



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 5th March 2024

Appeal Ref: APP/Q9495/C/23/3318605

The Bothy, Lofshaw, Troutbeck, Penrith, CA11 0SH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Roger Savage against an enforcement notice issued by Lake District National Park Authority (NPA).
 - The notice was issued on 9 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change to use as a unit of residential accommodation.
 - The requirements of the notice are to: Discontinue the use of the building as a unit of residential accommodation.
 - The period for compliance with the requirement is: Three months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the word 'Discontinue' be deleted from the requirements paragraph of the notice and substituted with the word 'Cease'.
2. The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Preliminary Matters

3. The determination of the appeal turns solely on consideration of ground (d), which is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The written evidence alone was sufficient for the consideration of the appeal, and so it was not necessary for me to carry out a site inspection.

The notice

4. The notice requires the unauthorised mixed use to 'discontinue'. In the interests of precision, I have directed that this term be replaced by the word 'cease'. This is because of a subtle difference in the meaning of these words: the word 'discontinue' carries the inference that, if the continuity of the use has been broken, it might recommence as a future unspecified time. Conversely, the word 'cease' more definitively means bring to an end.

Reasons

Hidden ground (c)

5. Although the appellant brought the appeal on ground (d) alone, much of his case turns on the argument that the Bothy was converted for residential use at the same time as the operational works he carried out. There is discussion between the main parties as to whether or not the building amounts to a dwellinghouse. Taking these factors into account, it is appropriate to consider this matter as a hidden ground (c), which is that there has not been a breach of planning control. In other words, if the building is in fact a dwellinghouse,

then its occupation as a residential unit cannot amount to a material change of use.

6. The Bothy is a rectangular single storey building constructed of stone and slate. Prior to 2013, it was a disused agricultural building whose roof had collapsed, and whose walls were only partially standing. The appellant began the process of rebuilding the structure in 2013. By 2015, a new roof had been provided, making the building weather tight, as confirmed by a receipt from Wayne Rumney, dated 15 October 2015.
7. The appellant states that he began using the building for overnight stays in or around October 2015, following the completion of the internal doors and flag flooring. A wood burning stove was fitted in January 2016, and the building was furnished in a rudimentary fashion. A receipt dated 26 January 2016 is supplied for the installation of the stove.
8. An application for a lawful development certificate (LDC), ref: 7/2020/3123, was submitted for 'rebuilding external walls, re-roofing, installation of rooflights, timber doors, internal floor and installation of woodburning stove with external flue pipe and use of the building as a dwellinghouse'.
9. The NPA found that the building works were lawful as they had been substantially completed more than four years prior to the date of the LDC application. However, as the building lacked basic day-to-day facilities such as electricity, running water, washing facilities, a toilet and a kitchen, the NPA concluded that it was not a dwellinghouse for planning purposes.
10. There is no definition of 'dwellinghouse' in the Act. In *Gravesham BC v SSE and O'Brien* [1983] JPL 307, it was held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons.
11. In *Grendon v FSS & Cotswold DC* [2006] EWHC 1711 (Admin), [2007] JPL 275, it was held that the building in question, which by any standard afforded basic accommodation, did not have the physical attributes of a dwellinghouse. The Court also endorsed *Backer v SSE* [1983] JPL 167 in that the use of a dwellinghouse has to be more than just 'camping out'.
12. Externally, the Bothy retains the appearance of a traditional agricultural building. Inside, it has a seating area close to the wood burning stove, and a table and benches. Behind the external timber doors, glazed screens allow natural daylight at one end of the building, which is augmented by a number of rooflights. A bed is provided which may be pulled up and stowed against the wall when not in use.
13. The appellant confirms that there is no mains electricity or running water at the building. However, he says that cooking and washing facilities are available, and that the heating within the building allows it to be occupied all year round. The NPA provide photographs of the interior of the building dated 19 November 2019. The picture of the table shows a small table top cooker with a kettle on top, which appears to be the only means of cooking food and heating water. Lanterns containing candles are shown in various positions.

14. I have also been provided with a page that advertises the Bothy as self-catering accommodation for up to three adults. It is described as 'camping without canvas', basic and yet offering 'everything you will need'. There is a solar panel which, weather permitting, provides enough electricity to charge a mobile phone or iPad and give some internal light. There are water butts at the building, which appear to be the only source of fresh water. The separate building next to the Bothy contains a wood store and a compost toilet. A hot water shower is available in a nearby barn/shed.
15. Returning to the wording of Gravesham, the presence within a dwellinghouse of facilities required for day-to-day private domestic existence is key. In this particular case, there appears to be no sink, and therefore no satisfactory provision of washing facilities. There appears to be no means to store or refrigerate food, and it is unclear whether the water from the water butts is fit for human consumption. In any event, no water at all would be available from this source in freezing weather, or during prolonged dry spells. Whilst a toilet and shower are available in the vicinity, one must leave the Bothy to use them. The building itself therefore does not provide for these day-to-day requirements.
16. Drawing these factors together, I am satisfied that the appeal site is not a dwellinghouse due to the lack of facilities required for day-to-day private domestic existence. The appellant asserts in his Statutory Declaration that the Bothy could be lived in on a permanent and all year-round basis. However, although one might be able to survive under these conditions, it would indeed be little more than camping. As it is not a dwellinghouse, its residential use amounts to a material change of use for which planning permission is required.
17. I take into account the appellant's point that second homes do not cease to be dwellinghouses when they are not being used. However, the lawfulness of their use can only persist during periods of vacancy following the grant of planning permission, or if lawfulness has already accrued through the passage of time.
18. The appeal on ground (c) therefore fails.

Ground (d)

19. The time limits for taking enforcement action are set out in s171B of the Act. Section 171B(2) provides that, in respect of 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.
20. The NPA argue that because the Bothy is not a dwellinghouse, it is subject to the ten year period provided by s171B(3). However, it is clear from the wording of s171B(2) that the central consideration is simply whether any building is being used as a dwellinghouse. If the subsection s171B(2) applied only to buildings which demonstrably are dwellinghouses, then it is unlikely that using them as such would be a material change of use. The development in this case is therefore subject to the four year rule in this case.
21. The enforcement notice was issued on 9 February 2023. To succeed on ground (d), the appellant needs to submit sufficient precise and unambiguous evidence to show, on the balance of probabilities, that the unit was occupied on or

before 9 February 2019, and that the use was continuous during the four-year period. The onus of proof lies on the appellant.

22. There is no statutory definition of the terms 'continuous occupation' or 'significant break', which are key to this case. These are a matter of fact and degree, based on the available evidence.
23. In his statement of case, the appellant gives some general detail of the pattern of occupation of the appeal site. He says that the building was being occupied on a regular basis by the time the NPA commenced their investigations in 2019. However, he goes on to confirm that the building is not permanently occupied, but 'is occupied on a regular basis throughout the year for several days each week and on many occasions longer periods'. It is used as a second home, although not in the normal sense as his main residence is only around three miles away.
24. As referred to above, the appellant submits a Statutory Declaration, which is signed and witnessed but not dated. In it, he states that 'We stay in the property several days each week with our occupation being semi-permanent during the summer months. In the winter months we live in the Bothy less frequently but it is still occupied each week.' As the document is undated, it does not help to establish a period of occupation of four years or more prior to the date of the enforcement notice. Whilst the receipts referred to above support the timeline of physical works to the building, they do not in themselves demonstrate the use of the building as a residence.
25. The appellant is clear that the building is not permanently occupied. Whilst I understand that individuals may wish not to use mains electricity or running water, this has the consequence that no utility bills or invoices can be provided to build up a picture of continuous occupation. That being so, it would be expected that dates of occupation of the building over the requisite period could be produced, to satisfy the requirement for precise and unambiguous information. The appellant is best placed to know the occasions when he occupied the Bothy between October 2015 and 9 February 2023, but declines to give any specific evidence.
26. Regular occupation of a building is not the same as continuous occupation for planning purposes. On the face of it, the fact that it is not permanently occupied points to a lack of continuous occupation. Despite having had ample opportunity through the appeal process, the appellant has not produced a precise and detailed timeline of occupation of the appeal site.

Conclusion

27. In conclusion, I am entirely willing to accept that the appellant has occupied the Bothy building temporarily since 2015. However, on the balance of probabilities, it has not been satisfactorily demonstrated that the appeal site has been continuously occupied as a residence for four years prior to the date of the enforcement notice.
28. Therefore, the appeal is dismissed and the enforcement notice, as corrected, is upheld.

Elaine Gray INSPECTOR