



Appeal Decision

Site visit made on 31 January 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/J9497/X/23/3320068

Waycotts Orchard, Merrifield Road, Buckfastleigh, Devon TQ11 0HE

- 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 Tobias Goulden against the decision of Dartmoor National Park Authority.
 - The application ref 0337/22, dated 10 August 2022, was refused by notice dated 30 November 2022.
 - 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 described as "creation of residential dwelling known as the Cabin".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Tobias Goulden against Dartmoor National Park Authority. This application is the subject of a separate decision.

Preliminary Matters

3. I carried out an accompanied site visit. The representative of the National Park Authority (NPA) on occasions referred to facilities they said had changed since their last site visit. I made it clear that I will be determining the application with regard to the evidence and the circumstances at the date of the refused application.

Main Issue

4. The main issue is whether the NPA's decision to refuse the LDC was well founded. The onus of proof in LDC cases is upon the appellant and the standard of proof is on the balance of probabilities. The planning merits of the proposal are not relevant to take into account.
5. The application was submitted on 10 August 2022 and has been made on the basis that the appellant considers that the building outlined in red on the application plan, is a single dwellinghouse. As such, they consider that relevant time-limit for taking enforcement action against the breach of planning control is as set out in s171B(2) of the Act. This states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

The material date is therefore 10 August 2018. If the use as applied for had begun before that date, it would be lawful by reason of s191(2) of the Act.

Reasons

6. The building to which the appeal relates is close to the adjoining Merrifield Road and is part of a larger site incorporating other buildings. Close to the building is a poly-tunnel and some outside storage including an area where logs and water tanks are kept. There were chickens within a fenced off area with cover provided by a trampoline just in front of a large storage shed. Close to the front, northern side of the building to which the appeal relates, a broader area of land controlled by the appellant, slopes down substantially and contains some woodland although I did not walk down into that area.
7. The building which has been used for residential purposes consists of 3 parts which are illustrated by the submitted plans. Firstly, at the rear, 'the store' immediately adjoins the substantial stone-wall that separates the site from the road. The store includes a bed-sitting area with 2 bunk-beds, another single bed as well as a sofa, a solid fuel-burning stove and a cubicle where there is a porta-loo. Within the middle section, which is linked internally by a doorway, there is another solid fuel-burning stove, kitchenette with a cooking-hob and a sink, as well as an area where electrical items are charged. Lastly, on the northern part of the building there is a covered veranda with a shower area. The main parts of the building look from the outside like 2 conjoined buildings each with single-pitched roofs. To the immediate western side of the building are the water tanks storing harvested rainwater. On the roof of the building, there are some solar panels and flues for the stoves protruding out of the top.
8. The appellant started sleeping in the store closest to the road, around Christmas 2017. The property was then purchased by the appellant in August 2018. There is no dispute between the main parties that the appellant has lived at the site since that time. In August 2020 the building was, in the appellant's words, "upgraded" further with the addition of the middle-section replacing a previous open-fronted covered veranda and the construction of the current veranda.
9. There is no statutory definition of "dwellinghouse" for the purposes of s171B(2). However, whilst I am referred to the Gravesham¹ judgement it is also important to keep in mind what s171B(2) says. What I need to determine is whether there is a "building" that was subject to a change of use to "use as a single dwelling house" and if so, whether that has occurred for the 4 years prior to the application for the LDC. Gravesham related to whether a chalet which had a planning condition limiting the period of the year when it could be occupied, was also a dwellinghouse for the purposes of the Town and Country Planning General Development Order 1977 (GDO) which was relevant at that time. That chalet had been extended and the challenged appeal decision concerned whether the extension was permitted development. In the present case, I am considering the use of the building and not whether any extensions are permitted development under the current version of the order.
10. Notwithstanding the differences as explained above, in the absence of a statutory definition, Gravesham is a useful starting point to understand the distinctive characteristics of a dwellinghouse. Those are its ability to afford to

¹ Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142; [1983] JPL 307

those who use or used it, the facilities required for day to day private domestic existence. In Gravesham, the chalet did not have an inside toilet or bathroom but there was a separate toilet within the same planning unit. It was however a brick building with a pitched, tiled roof with 3 rooms.

11. Although there are 3 sections to the structure in the present appeal, they are integral to one-another and form a single building. Overall, this building contains areas for sleeping, for food preparation, cooking facilities and a place to sit. The porta-loo needs to be emptied elsewhere, in a composting toilet within the separate storage shed. Whilst sewage in dwelling houses is generally disposed of outside of the building through pipework and then onto treatment facilities, the fact that it has to be carried out rather than piped to a tank or mains sewage system, makes things far less convenient than would normally be the case. This is less like a dwelling house in my experience and more like how someone may reside temporarily such as when on holiday in a mobile home or caravan. Washing without a separate bathroom or at the time of the application, at least a shower, is also more basic than I would normally expect within a dwelling house.
12. It is also undisputed, however, that the building as exists now, has not physically been in place in this form since the material date. The significance of changes that took place in 2020 and the terminology used to describe them are in dispute. If, looking objectively at what existed prior to the 2020 renovations, the use of the building was not as a dwelling house, the appellant will not have demonstrated their case notwithstanding what existed when the application was submitted.
13. In 2009, planning permission was given (NPA ref 0249/09) for “the erection of a polytunnel growing house (9.1m x 5.5m), store and raising the height of the roadside wall.” The drawings provided from that planning application show a polytunnel similar to the one on site and also the store. The aerial images provided by the appellant, the dates of which are not disputed by the NPA, are of varying quality but show the roof of the original store building in a similar position in 2010, 2017 and 2020 (the 2011 image is too blurred to be of any assistance). These images do not provide precise details of the work that was done in 2020 or how long this work took. The other evidence is imprecise in these respects as well. However, the 2017 image does indicate that a substantial roof extended from the original store building. In 2020 none of that roof can be seen. The appellant says that they replaced this original veranda with new timbers and glazing in 2020.
14. What is now in place is the enclosed middle room constructed of substantial timbers with glazing, a solid roof and a smaller open-ended veranda to the front of that. The only part of the previous veranda that is confirmed as having been retained is the floor. I did see that floor within the middle room and in the base of the new veranda. According to the application plans, the middle section and new veranda have more than doubled the floor space available.
15. The evidence indicates that these substantial additions have created a very different structure in terms of how it has affected the appearance of the overall building. It is a matter of fact and degree whether the current building is the same building or is another building. That however may not be of critical relevance in this case depending upon my conclusions regarding the nature of the use before those additions were created.

16. The appellant occupied the site permanently from February 2018. There is a suggestion that the previous owners of the site had on occasions stayed in the building but there is no evidence or suggestion by the appellant that it was in the form of a dwellinghouse at that time. The appellant's returned Planning Contravention Notice (PCN) dated 15 November 2021 refers to "building A" having been completed in 2008 and that the flue was installed prior to the appellant first seeing the property in 2017 (I am not provided with any plan that accompanied the PCN but the context of questions and answers indicate that building A is the older store building).
17. In February 2018, the appellant installed a kitchen with a sink and fitted bunk beds within the store. A porta-loo was installed although it is not confirmed whether at this time, it was within the small cubicle with a door, that I saw. Water was harvested for washing and although there is mention of this providing fresh water, it is unclear if that was the case before the 2020 alterations. The use of bottled water for drinking is also referred to. There had already been a solid-fuel stove in place with a flat top. It is not confirmed if that stove is the same one that is currently in place but it would seem that probably it was. The stove that I saw does include a large surface upon which it is entirely feasible that it could be used for some cooking.
18. The appellant in their statutory declaration refers to the original veranda as being a second living space. During that period, cooking also took place under cover of the veranda as well as on the solid-fuel stove in the store. In the absence of much detail about the original veranda and given the information that is possible to glean, it would appear to have been a useful sheltered space. The willow sides are not described in much detail. However, to me from that limited description, this conjures up a form of garden fencing material that would be far less robust in terms of keeping out wind, rain, other elements and would be far more difficult to keep warm in, than the solid walls of the old store or the building that exists now. From the information available to me, the original veranda could be considered to be a room within a building. It was probably not much more than a large external shelter.
19. Prior to the 2020 upgrades, therefore, a single-room building existed which the submitted drawings show measured 3.2m by 5.3m along with an external shelter. A very small living space was provided with very basic facilities including a toilet which, even if separated by a door, would be very intimately associated with activity within the rest of the room. This may be tolerable for a single person living alone. When people such as the appellant's children stayed, this would be (and remains) a poor functional situation. Similarly, washing using a bowl without separate facilities when only one person is in occupation may be passable, but it is not what would normally be expected within a dwelling house. I recognise that in previous eras washing would take place in a similar way in front of a living room fire but cumulatively, the sanitary facilities provided within the single room within the store, were much more primitive than I would expect within a dwelling house. Furthermore, even if the flat-top of the solid-fuel stove could be used for cooking, from the evidence it seems that cooking also had to take place in the external shelter rather than what could reasonably be considered to be a another room.
20. These very basic facilities afforded prior to 2020 would therefore be tolerable for somebody to live a simple existence within the store building. Whilst the building was used as a place to dwell, the facilities were lacking from what I

would expect within a building that was being used as a dwelling house, within the terms set out in *Gravesham*. As well as that case, another that has been referred to me is *Grendon*². The building prior to the 2020 changes was not physically a dwelling house even if it was able to sustain the appellant's modest lifestyle. This was very similar to *Grendon* where it was found that the building lacked the physical attributes of a dwelling house and so the 4 year period under the provisions of s171B(2) did not apply.

21. Whether or not this is a low impact way of living, as I say above, I cannot consider the planning merits of the case. Furthermore, the NPA's policies for low impact "residential development" do not attempt to define what a dwelling house is and policies are not relevant to take into account in this appeal. The appellant has had a great deal of support from local people. I don't in any question that they are reasonable people but much of what is said by them in their representations relates to the merits of the case and suitability of the development, which is not relevant to consider in this appeal for a LDC. They do confirm that the appellant has lived at the site since 2018 but that is not disputed by the NPA. The manner of occupation and what the building contained is in dispute and those representations do not provide much in the way of precise, first-hand evidence of what the building contained and how it was used, over the full 4 year period.
22. When the further changes were made with the replacement of the previous veranda with the additional timber structure including the new veranda, those works clearly substantially added to the overall building providing much better facilities. The original core remained but the substantial additions have created an overall building which is more akin to what I would recognise as a dwelling house albeit still a very basic one, rather than the previous use of a single internal room for living in a very primitive manner. In whatever way those changes are described and even if they are mere extensions of the original building, as the current physical attributes or similar have not existed for 4 years, the appellant has not demonstrated their case.

Conclusion

23. For the reasons given above I conclude, that Dartmoor National Park Authority's refusal to grant a certificate of lawful development in respect of the creation of residential dwelling known as the Cabin, was well-founded. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andy Harwood

INSPECTOR

² *Grendon v FSS & Cotswold DC* [2006] EWHC 1711 (Admin)