



Appeal Decision

Site visit made on 3 October 2023

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date 10 November 2023

Appeal Ref: APP/P1805/X/23/3321060

Sugarbrook Nurseries, Sugarbrook Lane, Stoke Pound, Worcestershire B60 3AU

- 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 Mark Banham against the decision of Bromsgrove District Council.
- The application ref 23/00207/CPE, dated 20 February 2023, was refused by notice dated 17 April 2023.
- 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 use of timber building and land surrounding the cabin and the timber building for incidental domestic purposes.

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

Applications for costs

1. An application for costs was made by Mr Mark Banham against Bromsgrove District Council. This application is the subject of a separate Decision.

Main Issue

2. The main issue is whether the refusal of the LDC was well-founded.

Reasons

3. Section 191(2) of the Town and Country Planning Act 1990 states that for the purposes of this 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.
4. Section 171B(3) of the Town and Country Planning Act 1990 states that "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."
5. The burden of proof is on the appellant and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence

alone is sufficiently precise and unambiguous to justify the grant of a certificate.

6. A separate LDC has been granted for the use of The Cabin¹ as a dwelling. That LDC submission included the timber shed and garden elements subject to this appeal, with those parts being refused.
7. The Council refer to the overgrown appearance of the site and apparent presence of shrubs on aerial pictures of the site. The frequency, extent and evidence to support the use of the outdoor area in association with The Cabin is also questioned.
8. The area subject to the appeal sits relatively tight to The Cabin and the timber building is also in close proximity to the dwelling. Statutory declarations have been provided by the occupants of The Cabin² covering the period from February 2013 to the submission of the LDC in February 2023 as well as from the owner of Sugarbrook Nurseries³. These declarations have been made in accordance with the Statutory Declarations Act 1835 and I give them significant weight.
9. Although the submissions cover the full 10 year period, they do not give precise dates and frequency of the use of the timber building and outdoor area within that period. However, the statutory declarations are clear in stating that the timber building was used as a carport and for storage of domestic paraphernalia. Although they do not state it was not used for any other purpose, there is no compelling evidence or suggestion to indicate that it was used other than for domestic purposes associated with The Cabin.
10. Aerial pictures show greenery around the timber building and covering much of the area subject to this appeal. Nonetheless, the proximity of the greenery to the timber building is comparable to that of The Cabin which the Council accepted had been used as a dwelling. The aerial pictures do not show domestic paraphernalia. Notwithstanding this, these are a snapshot in time, and do not mean that potentially moveable objects such as outdoor seating have not been present. There is no clear evidence to indicate that the growth of vegetation on site over this period meant the area was not used for domestic purposes.
11. Unlike for Unit 4 at the wider Nurseries site, the PCN response from the appellant did not mention the outdoor area or timber building subject to this appeal being used in association with The Cabin. The timber building was identified as a carport, but not specifically associated with The Cabin. However, the plan associated with the PCN identified the timber building separately to The Cabin, whereas the structures said to be incidental to Unit 4 were all identified as being Unit 4. As such, it does not demonstrate that the building was used for purposes other than those stated by the appellant in their submission.
12. Consequently, I consider that the evidence from the Council on how the timber building and land around The Cabin was being used does not indicate that the appellant's version of events is less than probable. From the evidence before me, on the balance of probabilities, the use began more than ten years from

¹ 21/01291/CPE

² Gareth Boast and Sophie Boast

³ Mark Banham

the beginning of the date of the breach. Therefore, no enforcement action may then be taken in respect of the use.

Other Matters

13. That the letter from the Housing Officer related to a different part of the Nurseries site does not alter my findings above.

Conclusion

14. 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 use of timber building and land surrounding the cabin and the timber building for incidental domestic purposes 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

15. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Stuart Willis

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 20 February 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 submitted evidence demonstrates, on the balance of probability, that the use of the timber building and land surrounding the cabin and the timber building for incidental domestic purposes has occurred for a continuous period in excess of 10 years and has not been subsequently abandoned or that a further material change of use has since occurred.

Signed

Stuart Willis

Inspector

Date: 10 November 2023

Reference: APP/P1805/X/23/3321060

First Schedule

Use of timber building and land surrounding the cabin and the timber building for incidental domestic purposes.

Second Schedule

Land at Sugarbrook Nurseries, Sugarbrook Lane, Bromsgrove, Worcestershire, B60 3AU

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

Plan

This is the plan referred to in the Lawful Development Certificate dated 10 November 2023.

by **Stuart Willis BA Hons MSc PGCE MRTPI**

Land at: Sugarbrook Nurseries, Sugarbrook Lane, Bromsgrove, Worcestershire, B60 3AU

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Scale: Not to Scale

