enforcement against the building to pass, principles of fairness and good governance could, in appropriate circumstances, preclude it from subsequently taking enforcement steps to render the building useless.*

³ *Murfitt v SSE* (1980) 40 P.&C.R.254,259; and *Somak Travel Ltd v SSCLG* [2013] JPL 1417

⁴ *R (oao James Waters) v Breckland DC & ors* [2016] EWHC 951 (Admin)

as part and parcel of the same breach of planning control. The time limit for taking enforcement action then is, per s.171B(3), the period of ten years beginning with the date of the breach.

12. The evidence of the Appellant is that they began living on the appeal site in March 2013. This is the earliest date at which there could be said to have been a material change to residential use, but it occurred less than ten years before the LDC application was made on 12 February 2021. Since the time for taking enforcement action had not expired at the date of the LDC application, the development was not lawful within the meaning of S.191(2).
13. I note the Appellant's contention that a LDC could be granted solely for the building, and not for its residential use, as the building could potentially be used for agricultural purposes. The difficulty with this is that the development for which the LDC was sought was described as "the erection of a dwellinghouse", and the Appellant's own evidence is that the building was indeed constructed, and used, as a dwellinghouse. For the reasons set out above I have found the construction of the dwellinghouse to be integral to the residential use of the land, such that they are part and parcel of the same breach of planning control. Exercising my discretionary power under s.191(4) to amend the description of development and issue a LDC for "the erection of a building" would be inappropriate, since it would frustrate the ability of the Council to take enforcement action against the building as an integral component of an unauthorised use.
14. Of course, whether or not the Council would consider it expedient to take such action, in the light of Lord Mance's comment in *Welwyn Hatfield*, is entirely a matter for them.
15. The Appellant has drawn my attention to the Council's decision to issue a LDC for a lodge on a farm in Callington, on the basis that "in this instance, the four-year rule applies for the construction of the building and use as a dwelling house".⁵ While I can understand the Appellant's frustration that a case which appears similar has been decided differently, it is necessary to bear in mind that each application must be considered on the basis of its own site-specific circumstances. For example, an unauthorised dwellinghouse constructed on land that was already in residential use (such as a garden) would be a different proposition to an unauthorised dwellinghouse constructed on land not in residential use. I do not have sufficient information to assess whether that was the case in the Callington example, but the important point is that the current appeal must be determined on its own merits. That is what I have done.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a LDC for the erection of a dwellinghouse 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.

Jessica Graham

INSPECTOR

⁵ Ref PA22/02925, May 2022