



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/J9497/X/22/3310773

Wren Cottage and Robin Cottage, Poundsgate, NEWTON ABBOT, TQ13 7PD

- 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 S Weymouth against the decision of Dartmoor National Park Authority.
- The application ref 0191/22, dated 23 May 2022, was refused by notice dated 19 July 2022.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the continued occupation of Wren Cottage in breach of condition (b) of 5/06/257/98/03.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the LDC application is as described above, the appellant in the statement of case says that the application for the continued use of the cottages in breach of condition (b) was effectively for use as a separate dwelling. I have therefore considered the appeal on this basis.
3. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant and 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 onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
5. As the application is dependent on past circumstances and factual evidence, it was not necessary for me to carry out a site inspection.

Reasons

6. Wren and Robin Cottages are two holiday cottages created from the conversion of an agricultural building behind New Cott Farm.
7. Permission was granted on appeal for the conversion of the redundant agricultural building to disabled persons holiday accommodation subject to three conditions. Condition (iii) stated that the holiday accommodation shall not be occupied during the months of November to February inclusive. In December 1998 an application to vary condition (iii) was approved

- (5/06/257/98/03) and subject to a revised condition (b) which stated "The development to which this permission relates shall only be used as holiday accommodation and shall not be occupied between 14 January and 14 March inclusive in any year.
8. In order for the appellant to demonstrate that the properties have been in breach of this condition it is necessary to show the breach occurred continuously for ten years prior to the LDC application of 24 May 2022.
 9. The appellant's case argues that both units have been occupied in breach of the 1998 condition for more than 10 years; that the appeal conditions fell away when the 1998 permission was granted; and, that the use of the two units has not been limited to disabled people.
 10. The appellant's statutory declaration dated 13 May 2022 states that the cottages were purchased in 2008, continued to be open all year, that the appellant stayed at the cottages to save travelling including during January-March, and occupied by family members when away. In 2018 the appellant sold his family home, Ponsworthy House, due to unaffordable repair costs and started to use Wren Cottage for his own use with guest bookings mainly in Robin Cottage.
 11. Detailed evidence from the appellant's wife, Diane Weymouth, indicates that the cottages were occupied during the restricted periods since 2001 by the previous owner as shown in the guest books and that the cottages have been used continually either by guests, Mr and Mrs Weymouth, family or available to rent for 21 years.
 12. Considerable documentary evidence has been submitted such as guest book entries, calendar entries, bookings, and brochure entries among others. Letters of support from family members and others corroborate the appellant's own evidence. Whilst the Authority regard some of this evidence to be circumstantial, incomplete, imprecise or ambiguous, I disagree as it shows in its entirety that it is probable that the cottages were occupied in breach of the condition inasmuch as it relates to the dates of occupancy.
 13. I am satisfied that on the balance of probabilities the cottages have been used in breach of condition (b) of 5/06/257/98/03 in respect of their occupation between 14 January and 14 March inclusive in excess of 10 years prior to the date of the application.
 14. The effect of this decision is that the cottages remain as holiday cottages and that they can be occupied as such throughout the year.
 15. Although the agent for the appellant is of the view that the conditions attached to the permission granted on appeal fell away when the s73 variation of condition was granted, as these were not included as conditions on the decision notice, no explanation for this conclusion has been provided other than stating 5/06/257/98/03 is a planning permission in its own right.
 16. The application subject to the appeal decision refers to the conversion of the properties to disabled holiday accommodation and conditions ii) and (iii) expressly refers to the development permitted only be used as holiday accommodation. Whilst it is good practice for a local planning authority to include conditions from an original permission in a s73 decision, it was

indicated by the Supreme Court in the Lambeth case¹ that original conditions could remain valid and binding (even though not expressly repeated in a subsequent s73 permission) if there was nothing inconsistent to their continued operation. The judgment says it is a matter of construction as to whether a later permission on the same piece of land is compatible with the continued effect of earlier permissions and, following their implementation, conditions would in principle remain binding unless and until discharged by performance or further grant.

17. In the current LDC appeal, the s73 decision is compatible and consistent with the original permission and in my view, these conditions still bite except where non-adherence to them has become lawful through the passage of time, which is the case in respect of non-occupation for part of the year. Although disabled persons accommodation was referred to in the original application, the conditions imposed by the Inspector made no reference to them.
18. The appellant's case that the LDC application was effectively use as a separate dwelling ignores the nature of the original planning permission and the s73 decision which both refer to holiday accommodation. Whilst this is a residential use it is restricted by the nature of the occupancy but not by duration having regard to my earlier conclusion above.
19. For full residential use to be lawful, this should have occurred continuously for more than ten years for both cottages but the evidence clearly indicates that both have been used as holiday accommodation for periods of ten years or more and that Wren Cottage only became the appellant's residence in 2018. Although I have powers to amend the description of the existing use, this does not empower me to grant an LDC for something totally different to what has been applied for, which appears to be for a mixed use of holiday accommodation at Robin Cottage and the use as a single dwellinghouse of Wren Cottage.

Conclusion

20. 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 continued occupation of Wren Cottage in breach of condition (b) of 5/06/257/98/03 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

¹ *Lambeth LBC V SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2019] UKSC 33