



Appeal Decision

Inquiry Held on 15 August 2023

Site visit made on 15 August 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/D3505/X/22/3291449

Stone Cottage, Summer House, 3 Bury Road, Shipling, Suffolk IP30 0JJ

- 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 Paul Willis against the decision of Babergh District Council.
 - The application Ref DC/21/05011, dated 9 September 2021, was refused by notice dated 30 November 2021.
 - 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 for a C3 dwellinghouse.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. Prior to the Inquiry two applications for costs were made by Mr Paul Willis against Babergh District Council. These applications are the subject of a separate decision.

Procedural and background matters

3. Firstly, I should explain that the planning merits of the development are not relevant to this appeal, which relates to an application for a lawful development certificate (LDC). In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probability, the development would have been lawful, at the time of the application.
4. It is also necessary to clarify the exact nature of the proposal, as the description of the development was not set out clearly on the application form. It also differs slightly from that reflected on the Council's decision notice. It was agreed at the Inquiry that it would more accurately be described as, 'The use of the building known as 3 Stone Cottages, (the Summerhouse), as a separate dwelling house'. Similarly, the address of the development differs between various documents. It was agreed that the site address should be referred to as 3 Stone Cottages (the Summerhouse) 3 Bury Road, Shipling, Suffolk IP30 0JJ. I have considered the appeal on this basis.

5. I note that the LDC application was dated 9 September 2021, shortly after the enforcement notice was issued on 13 August 2021. As no appeal was made, the notice took effect on 17 September 2021. Therefore, the LDC application was made before the effective date of the notice. However, the parties agreed that the relevant date for determining this appeal should be 9 September 2021, with the appeal determined on the basis of the four-year rule. There is nothing before me to suggest otherwise.

Main Issue

6. Whether the Council's decision to refuse the LDC application was well founded or not, based on the available evidence.

Reasons

7. A statement of common ground including the site description and planning history of the site, was agreed by the parties prior to the Inquiry. From this, it is clear that the main area of disagreement is whether the use as described, has been separate from, or ancillary to, the residential use of the dwelling at 2 Stone Cottages (No 2). I see no reason to disagree and that will be the basis of my deliberations to which I now turn.
8. Access to the land is from the A134, down a shared access road. The appeal site comprises a small rectangular parcel of land to the east of the access. It formed part of the former RAF Lavenham Airfield which ceased to operate in the late 1940s, when it was returned to the farmer. The appellant's parents purchased 2 Stone Cottages in 1974. One of a pair of cottages that are sited to the west of the access road and opposite the appeal site. The appellant's mother continues to live at No 2. It is clear from the evidence that the building and land was originally rented from the farmer and used by the appellant's family for a variety of hobby uses. It was then sold to the appellant in 1992.
9. At the time of my visit there were two buildings on the land, a detached garage which is understood to fall outside the Council's administrative boundary and the appeal building. The land was bounded by post and wire fencing.
10. The appeal building is a small, freestanding rectangular two storey structure of solid construction under a pitched roof. At the time of my visit the downstairs contained a small sitting area, with a small dining table and seats. There was a very compact kitchen with a sink, a cooker and oven, two wall cupboards, drawer unit and two floor cupboards. A narrow set of stairs led to a similar sized room on the upper floor. This had room for a double bed, limited clothes storage and some under-eaves storage. There was also a small bathroom with wash hand basin, toilet and shower. To my mind, albeit compact and rustic, it contained all of the facilities reasonably required for day to day living.

The case for the appellant

11. The appellant sets out the context for the history of the building since he purchased it in 1992. His evidence at the Inquiry broadly mirrors that set out in his sworn statement dated 7 September 2021. For the sake of brevity, I do not intend to repeat this in full. However, in summary his father and mother bought 2 Stone cottages in 1974 and this was where he and his sister lived during their formative years.

12. The appeal site became available to purchase in 1992 from a local farmer. Planning permission (B93/1001) was granted to carry out roof works in connection with the use of the building for domestic storage. This permission was conditioned for domestic storage accordingly. The parties agree that the permission was implemented during 1994, by carrying out the permitted works to the roof.
13. Between then and up to 2016, it was used for a variety of purposes including motorbike storage, repair and some carpentry. Throughout this period the building was gradually altered as materials became available, including the fitting of a toilet, patio doors, a cooking area and roof lights and the building was then maintained. Many of the materials used were left over from jobs they had been working on elsewhere. The family held barbeques for friends and family, and there were some overnight stays in the building.
14. The appellant during this time, had either built or renovated several properties, and whilst those works were carried out, he had stayed at No 3 for varying periods of time, before returning to his main properties once the works were completed. In 2016 the separate garage was built.
15. Looking back to 2016 and the four years prior to the LDC application. In November 2016 the appellant's father was found to be terminally ill. To assist and provide moral support for his mother, the appellant and his partner brought their clothes from their property at Lambert Drive, Sudbury and stayed in No 3, where he and his partner remained until served with the enforcement notice in 2021. The property at Sudbury was retained with the remainder of their possessions.
16. The evidence of the appellant's partner confirms that she has known the building since about 2000. In summary, the evidence is similar to that of the appellant confirming that No 3 had been occupied by them for periods of time, whilst they were developing their properties in Sudbury. From late 2016 until September 2021, they moved some of their possessions to No 3 to provide assistance and support to the appellant's late father and his mother. In addition, she confirmed that they retained an office at 66A Lambert Road, Sudbury to manage the business paperwork and most of their possessions remained there, due to the lack of storage at No3.
17. The evidence of the appellant's sister confirmed the use of the building over the years. Following their father's diagnosis, she confirmed that her brother and his partner, lived at No3, to assist their mother and provide moral support. On the occasions when she visited her parents, she was aware that No 3 was occupied as it had windows open, cooking was taking place and music was playing.

The case for the Council

18. The case for the Council is that the use of the building has always been ancillary or incidental to the use of No 2. That use as evidenced by photos taken in 1996 showing motorcycle storage, and various Council Tax and electoral roll details. In addition, the Council refer to the responses given by the appellant to the PCN that clearly indicated that no one was living on the land.

Assessment

19. I have already found that the building has all of the facilities required for day to day living. It is therefore necessary to assess whether the building has been used as a separate dwelling throughout the relevant period. From the evidence it is unclear whether the appeal site remained as a separate planning unit following the appellant's purchase or became part and parcel of No 2. In any event, this would not necessarily determine whether any residential occupation of the building was separate, resulting in the creation of a new dwellinghouse.
20. When asked on cross examination about the contradictory responses he had given on the Planning Contravention Notice, the appellant's explanation was that he was not good at completing forms and that his responses contained a number of misunderstandings and mistakes as he had failed to fully understand the questions. He maintained that at the time of completion they were living in the appeal building. He conceded that the form, although written by his partner, was read through and signed by him.
21. In contrast to that, I found the appellant's evidence at the Inquiry to be clear and he had no difficulty in answering any of the questions put to him. He confirmed that he had understood the declaration he had made when signing the PCN. However, the responses he gave are clearly contradictory to those given in evidence on oath. Inevitably, this leads to uncertainty regarding the reliability of his evidence and reduces the weight I give to it.
22. Looking at the evidence as a whole, it is apparent that since 1974, the land and building have been used for purposes connected to the occupation of No 2 by the appellant and his family. I also acknowledge that the appellant and his partner have been staying at No 3 for varying periods of time, throughout the relevant period. However, to my mind, their occupation initially seems to have been one of convenience whilst work was carried out at their other properties.
23. I say that given the construction of the new property at 66A was completed during late 2020 and early 2021. As a result, they appear to have been staying in the appeal building for discrete periods, interspersed with gaps when they returned to their various addresses in Sudbury. This seems to be reinforced by the continuation of the payments of Council Tax, Electoral Register records, the retention of their properties in Lambert Drive and their ongoing use of these for storage of their possessions and as a business base.
24. Since late 2016 I recognise they have stayed more regularly at the building, including the relevant period of 9 September 2017 and 9 September 2021. This seems to have been primarily to provide assistance with his father's medication, care and moral support to both parents during what was understandably a very difficult time. They brought some clothing and essentials with them, but their main possessions remained at no 66A Lambert Drive, following its completion.
25. The evidence of the other witnesses, generally add little additional information, save for confirming the facilities available within the appeal building and that the appellant and his partner were occupying the building. Additionally, they generally highlight that the building has been used by the appellant's family for a number of purposes in association with No 2.

26. Overall, although I accept that mistakes can be made on formal documents, the responses given by the appellant on the PCN in January 2021 are clear. They indicated that the building was not occupied but continued to be closely associated with No 2 and was used by the family as a whole, rather than as a separate dwelling as now claimed. Consequently, I have no evidence to suggest that anything either physically or functionally, changed after 1992 when the appellant purchased it, or that it has subsequently formed a separate unit of occupation.
27. Therefore, based on the evidence before me and in the particular circumstances of this case, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous, to demonstrate that on the balance of probability, the use of the appeal building known as 3 Stone Cottages, (the Summerhouse), has resulted in the creation of a separate dwelling. The decision of the Council was therefore, as a matter of face and degree, well founded.

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 the building known as 3 Stone Cottages, (the Summerhouse), as a separate dwelling house' 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.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr John Lomax	Agent
He called;	
Paul Willis	Appellant
Jackie Sayer	Appellant's partner
Dawn Willis	Appellant's sister

FOR THE LOCAL PLANNING AUTHORITY:

Dr Alex Williams	Instructed by the Shared Legal Service for Mid Suffolk,
of Kings Counsel	Babergh and West Suffolk Councils

He called;	
Helen Noble	Planning Officer

Ian de Prez	Solicitor for the Council
Simon Bailey	Instructing Officer