The Planning Inspectorate

Appeal Decisions

Site visit made on 10 October 2023

by S M Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th October 2023

Appeal A Ref: APP/C1950/X/22/3296178
Garden Cottage, Danesbury Park Road, Welwyn, AL6 9SE

- 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 in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Sewell against the decision of Welwyn Hatfield Borough Council.
- The application Ref. 6/2021/1675/LAWE, dated 24 May 2021, was refused by the Council by notice dated 12 January 2022.
- The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development and use for which a certificate of lawful use or development is sought is existing stables within the site of an existing dwelling.

Appeal B Ref: APP/C1950/X/22/3296181
Garden Cottage, The Annexe, Danesbury Park Road, Welwyn, AL6 9SE

- 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 and Mrs Adam Sewell against the decision of Welwyn Hatfield Borough Council.
- The application Ref 6/2021/1674/LAWE, dated 24 May 2021, was refused by notice dated 29 December 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is for an existing residential one-bedroom annex.

Decisions

1. Appeal A: The appeal is allowed in respect of the existing operational development (the building) and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful but the appeal is dismissed in respect of the existing use of the land.

2. Appeal B: The appeal is allowed in respect of the existing operational development (the building) and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful but the appeal is dismissed in respect of the existing use of the building.

Procedural Matters

3. In respect of Appeal A, it is my understanding from the evidence provided that the appellants seek a Lawful Development Certificate (LDC) for (i) the stable building and (ii) use of the stable land for residential purposes in Garden Cottage. In respect of Appeal B, the appellants seek a lawful development certificate for a residential annex as part and parcel of the use of Garden Cottage.

Main Issue (both appeals)

4. The main issue for each appeal is whether the Council's decisions to refuse to issue a LDC was well-founded. This turns on whether the use and operations for which the certificates are sought were lawful on the date the applications were made.

Reasons

5. For the purposes of the Act uses and operations are lawful at any time if— (a)no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b)they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. Thus, failure on either (a) or (b) means that the use and/or operations were not lawful on the date of the application and a certificate cannot be issued. The burden of proof falls on the appellant and the standard of proof is the balance of probability.

7. My attention has not been drawn to any enforcement notice served in relation to the developments.

8. Section 171B gives the time limits for enforcement:

- (1) *Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*

- (2) *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*

- (3) *In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*.

Appeal A - Stables

9. There is no dispute between the parties that the stable building has been in existence since 2006. Dated ariel photographs submitted by the appellants demonstrate its existence for more than 4 years before the date the application was submitted. The stables are constructed as you would expect for a stable building. They are generally of a timber construction with stable doors and

unglazed windows. Therefore, in accordance with S.171B(1) of the Act, the building itself is lawful.

10. The appellants also seek to establish that the land on which the stable building is sited has a residential use. The appellants' argument is that the stables are constructed on land which is in the same planning unit as the house. Their justification for this is that they claim that the red line edge which granted permission for the house included the land upon which the stables are sited. In addition, they say that the stables have been used in connection with the residential use of the house for at least 10 years.

The Planning Permission

11. The Council says that when the existing dwelling, which replaced a previous dwelling, was granted planning permission in 1999[1], the curtilage was restricted to a smaller area which did not include the land on which the stables have been constructed. However, the term "curtilage" is not the same as the planning unit and neither is curtilage a use of land. It is the planning unit and the use of the land that are relevant.

12. There is dispute over where the red line edge was drawn on the 1999 permission as there are three edged areas on the approved plans and there are no colour copies of those plans. All the lines on the plans before me are black.

13. The outer line on the location plan relating to the 1999 planning permission includes the land containing the stables. There is also an inner line on the same location plan which does not include the stable land. In addition, there is a site plan which includes a third area with a line around it with the annotation "new residential curtilage edged in green". A green edge restricts the curtilage of the dwelling by a condition of the planning permission. The stable building is outside of this third area. In summary, the stables are within the large area, which the appellant claims defines the red line edge, but outside of the two smaller areas.

14. The appellant says the "green edge curtilage" on the site plan is a larger area of land than the inner line on the location plan, and therefore, in his opinion, the inner line on the location plan could not be the red line and therefore, he submits that the outer line on the location plan is the red line. In my assessment, the "green edge curtilage" on the site plan is wider than the inner black edge on the location plan.

15. These two smaller edged areas conflict but this does not automatically mean that the outer line was the red edge. For example, there could be drafting errors. It is also possible that the outer edge was a blue edge showing land in the ownership of the appellants. It is impossible to know, due to the lack of colour, where the red edge was drawn. I appreciate that the appellants are frustrated that the Council did not provide them with a coloured plan but, for the purposes of this appeal, the onus is on the appellants to provide the evidence.

16. On the evidence before me, and particularly in the absence of coloured plans, there is insufficient evidence that the red line is the outer line defining the planning permission.

[1] N6/1999/0192/FP

Use of the land

17. As I have found that the appellants have not demonstrated that the land benefits from residential use by virtue of a grant of planning permission, I will now examine the use of the land. The appellants must be able to demonstrate that the land had been in use for a continuous period of 10 years as part and parcel of the residential use of the house. The relevant period would be a 10-year period preceding 24 May 2021.

18. The appellants claim that the land has been used as an equestrian use and for the storage of building materials in connection with the appellants' business and that these uses were incidental to the primary residential use of the house. However, no particular details of these activities are before me. For example, I have no detailed evidence of horses being stabled on the site, let alone any connection between such horses and the residential use of Garden Cottage. I note that a planning statement submitted under a withdrawn 2021 application[2] suggested that the land was used for the stabling of horses for the enjoyment of the occupiers of Garden Cottage but this is insufficient to demonstrate a 10 year use prior to the relevant date. The appellant has provided an aerial photograph of a slightly worn track which they claim was made by horses but I have no substantive evidence that the track was actually made by horses. Furthermore, I have no substantive evidence of the existence of the building business that the appellants refer to or that this business was incidental to the residential use of the dwelling.

19. The appellant also says that there are structures which look like horse jumps on the aerial images. However, the images are not clear enough to identify horse jumps and even if there were horse jumps on the land at some time during the relevant period, this does not mean that the horses were associated with the occupants of the house.

20. I accept that the land has always been accessible from the more formal garden area of the house and that it is also owned by the appellants but these factors do not mean that the land was used in connection with the dwelling for the relevant period or that it was not used for any other purpose. Furthermore, the land can be accessed via a gate which is independent to the main vehicular access for the dwelling. This gate is shown on a 2018 plan for a previous planning application[3].

21. In addition, the 2017, 2018 and 2020 aerial photographs all show several vehicles parked on the land. The house has a parking area of its own with cars parked on it in the photographs. There is no explanation for the additional car parking on the stable land and it seems that the number of cars across both areas indicates that individuals were accessing the stable land by vehicles independent of the dwelling. Whilst not determinative, this casts some doubt about the land being used as part and parcel of the dwelling.

22. The appellant has referred to the previous dwelling on the site, but no evidence has been provided to show that the appeal land was in residential use before the erection of the existing dwelling.

[2] 6/2021/0563/HOUSE
[3] 6/2018/3251/OUTLINE

Appeal B – Annex

23. There are two components to the LDC. One is the use of the building for residential purposes and the other is operational development.

24. The appellants say that the annex is part and parcel of the use of the house as a dwelling. They say that no change of use has occurred and no separate planning unit has been created. The Council neither accepts that the annex is within the same planning unit as the dwelling, neither does it accept that it has existed for at least 4 years.

Use

25. In respect of the use, the annex is not within the green edge site plan and it is not clear that it is within the black inner edge on the location plan. I have already found that there is insufficient evidence that the red line defining the 1999 permission is the black outer line on the location plan. Therefore, due to the lack of clarity in respect of the plans, the 1999 planning permission cannot be relied upon to demonstrate that the annex is within the same planning unit as the main dwelling.

26. As I have no reason to believe that it was built as anything other than a residential annex, S.171B(3) applies to the residential use of the building which requires a 10-year period for immunity. As the appellants say that the annex was constructed in 2015, it does not meet the 10-year requirement. Therefore, the residential use of the building is not lawful.

Operational Development

27. Under S.171B(1) the relevant time period for operational development is 4 years. The submitted aerial photographs are unclear, however, the one dated March 2017, in the appellants' planning statement for the replacement annex[4], does show a shape that is not inconsistent with the annex. The same shape is apparent on the aerial photograph dated April 2020. Both pictures show the same thing.

28. In addition, a statutory declaration by a previous owner, witnessed by a solicitor and dated 15 September 2020, refers to an annex as having been occupied in excess of 4 years. The appellants have also provided Council Tax band details for an annexe at Garden Cottage, which states that an annex has been registered from 20 September 2015. The record also states that it was last updated on 10 January 2021.

29. The Council say that there is ambiguity about which structure is referred to in the Council Tax documents and the statutory declaration. They query whether the annex was actually another timber structure on the site as they say that two annexes were referred to in 2015 sales particulars for the house. However, the 2015 sale particulars describe one annex as being a log cabin/games room and the other annex as containing a kitchen, living room, double bedroom and shower room with WC and a veranda.

30. Another set of sales particulars for the house that the appellant has submitted for the appeal for the replacement annex, have a copyright date of 2018. They

[4] APP/C1950/W/22/3296366

describe a games room/gym attached to the garage and a one-bedroom, self-contained annex.

31. At my visit I saw two timber buildings: one was a timber building attached to the garage (described and notated on floorplans as the games room/gym on the 2018 sales particulars) and the other was a detached self-contained residential annex which fits the descriptions on both sets of sales particulars.

32. I saw that the annex is weathered externally and the fittings and fixtures inside are aged in a way which I would expect for a building dating from 2015. I also went into the timber garage extension and there was no visual evidence that it had ever been fitted out for residential purposes and I have no substantive evidence that it ever was. The appeal annex is consistent with what is described in both the 2015 and the 2018 sales particulars. Furthermore, the annex referred to in the 2018 sales particulars cannot have been the timber garage extension because the sales particulars describe the annex as a "detached building".

33. The Council also argue that the annex referred to in the statutory declaration/Council Tax records might have been the "recently demolished building" shown on a 2018 site plan which accompanied an application for a new dwelling. I think it is highly unlikely that the annex referred to in the Council Tax record, which was last updated in 2021, is the demolished building referred to on the 2018 site plan because the Council Tax record significantly post-dates the demolished building.

34. In addition, the Council point out that neither the annex nor the other timber structure were shown on site plans for other planning applications. These plans were dated December 2018 and October 2015. Whilst I accept that the site plans for previous applications do not show the annex, this does not necessarily mean that it did not exist.

35. There is nothing substantive that would suggest that the Council Tax record and the statutory declaration refer to any other building than the one the appellants state it does.

36. Given the Council Tax record, the statutory declaration, two sets of sales particulars, the aerial photographs and the existence and condition of the building, I consider that, on the balance of probabilities, the annex building has been there for at least the required 4-year period.

Summary - both Appeals

37. I am not persuaded that the 1999 planning permission defined the land where the stable or the annex is situated as being within the same planning unit of the dwelling. I have insufficient evidence that a lawful residential use of the stable land or the annex has been established. The onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find that the appellant's evidence, on the balance of probabilities, does not meet this requirement. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

38. Nevertheless, I find that on the balance of probabilities that both buildings have been substantially complete in excess of 4 years and the buildings themselves are lawful.

Conclusion

39. 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 land and the use of the annex as residential was well-founded and that the appeals in respect of those elements should fail.

40. For the reasons given above, I conclude on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of the operational development (i.e. the buildings) was not well-founded and the appeals should succeed in that respect. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Siobhan Watson

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 24 May 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked blue within the red edge on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the date of the application those works comprising development were immune from enforcement in accordance with, in accordance with S.171B(1) of the Act.

Signed

Siobhan Watson
Inspector

Date: 27th October 2023
Reference: **APP/C1950/X/22/3296178**

First Schedule
Stable building

Second Schedule
Garden Cottage, Danesbury Park Road, Welwyn, AL6 9SE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule would have been 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 operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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.
The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 27th October 2023

by Siobhan Watson BA(Hons) MCD MRTPI

Land at: Garden Cottage, Danesbury Park Road, Welwyn, AL6 9SE

Reference: APP/C1950/X/22/3296178

Scale: Not to scale



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 24 May 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked green on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the date of the application those works comprising development were immune from enforcement in accordance with, in accordance with S.171B(1) of the Act.

Signed

Siobhan Watson
Inspector

Date: 27th October 2023
Reference: **APP/C1950/X/22/3296181**

First Schedule
Timber annex building

Second Schedule
Garden Cottage, Danesbury Park Road, Welwyn, AL6 9SE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule would have been 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 operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 27th October 2023

by Siobhan Watson BA(Hons) MCD MRTPI

Land at: Garden Cottage, Danesbury Park Road, Welwyn, AL6 9SE

Reference: APP/C1950/X/22/3296181

Scale: Not to scale

