

Appeal Decision

Inquiry held on 22 February 2024

Site visit made on 22 February 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2024

Appeal Ref: APP/U2370/C/23/3322003

Land at Helmsdeep Long Lane, Barnacre, Preston, Lancashire PR3 1RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Susan Gutierrez-Inostroza against an enforcement notice issued by Wyre Borough Council.
 - The notice was issued on 27 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land consisting in:
 - (i) the material change of use of the building (hereinafter referred to as the 'Shed') in the approximate location on the land shown shaded in blue on the attached plan marked Plan 1 to use as a single self-contained residential dwellinghouse;
 - (ii) the use of the part of the land on which the shed is erected for the residential purposes described at sub-paragraph 3.(i) above; and
 - (iii) the use of all other parts of the land for purposes ancillary and/or incidental to the residential uses described at sub-paragraphs 3.(i) and 3.(ii) above.
 - The requirements of the notice are to:
 - (i) cease the use of the shed as a self-contained residential dwellinghouse;
 - (ii) cease the use of the part of the land on which the shed is erected for residential purposes;
 - (iii) cease the use of all other parts of the land for any purpose ancillary or incidental to the residential use described in sub-paragraphs 5.(i) above and 5.(ii) above respectively.
 - The period for compliance with the requirements is: six months from the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the duplicate 'at' from the site address in paragraph 2.
2. Subject to the correction, the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

3. I have a duty to ensure that the enforcement notice is in order. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms. I am satisfied that the correcting the site's address to remove a duplicate 'at' will not cause any injustice. Both parties agreed with this view.

Reasons

4. Ground (d) is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters.

5. At an Inquiry concerning a previous enforcement notice¹, the Council accepted that the built form of the 'shed' was immune from enforcement action as it had been present on the land for more than four years. As a result, that notice was varied to remove reference to the shed. However, the Council did not accept that the use of the shed was immune from enforcement action.
6. For the appeal to succeed on ground (d) the shed must have been used as a single dwellinghouse for a continuous four-year period at least prior to 26 March 2019 or for any continuous four-year period before that. For the appeal to succeed on ground (d) for the other parts of the land comprising the appeal site, both parties agreed that the ten-year period dating back from when the enforcement notice was issued is 26 March 2013. This is the date from which they must have been in continuous use ancillary and/or incidental to the residential use of the shed as an independent dwelling.
7. The shed was erected in 2011. The building was initially used for storage and welfare facilities in association with the use of the land for agricultural purposes. Water and sanitation were available to provide facilities for workers on the land. Photographs from 9 August 2011 show the shed with no windows, no decking, no chimney flue, porch or other domestic items.
8. There is no definition of the term 'dwellinghouse' in the Act, but it was accepted in *Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P & CR 142* 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. Whether or not this is the case is a matter of fact and degree.
9. In October to December 2011, the shed was converted into living accommodation by adding: a window to the front elevation, insulation and plaster board to the internal walls, a shower, gas heating, a kitchen including a gas cooker, and electrics. A double bed provided sleeping facilities. Over subsequent months and years, the facilities in the shed were added to by the appellant² but at some point, in December 2011, the shed offered facilities to support day to day private domestic existence. This enabled the appellant and her husband to move into the shed from a static caravan that they had been living in elsewhere on the land. The caravan did not provide living accommodation for day-to-day living as it did not have welfare facilities. On this basis, the appellant says that the move to the shed was out of necessity so that they could manage the alpacas on the land, not through choice.
10. The appellant says that she and her husband continued to live in the shed until February 2016. It is claimed that their occupation between January 2015 and February 2016 was to provide a stable living environment for their son for health reasons, though there is no supportive evidence of the son's health conditions. Even so, if true, the appellant and her husband would have lived in the shed longer than the required four-year continuous period. To be immune from enforcement action, the use of the shed as a dwellinghouse must be 'affirmatively established' over the four-year period, according to *Swale BC v FSS & Lee* [2005] EWCA Civ 1568. That use must also be continuous through the immunity period³. As such, there is a need to examine the situation on the site between December 2011 and February 2016.

¹ Appeal Decision Ref: APP/U2370/C/18/3205129

² central heating, washing machine, tumble dryer, and served by electricity generated by a wind turbine

³ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

11. In the Autumn of 2012, a second caravan was brought onto the land after it was initially damaged. This provided extra living space and enabled the appellant's son to live on the site, as he had previously been living with his grandmother or at halls of residence at university. The son left university and lived in the second caravan, but as it only offered sleeping and bathroom facilities, he needed to use the shed's facilities. Hence, at this point, the second caravan provided incidental living accommodation to the shed.
12. That caravan was damaged in a storm in February 2014. Consequently, the appellant's son returned to live with his grandmother after permission was obtained from the site owner to allow him to do so. The damaged caravan was not lived in between February 2014 and 2017, when it was removed from the site. The son continued to live with his grandmother until January 2015.
13. A new static mobile home was brought onto the land in January 2015. This enabled the appellant's son to return to the site, and the appellant says that he lived in the mobile home until February 2016. The mobile home has been used for sleeping, cooking, and washing. The second bedroom was used as an office from January 2015, according to the appellant.
14. In February 2016, the living arrangements for the shed and the mobile changed, according to the appellant, after the appellant's mother became ill. This meant that the appellant and her husband moved into the mobile home along with her mother. Their son moved into the shed. The appellant says that she and her husband continued to live in the mobile home after the appellant's mother moved back home roughly six months later. Their son was intermittently at home in 2015 and 2016 while he was at university. The evidence indicates that the son has continued to stay at the site on occasion, including with his girlfriend, but there is no evidence setting out when, how frequent, or for how long his stays have been in the shed other than a broad reference to the weekend.
15. I recognise that the site has been the place of residence for the appellant and her husband between 2010 and the present day. That said, on the balance of probabilities, I consider the evidence and testimony of the appellant shows that the shed had all the necessary facilities for day-to-day private domestic existence, and it had been used as an independent dwelling between December 2011 and at least until January 2015. This is due to the type of accommodation present on the site, the appellant's intentions, and the facilities that the shed and the first two caravans afforded.
16. Nevertheless, the mobile home is larger than the shed, and it has been designed to be used as an independent unit of accommodation. The mobile home, which currently remains on site, offered the two bedrooms that the appellant had wished for so that her immediate family could all live on the site together. It also offers a larger living room, an extensive kitchen, and a dining table. The mobile home can be occupied without any dependence on the shed's facilities. As such, the use of the shed could have potentially changed in January 2015 following the arrival of the mobile home, which replaced the incidental living accommodation that the second caravan provided to the shed.
17. Therefore, consideration needs to be given to how the shed was used between January 2015 and February 2016; it is not just enough for it to have the necessary facilities for day-to-day existence. By extension, consideration needs to also be given to how the mobile home was used.

18. The sworn affidavits provided by the appellant suggest that the shed and the mobile home were both lived in by the appellant, her husband, and their son from January 2015. Photographs from 2016 and May 2017 show the exterior of the shed, and various internal photographs are said to have been taken between 2011 and 2021. This evidence should not be rejected simply because it is uncorroborated. It does, however, need to be sufficiently precise and unambiguous to show that it is more likely than not that the shed was used, as the appellant claims.
19. It is the Council's submission that the shed has not been used as a single unit of residential accommodation for any four-year period since it was erected. The Council considered the merits of this in a Certificate of Lawfulness for an Existing Use or Development (CLUED)⁴. As part of the CLUED, the Council considered the appellant's sworn affidavits and photographs, but also cited Council Tax records, Electoral Roll records and the absence of items such as bills and letters clearly linked to the use of the shed.
20. Council Tax has been paid since 1 April 2019 and the appellant, her husband, and son were on the Electoral Roll between June 2016 and August 2018, with the appellant and husband remaining on there since August 2018.
21. There is a post box serving the site, though this is labelled 'Helms Deep' and does not distinguish between the shed and the mobile home.
22. A letter from the appellant's doctor confirms that the appellant and her husband have been registered at a medical practice since 2010, with the site's address recorded. This would be a fair reflection of the appellant's occupation of the site along with her husband, regardless of the accommodation that they have lived in since 2010. It is not, however, specific to the shed, mobile home, or any of the caravans. Furthermore, as the invoice from the appellant's internet provider relates to 2021, it does not indicate how the shed was used in 2015 and 2016.
23. There are no other documents, such as utility bills or letters relating to the residential use of the shed or the mobile home, to suggest how they were used between January 2015 and February 2016. The appellant says that they would be generic to the people living at Helms Deep and not specific to the shed or the mobile home. Even if that is true, there are no bills, letters, or addressed documents before me beyond those that I have considered. Added to this, although there has evidently been a change in décor in the shed at some point since December 2011, the photographs provided by the appellant as part of this appeal are not date stamped. There are also limited internal photographs available, and there are no photographs between 2012 and May 2019 relating to typical family activities or events such as birthdays and Christmas.
24. Given the age of the appellant's son, who was an adult between January 2015 and February 2016, and the common use of smart phones, it is improbable that he did not have access to a smart phone at this time, prior to that, or since then. Equally, it is also unrealistic for anyone of the appellant, her husband or wider family members not to at least have access to a smart phone either during this period before that or after given their availability and the use of a smart phone to take photographs in 2019. This is against the backdrop of the appellant's son producing promotional material for her business.

⁴ Council Ref: 21/01419/LAWE

25. The appellant is reticent to take photographs and be part of them, but they have been acutely aware of the significance of the relevant immunity period and the burden that rests with them to demonstrate their case. This is evident from their detailed submissions, references to relevant case law, and responses to questions at the Inquiry after carrying out research.
26. Given this, it is difficult to reconcile why there is no evidence such as household bills or correspondence, date stamped photographs, or a wider range of photographs from January 2015 to February 2016 relating to any of the occupants, the shed, or the mobile home. All are likely sources of evidence given the time spent on site, the availability of smart phones, and the number of family members, even if the appellant does not like taking photographs.
27. It was the appellant's long-term plan to convert the barn into residential accommodation. This is borne out by the two prior notification applications in 2015, which were both refused. This is the reason why the appellant and her husband are said to have continued to live in the shed until 2016. However, there is still not a body of evidence that supports the use of the shed between January 2015 and February 2016 as a self-contained dwellinghouse. There is also no evidence outlining why the mobile home was preferred to be used as an office instead of the shed, though I accept that the office could be incidental, and so it is not a determinative factor in this case.
28. In my view, there is an evidential gap that places significant doubt on the appellant's version of events, especially when the appellant is aware that the burden rests with them. I consider that the appellant's evidence is not, on the balance of probabilities, precise and unambiguous, to show that the shed has been used as the primary dwellinghouse for a continuous four-year period between December 2011 and December 2015. While I accept the evidence for part of this period, the circumstances relating to the use of the shed after January 2015 are unclear. This is against the backdrop of the arrival of a mobile home in 2015 that offered the appellant and her family the two bedrooms that were desired, and accommodation that was fit for purpose.
29. Notwithstanding this, the appellant contends that the shed has continued to be used as an independent domestic dwelling to date. Since February 2016, the shed has been used by the appellant's mother (6 months from February 2016 and for several months in 2018-2019) so that support could be provided while she retained her independence. It has also be used by the appellant's son intermittently at weekends, by wider family members who have visited on occasion, and by the appellant during the pandemic to shield.
30. Evidence submitted relating to 2019 and 2020 points to the shed being ancillary or incidental to the residential use of the mobile home. The shed was described in the 2020 appeal decision to provide a second bedroom with en-suite bathroom facilities. Furthermore, the Inspector in the appeal decision in January 2020 expressed that "rather than the mobile home being functionally subordinate to the shed, it appears that the reverse is, in fact the case – the shed being functionally ancillary or incidental to the use of the mobile home." They went onto say "there have been periods when the living arrangements of the shed and mobile home have been fluid – for example times when the caravan would accommodate most family members whereas the shed would accommodate the appellant's mother. This does not indicate a situation where the mobile home is being used for purposes incidental to the shed."

31. The shed has been available to use as an independent residential dwelling since February 2016. However, the shed has not been continuously occupied or used in that time as an independent residential dwelling for a four-year period, though I accept there are at least three passages of several months when it seems to have been occupied or used continuously as such. I therefore agree with the findings of the previous Inspector about the incidental use of the shed. Therefore, despite the fluidity of the shed's use/occupation, there appears to have at least been periods of time greater than a few days when the shed has not been occupied as an independent dwellinghouse since February 2016. The photograph from Christmas 2019 does not change matters as it is a snapshot in time, and I have previously outlined that the evidence does not support the view that it had not acquired lawfulness by this time⁵.
32. The use of the mobile home and the shed have not changed since the pandemic, up until the notice was issued. Consequently, I am not satisfied that, on the balance of probability, the shed has been used as a self-contained residential dwelling for a continuous four-year period since February 2016. This may well also be the case since January 2015, but the evidential gap relating to the period of January 2015 and February 2016 means that events are uncertain regarding the use of the shed and by extension the mobile home.
33. Little clear evidence has been presented by the appellant about the use of all other parts of the land for any purpose ancillary or incidental to the residential use. The construction of a greenhouse, and the use of the land for BBQ's, family gatherings, and games are all plausible given the period in which the appellant and her family have occupied the land. That said, the mobile home should have ceased being used for residential purposes and been removed from the land six months after the appeal decision on 22 February 2020.
34. In any event, by the appellant's own admission, they moved out of the shed and into the mobile home in February 2016 at the latest. I have also considered the use of the shed since then, and why that has not acquired lawfulness as an independent residential dwelling. It follows, therefore, that the use of the land on which the shed is sited and the other parts of the land within the appeal site have not achieved the ten-year immunity period. Even if they have been used for residential purposes, this has been in association with the mobile home and not just the shed.
35. In conclusion, the onus to demonstrate their case rests with the appellant, and I am not satisfied on the balance of probabilities, despite the shed having the necessary facilities to support day to day private domestic existence, that the actual use of the shed has not been as an independent residential dwelling for any continuous four year period dating back from the date of the notice to when the shed was first built on the land. Moreover, I am not satisfied that the use of the land for ancillary and/or incidental purposes to the residential use of the shed has been demonstrated. The appeal on ground (d) therefore fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Andrew McGlone

INSPECTOR

⁵ Panton and Farmer v, SSETR and Vale of White Horse DC (1999) JPL 461) and Arun DC v. FSS [2006] EWCA Civ 1172

APPEARANCES

FOR THE APPELLANT:

Mrs Susan Gutierrez-Inostroza

FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson of Counsel

Robert Clewes, Principal Planning Officer, Wyre Borough Council

INQUIRY DOCUMENTS

- 1 – Photographs from dates in 2008, 2011, 2013, 2017 and 2019
- 2 – Appellant Opening Statement
- 3 – Council Opening Statement
- 4 – Council Closing Submissions
- 5 – Appellant Closing Submissions