



Appeal Decision

Site visit made on 16 January 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal Ref: APP/C1625/X/23/3328060

Galloway Cottage, Waterley Bottom, North Nibley, Gloucestershire, GL11 6EF

- 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 PAUL DRAGE against the decision of Stroud District Council.
 - The application ref S.22/1174/CPE, dated 26 May 2022, was refused by notice dated 28 February 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 land as residential garden and garage outbuilding (Class C3) in association with the property known as Galloway Cottage.
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Decision

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

Preliminary Matters

2. I have taken the description of the appeal from the appeal form as this best describes what the appellant is seeking.

Reasons

3. Galloway Cottage stands on a hillside and is accessed by a steep winding track. Once into the appellant's land the relatively narrow grassy area to the left is, according to the appellant, part of his front garden. To the right is a much larger area of grass and scrub on a steep hillside described as a paddock. At the bottom corner of the paddock, by the access drive, is a wooden structure, about the size of 3 small garages. This is in a poor state of repair but is currently used for the parking of a car and storage of domestic items, tools and general grounds maintenance equipment. It is this structure the appellant wants to continue using for its current purpose and the area to the left of the drive as garden land. There would seem to be no dispute that the structure has been in place for many years, but the Council argue there is no evidence that it is part of the residential curtilage of Galloway Cottage. They consider it is more likely to be linked to the paddock and so, presumably, has an agricultural, rather than a domestic use. A similar argument relates to the 'garden land' that there is no evidence to clearly show it being used residentially.
4. I had a good look around the structure. It is in a somewhat dilapidated state and is patched up with various materials. Nevertheless, it is clearly designed

(if that is the right word) to be accessed from the drive. The various sub-divisions are all open to the front, that is to the drive, and there is only a single small door giving access to the rear – or paddock. It was clearly not built to be easily accessed from the paddock directly – as a stable, or agricultural machinery store might have been. It is fenced off from the paddock by a simple line of poles and string, but the appellant pointed out on site the base of a curving line of tree stumps planted, apparently by a previous owner many years ago, which would have clearly separated the structure from the paddock.

5. The appellant has also provided various statutory declarations, including one from the gardener and handyman to the previous owner which supports the argument the building was erected in the 1980s and used for domestic storage and car parking. Photographs provided from 2013 by the gardener show this use clearly taking place and the structure separated from the paddock by the trees that have now been removed. The son and the granddaughter of the previous owner also back this up.
6. Consequently, all the written and physical evidence points to the structure being built in the 1980s and used for domestic storage and car parking and never being linked to the paddock.
7. As to the garden land, this is separated from the paddock by the access drive. At present it is in a rather forlorn state, but photographs show it was covered in ornamental bushes and shrubs. The statutory declarations from the son and granddaughter explain the gardener maintained the 'garden land' but not the paddock, the gardener agrees and says the paddock was topped by a local farmer once a year. The aerial photographs support the difference in use between the paddock and the 'garden land', the latter being planted up with shrubs etc.
8. The Council have no contrary evidence of their own. They say there is no link between the 'garden land' and the residential curtilage of Galloway Cottage, but that is not the question before us. The question is what use the land was put to and the evidence suggests, on the balance of probabilities, it was used as garden land, or in planning terms was used residentially. Whether it forms part of the curtilage of Galloway Cottage is another matter entirely and not one I am going to venture an opinion on, nor one suitable for an LDC concerning a material change of use.

Conclusion

9. I shall allow the appeal and grant the LDC as applied for with the description of the use taken from the appeal form.

Simon Hand

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 26 May 2022 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 use has been ongoing for 10 years or more.

Signed

Simon Hand

Inspector

Date: 29 January 2024

Reference: APP/C1625/X/23/3328060

First Schedule

The use of land as residential garden and garage outbuilding (Class C3) in association with the property known as Galloway Cottage.

Second Schedule

Land at Galloway Cottage, Waterley Bottom, North Nibley, Gloucestershire, GL11 6EF

IMPORTANT NOTES – SEE OVER

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 described in the First Schedule taking place on the land specified in the Second Schedule was 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 29 January 2024

by **Simon Hand MA**

Land at: Galloway Cottage, Waterley Bottom, North Nibley, Gloucestershire, GL11 6EF

Reference: APP/C1625/X/23/3328060

Scale: Not to Scale

